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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS–SC–17–0067; SC17–959–4]

Onions Grown in South Texas; Order Amending Marketing Order 959

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Order No. 959, which regulates the handling of onions grown in South Texas. The amendments will reduce the size of the South Texas Onion Committee (Committee) and make necessary conforming changes.

DATES: This rule is effective April 22, 2019.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Geronimo.Quinones@usda.gov.*

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

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, finalizes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. Part 959 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee, which is responsible for the local administration of the Order, is comprised of onion producers and handlers operating within the area of production. The applicable rules of practice and procedure governing the formulation of Marketing Agreements and Orders (7 CFR part 900) authorize amendment of the Order through this informal rulemaking action.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering onions grown in South Texas.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendment, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

The Agricultural Marketing Service (USDA–AMS) considered the nature and complexity of the proposed amendment, the potential regulatory and economic impacts on affected entities, and other relevant matters, and determined that amending the Order as proposed by the Committee could appropriately be accomplished through informal rulemaking.

The amendments were unanimously recommended by the Committee following deliberations at a public meeting held on June 7, 2017. This final rule will amend the Order by reducing the size of the Committee from 34 to 26 members. The change will remove one voting producer and one voting handler member, and one producer and one handler alternate member from each of the two districts. Conforming and clarifying changes will also be made to §§ 959.24, 959.26, 959.32, and §§ 959.110 and 959.111 will be removed and reserved.

A proposed rule and referendum order were issued on July 19, 2018 and published in the **Federal Register** on July 30, 2018 (83 FR 36479). That document also directed that a referendum among Texas onion growers be conducted August 6, 2018 through August 27, 2018 to determine whether they favored the proposals. To become effective, the amendment had to be approved by either two-thirds of the growers voting in the referendum or by those representing at least two-thirds of the volume of onions produced by those voting in the referendum. The amendment was favored by 100 percent of the growers voting and by 100 percent of the volume represented, the

second of which exceeds the two-thirds volume requirement.

The amendment in this final rule reduces the size of the Committee from 34 to 26 members. The reduction will remove one voting producer and one voting handler member, and one producer and one handler alternate member from each of the two districts (eight members total). As a result, conforming changes need to be made to Order language regarding the definition of Districts, the selection of Committee nominees and Committee voting procedures. Additionally, two sections will be rendered obsolete and will be removed.

Final Regulatory Flexibility Analysis

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

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

There are approximately 60 producers of onions in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

Based on information from the National Agricultural Statistics Service, the weighted grower price for South Texas onions during the 2015–16 season was approximately $12.30 per 50-pound equivalent. Furthermore, according to Committee data, total shipments were approximately three million 50-pound equivalents for the 2015–16 season with a total 2015–16 crop value estimated at $37 million. Dividing the crop value by the estimated number of producers (60) yields an estimated average receipt per producer of $617,000. This is below the $750,000 SBA definition of small producers. The average handler price for South Texas onions during the 2015–16 season was approximately $14.05 per 50-pound equivalent. Multiplying the average handler price by shipment information of 3 million 50-pound equivalent results in an estimated handler-level value of $42 million. Dividing this figure by the number of handlers (30) yields an estimated average annual handler receipts of $1.4 million, which is below the SBA definition of small agricultural service firms. Assuming a normal distribution, most producers and handlers of South Texas onions may be classified as small entities.

The Committee's proposed amendment to reduce the size of the Committee from 34 to 26 members under the Order by removing one voting producer and one voting handler member, and one producer and one handler alternate member, from each of the two districts was unanimously recommended at a meeting on June 7, 2017.

Over the past 15 years there has been a 31-percent decrease in the number of onion producers, and a 34-percent decrease in the number of handlers in the production area. Many seats on the Committee remain vacant, as it has been challenging to find sufficient nominees. Having a smaller size Committee will enable it to fulfill those membership and quorum requirements.

AMS believes this change will serve the needs of the Committee and the industry thereby ensuring a more efficient and orderly flow of business. No economic impact is expected because amendments would not establish any regulatory requirements on handlers, nor does it contain any assessment or funding implications. There will be no change in financial costs, reporting, or recordkeeping requirements because of this action.

Alternatives to this proposal, including making no changes at this time, were considered. However, the Committee believes that given reductions in the size of the industry, a smaller Committee size is necessary in order to ensure its ability to locally administer the program. Reducing the size of the Committee would enable it to fulfill membership and quorum requirements, thereby ensuring a more efficient and orderly flow of business.

Paperwork Reduction Act

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

This amendment will not impose any additional reporting or recordkeeping requirements on either small or large South Texas onion handlers.

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

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

The Committee's meeting was widely publicized throughout the South Texas onion production area. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the June 7, 2017, meeting was public, and all entities, both large and small, were encouraged to express their views on the proposal.

A proposed rule concerning this action was published in the **Federal Register** on March 1, 2018 (83 FR 8804). Copies of the rule were mailed or sent via facsimile to all Committee members and South Texas onion handlers. The proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending April 30, 2018, was provided to allow interested persons to respond to the proposal.

Although two comments were received, no changes were made to the proposed amendments.

A proposed rule and referendum order was then issued on July 19, 2018 and published in the **Federal Register** on July 30, 2018 (83 FR 36476). That document directed that a referendum among Texas growers be conducted during the period of August 6, 2018 through August 27, 2018 to determine whether they favored the proposed amendment to the Order. To become effective, the amendment had to be approved by at least two-thirds of the growers voting, or two-thirds of the volume of Texas onions represented by voters in the referendum. The amendment was favored by 100 percent of the growers voting and by 100 percent of the volume represented, the second of which exceeds the two-thirds volume requirement.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may

be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Order Amending the Order Regulating the Handling of Onions Grown in South Texas [1]

Findings and Determinations

(a) Findings and Determinations Upon the Basis of the Rulemaking Record.

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the Order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The Order, as amended, and as hereby further amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

2. The Order, as amended, and as hereby further amended, regulates the handling of onions grown in South Texas in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the Order;

3. The Order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The Order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of onions produced in the production area; and

5. All handling of onions produced or packed in the production area as defined in the Order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.*

It is hereby determined that:

1. Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping of walnuts covered under the Order) who during the period August 1, 2016, through July 31, 2017, handled not less than 50 percent of the volume of such onions covered by said Order, as hereby amended, have not signed an amended marketing agreement; and

2. The issuance of this amendatory Order, amending the aforesaid Order, is favored or approved by producers representing at least two-thirds of the volume of onions produced by those voting in a referendum on the question of approval and who, during the period of August 1, 2016, through July 31, 2017, have been engaged within the production area in the production of such onions.

3. The issuance of this amendatory Order advances the interests of growers of onions in the production area pursuant to the declared policy of the Act.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of onions grown in South Texas shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby proposed to be amended as follows:

The provisions amending the Order contained in the proposed rule issued by the Administrator on February 23, 2018 and published in the **Federal Register** (83 FR 8804) on March 1, 2018, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Dated: March 13, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 959.22 to read as follows:

§ 959.22 Establishment and membership.

The South Texas Onion Committee, consisting of thirteen members, eight of whom shall be producers and five of whom shall be handlers, is hereby established. For each member of the Committee there shall be an alternate. Producer members and alternates shall not have a proprietary interest in or be employees of a handler organization.

■ 3. Revise § 959.24 to read as follows:

§ 959.24 Districts.

To determine a basis for selecting Committee members, the following districts of the production area are hereby established:

(a) *District No. 1.* (Coastal Bend-Lower Valley) The Counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, McMullen, Cameron, Hidalgo, Starr, and Willacy in the State of Texas.

(b) *District No. 2.* (Laredo-Winter Garden) The Counties of Zapata, Webb, Jim Hogg De Witt, Wilson, Atascosa, Karnes Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and La Salle in the State of Texas.

■ 4. Revise § 959.26 to read as follows:

§ 959.26 Selection.

The Secretary shall select members and respective alternates from districts established pursuant to § 959.24 or § 959.25. Selections shall be as follows:

(a) *District No. 1.* Five producer members and alternates; three handler members and alternates.

(b) *District No. 2.* Three producer members and alternates; two handler members and alternates.

■ 5. Amend § 959.32 by revising paragraph (a) to read as follows:

§ 959.32 Procedure.

(a) Nine members of the Committee shall be necessary to constitute a quorum. Seven concurring votes, or two-thirds of the votes cast, whichever is greater, shall be required to pass any motion or approve any Committee action. At assembled meetings all votes shall be cast in person.

* * * * *

§§ 959.110 and 959.111 [Removed and Reserved]

■ 6. Remove and reserve §§ 959.110 and 959.111.

[FR Doc. 2019–05435 Filed 3–21–19; 8:45 am]

BILLING CODE 3410–02–P

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0122; Product Identifier 2018–NM–164–AD; Amendment 39–19592; AD 2019–05–10]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This AD was prompted by a report of un-torqued nuts on certain slat and flap shaft junctions of the wings. This AD requires a one-time inspection on each junction of certain slat and flap shafts for discrepancies, and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective April 8, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 8, 2019.

We must receive comments on this AD by May 6, 2019.

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

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

For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0122.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0122; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0244, dated November 13, 2018; (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes. The MCAI states:

> During inspection on an aeroplane in final assembly line, un-torqued nuts on slat and flap shaft junctions have been reported.
>
> This condition, if not detected and corrected, in case of two or more nuts missing or incorrectly torqued on a shaft junction and concurrent failure of a different shaft, could lead to uncommanded slat or flap movement, possibly resulting in loss of control of the aeroplane.
>
> To address this potential unsafe condition, Airbus published the SB [Service Bulletin A350–27–P022] to provide applicable instructions.
>
> For the reasons describe above, this [EASA] AD requires a one-time detailed inspection (DET) of each affected junction, and, depending on findings, accomplishment of applicable corrective action(s).

Corrective actions include ensuring correct torque on all nuts and bolts, applying torque red line markings on affected nuts, and replacing any missing bolt. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0122.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A350–27–P022, Revision 00, dated June 6, 2018. This service information describes procedures for a one-time inspection of each junction of flap torque-shaft 2 and slat torque-shafts 2 and 4 for discrepancies (including missing torque marking on any nut, any untorqued nut, or any missing bolt). The service information also describes procedures for torqueing any affected nuts and bolts, applying torque red line markings on affected nuts, and replacing any missing bolts.

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

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in the service information described previously.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because two or more missing or incorrectly torqued nuts on a junction of certain slat and flap shafts, concurrent failure of an alternate flap shaft, and consequent uncommanded slat or flap movement, could result in loss of control of the airplane. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0122; Product Identifier 2018–NM–164–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 1 airplane of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
12 work-hours × $85 per hour = $1,020	$0	$1,020	$1,020

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × $85 per hour = $255	$1,000	$1,255

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

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):

2019–05–10 Airbus SAS: Amendment 39–19592; Docket No. FAA–2019–0122; Product Identifier 2018–NM–164–AD.

(a) Effective Date

This AD becomes effective April 8, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, manufacturer serial numbers as identified in Airbus Service Bulletin A350–27–P022, Revision 00, dated June 6, 2018.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by a report of untorqued nuts on certain slat and flap shaft junctions of the wings. We are issuing this AD to address two or more missing or incorrectly torqued nuts on a junction of certain slat and flap shafts, concurrent failure of an alternate flap shaft, and consequent uncommanded slat or flap movement, which could result in loss of control of the airplane.

(f) Compliance

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

(g) One-Time Inspection and Corrective Action

Within 3 months after the effective date of this AD: Do a one-time detailed inspection (including a torque check on any affected nut) on each junction of flap torque-shaft 2 and slat torque-shafts 2 and 4 of the right and left hand wing for discrepancies (including missing torque marking on any nut, any untorqued nut, or any missing bolt), and do all applicable corrective actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A350–27–P022, Revision 00, dated June 6, 2018. Do all applicable corrective actions at the applicable times specified in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A350–27–P022, Revision 00, dated June 6, 2018.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards 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 International Section, send it to the attention of the person identified in paragraph (i)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0244, dated November 13, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0122.

(2) For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A350–27–P022, Revision 00, dated June 6, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued in Des Moines, Washington, on March 13, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–05490 Filed 3–21–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845, and 846

[Docket ID: OSM–2018–0009; S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A00 19XS501520]

RIN 1029–AC76

Civil Monetary Penalty Inflation Adjustments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), and Office of Management and Budget (OMB) guidance, this rule adjusts for inflation the level of civil monetary penalties assessed under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

DATES: This rule is effective on March 22, 2019.

FOR FURTHER INFORMATION CONTACT: Kathleen Vello, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4550, Washington, DC 20240; Telephone (202) 208–1908. Email: *kvello@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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M. Data Quality Act
N. Administrative Procedure Act

I. Background

A. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

Section 518 of SMCRA, 30 U.S.C. 1268, authorizes the Secretary of the Interior to assess civil monetary penalties (CMPs) for violations of SMCRA. The Office of Surface Mining Reclamation and Enforcement's (OSMRE) regulations implementing the CMP provisions of section 518 are located in 30 CFR parts 723, 724, 845, and 846. We are adjusting CMPs in four sections—30 CFR 723.14, 724.14, 845.14, and 846.14.

On November 2, 2015, the President signed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (2015 Act) into law. The 2015 Act, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (codified as amended at 28 U.S.C. 2461 note), requires Federal agencies to promulgate rules to adjust the level of CMPs to account for inflation. The 2015 Act required an initial ''catch-up'' adjustment. OSMRE published the initial adjustment in the **Federal Register** on July 8, 2016 (81 FR 44535), and the adjustment took effect on August 1, 2016. The 2015 Act also requires agencies to publish annual inflation adjustments in the **Federal Register** no later than January 15 of each year. These adjustments are aimed at maintaining the deterrent effect of civil penalties and furthering the policy goals of the statutes that authorize the penalties. Further, the 2015 Act provides that agencies must adjust civil monetary penalties ''notwithstanding section 553 of [the Administrative Procedure Act].'' Therefore, the public procedure that the Administrative Procedure Act generally requires for rulemaking—notice, an opportunity for comment, and a delay in the effective date—is not required for agencies to issue regulations implementing the annual CMP adjustments. *See* December 14, 2018, Memorandum for the Heads of Executive Departments and Agencies (M–19–04), from Mick Mulvaney, Director, Office of Management and Budget, *Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Memorandum).

Pursuant to SMCRA and the 2015 Act, this final rule reflects the statutorily required CMP adjustments as follows:

CFR citation	Points (where applicable)	Current penalty dollar amounts ($)	Adjusted penalty dollar amounts ($)
30 CFR 723.14	1	$65	$67
	2	132	135
	3	197	202
	4	262	269
	5	328	336
	6	394	404
	7	459	471
	8	524	537
	9	590	605
	10	656	673
	11	721	739
	12	787	807
	13	852	873
	14	918	941
	15	985	1,010
	16	1,050	1,076
	17	1,115	1,143
	18	1,182	1,212
	19	1,247	1,278
	20	1,312	1,345
	21	1,378	1,413
	22	1,444	1,480
	23	1,509	1,547
	24	1,574	1,614
	25	1,640	1,681
	26	1,968	2,018
	27	2,296	2,354
	28	2,623	2,689
	29	2,827	2,898
	30	3,281	3,364
	31	3,608	3,699
	32	3,936	4,035
	33	4,264	4,372
	34	4,592	4,708
	35	4,920	5,044
	36	5,248	5,380
	37	5,577	5,718
	38	5,904	6,053
	39	6,232	6,389
	40	6,559	6,724
	41	6,889	7,063
	42	7,216	7,398
	43	7,544	7,734
	44	7,872	8,071

CFR citation	Points (where applicable)	Current penalty dollar amounts ($)	Adjusted penalty dollar amounts ($)
	45	8,200	8,407
	46	8,529	8,744
	47	8,856	9,079
	48	9,185	9,417
	49	9,512	9,752
	50	9,840	10,088
	51	10,167	10,423
	52	10,497	10,762
	53	10,825	11,098
	54	11,152	11,433
	55	11,481	11,771
	56	11,808	12,106
	57	12,136	12,442
	58	12,464	12,778
	59	12,793	13,116
	60	13,120	13,451
	61	13,448	13,787
	62	13,777	14,124
	63	14,105	14,461
	64	14,433	14,797
	65	14,760	15,132
	66	15,089	15,470
	67	15,416	15,805
	68	15,744	16,141
	69	16,072	16,477
	70	16,401	16,815
30 CFR 723.15(b) (Assessment of separate violations for each day)	.....	2,460	2,522
30 CFR 724.14(b) (Individual civil penalties)	.....	16,401	16,815
30 CFR 845.14	1	65	67
	2	132	135
	3	197	202
	4	262	269
	5	328	336
	6	394	404
	7	459	471
	8	524	537
	9	590	605
	10	656	673
	11	721	739
	12	787	807
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	14	918	941
	15	985	1,010
	16	1,050	1,076
	17	1,115	1,143
	18	1,182	1,212
	19	1,247	1,278
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	65	14,760	15,132
	66	15,089	15,470
	67	15,416	15,805
	68	15,744	16,141
	69	16,072	16,477
	70	16,401	16,815
30 CFR 845.15(b) (Assessment of separate violations for each day)	.....	2,460	2,522
30 CFR 846.14(b) (Individual civil penalties)	.....	16,401	16,815

In the chart above, there are no numbers listed in the ''Points'' column relative to 30 CFR 723.15(b), 30 CFR 724.14(b), 30 CFR 845.15(b), and 30 CFR 846.14(b) because those regulatory provisions do not set forth numbers of points. For those provisions, the current regulations only set forth the dollar amounts shown in the chart in the ''Current Penalty Dollar Amounts'' column; the adjusted amounts, which we are adopting in this rule, are shown in the ''Adjusted Penalty Dollar Amounts'' column.

B. Calculation of Adjustments

OMB issued guidance on the 2019 annual adjustments for inflation. *See* OMB Memorandum (December 14, 2018). The OMB Memorandum notes that the 1990 Act defines ''civil monetary penalty'' as ''any penalty, fine, or other sanction that . . . is for a specific monetary amount as provided by Federal law; *or* . . . has a maximum amount provided for by Federal law; *and* . . . is assessed or enforced by an agency pursuant to Federal law; *and* . . . is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts . . . .'' It further instructs that agencies ''are to adjust 'the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment.' '' *See* December 14, 2018 OMB Memorandum. The 1990 Act and the OMB Memorandum specify that the annual inflation adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (the CPI–U) published by the Department of Labor for the month of October in the year of the previous adjustment, and the October CPI–U for the preceding year. The recent OMB Memorandum specified that the cost-of-living adjustment multiplier for 2019, not seasonally adjusted, is 1.02522 (the October 2018 CPI–U (252.885) divided by the October 2017 CPI–U (246.663) = 1.02522). OSMRE used this guidance to identify applicable CMPs and calculate the required inflation adjustments. The 1990 Act specifies that any resulting increases in CMPs must be rounded according to a stated rounding formula and that the increased CMPs apply only to violations that occur after the date the increase takes effect.

Generally, OSMRE assigns points to a violation as described in 30 CFR 723.13 and 845.13. The CMP owed is based on the number of points received, ranging from one point to 70 points. For example, under our existing regulations in 30 CFR 845.14, a violation totaling 70 points would amount to a $16,401 CMP. To adjust this amount, we multiply $16,401 by the 2019 inflation factor of 1.02522, resulting in a raw adjusted amount of $16,814.65. Because the 2015 Act requires us to round any increase in the CMP amount to the nearest dollar, in this case a violation of 70 points would amount to a new CMP of $16,815. Pursuant to the 2015 Act, the increases in this Final Rule apply to CMPs assessed after the date the increases take effect, even if the associated violation predates the applicable increase.

C. Effect of the Rule in Federal Program States and on Indian Lands

OSMRE directly regulates surface coal mining and reclamation operations within a State or on Tribal lands if the State or Tribe does not obtain its own approved program pursuant to sections 503 or 710(j) of SMCRA, 30 U.S.C. 1253 or 1300(j). The increases in CMPs contained in this rule will apply to the following Federal program States: Arizona, California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for those States appear at 30 CFR parts 903, 905, 910,

912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Under 30 CFR 750.18, the increase in CMPs also applies to Indian lands under the Federal program for Indian lands.

D. Effect of the Rule on Approved State Programs

As a result of litigation, *see In re Permanent Surface Mining Regulation Litigation,* No. 79–1144, Mem. Op. (D.D.C. May 16, 1980), 19 Env't. Rep. Cas. (BNA) 1477, State regulatory programs are not required to mirror all of the penalty provisions of our regulations. Thus, this rule has no effect on CMPs in States with SMCRA primacy.

II. Procedural Matters and Required Determinations

A. Regulatory Planning and Review (Executive Orders 12866, 13563, and 13771)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that agency regulations exclusively implementing the annual inflation adjustments are not significant, provided they are consistent with the OMB Memorandum.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements, to the extent permitted by statute.

Executive Order 13771 of January 30, 2017 directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. Executive Order 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of Executive Order 12866. As mentioned above, OIRA has determined that agency regulations exclusively implementing the annual adjustment are not significant regulatory actions under Executive Order 12866, provided they are consistent with the OMB Memorandum (*see* OMB Memorandum, M–19–04, at 3). Thus, Executive Order 13771 does not apply to this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties annually for inflation ''notwithstanding section 553 [of the Administrative Procedure Act].'' Thus, no proposed rule will be published, and the RFA does not apply to this rulemaking.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector, of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (Executive Order 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy, under Departmental Manual Part 512, Chapters 4 and 5, and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on Federally-recognized Tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department's Tribal consultation policy is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an

administrative nature. (For further information *see* 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on Energy Supply, Distribution, and Use (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;
(b) Use the active voice to address readers directly;
(c) Use common, everyday words and clear language rather than jargon;
(d) Be divided into short sections and sentences; and
(e) Use lists and tables wherever possible.

If you believe that we have not met these requirements in issuing this final rule, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Your comments should be as specific as possible in order to help us determine whether any future revisions to the rule are necessary. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

N. Administrative Procedure Act

We are issuing this final rule without prior public notice or opportunity for public comment. As discussed above, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to publish adjusted penalties annually. Under the 2015 Act, the public procedure that the Administrative Procedure Act generally requires—notice, an opportunity for comment, and a delay in the effective date—is not required for agencies to issue regulations implementing the annual adjustments required by the 2015 Act. *See* OMB Memorandum, M–19–04, at 4.

List of Subjects

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Dated: February 22, 2019.

Joseph R. Balash,

Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, the Department of the Interior amends 30 CFR parts 723, 724, 845, and 846 as set forth below.

PART 723—CIVIL PENALTIES

■ 1. The authority citation for part 723 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.,* and 31 U.S.C. 3701.

■ 2. Revise the table in § 723.14 to read as follows:

§ 723.14 Determination of amount of penalty.

* * * * *

Points	Dollars
1	67
2	135
3	202
4	269
5	336
6	404
7	471
8	537
9	605
10	673
11	739
12	807
13	873
14	941
15	1,010
16	1,076
17	1,143
18	1,212
19	1,278
20	1,345
21	1,413
22	1,480
23	1,547
24	1,614
25	1,681
26	2,018
27	2,354
28	2,689
29	2,898
30	3,364
31	3,699
32	4,035
33	4,372
34	4,708
35	5,044
36	5,380
37	5,718
38	6,053
39	6,389
40	6,724
41	7,063
42	7,398
43	7,734
44	8,071
45	8,407
46	8,744
47	9,079
48	9,417
49	9,752
50	10,088
51	10,423
52	10,762
53	11,098
54	11,433
55	11,771
56	12,106
57	12,442
58	12,778
59	13,116
60	13,451
61	13,787
62	14,124
63	14,461
64	14,797
65	15,132
66	15,470
67	15,805
68	16,141
69	16,477
70	16,815

■ 3. In § 723.15, revise paragraph (b) introductory text to read as follows:

§ 723.15 Assessment of separate violations for each day.

* * * * *

(b) In addition to the civil penalty provided for in paragraph (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than $2,522 will be assessed for each day during which such failure to abate continues, except that:

* * * * *

PART 724—INDIVIDUAL CIVIL PENALTIES

■ 4. The authority citation for part 724 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.,* and 31 U.S.C. 3701.

■ 5. In § 724.14, revise the first sentence of paragraph (b) to read as follows:

§ 724.14 Amount of individual civil penalty.

* * * * *

(b) The penalty will not exceed $16,815 for each violation. * * *

PART 845—CIVIL PENALTIES

■ 6. The authority citation for part 845 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.,* 31 U.S.C. 3701, Pub. L. 100–202, and Pub. L. 100–446.

■ 7. Revise the table in § 845.14 to read as follows:

§ 845.14 Determination of amount of penalty.

* * * * *

Points	Dollars
1	67
2	135
3	202
4	269
5	336
6	404
7	471
8	537
9	605
10	673
11	739
12	807
13	873
14	941
15	1,010
16	1,076
17	1,143
18	1,212
19	1,278
20	1,345
21	1,413
22	1,480
23	1,547
24	1,614
25	1,681
26	2,018
27	2,354
28	2,689
29	2,898
30	3,364
31	3,699
32	4,035
33	4,372
34	4,708
35	5,044
36	5,380
37	5,718
38	6,053
39	6,389
40	6,724
41	7,063
42	7,398
43	7,734
44	8,071
45	8,407
46	8,744
47	9,079
48	9,417
49	9,752
50	10,088
51	10,423
52	10,762
53	11,098
54	11,433
55	11,771
56	12,106
57	12,442
58	12,778
59	13,116
60	13,451
61	13,787
62	14,124
63	14,461
64	14,797
65	15,132
66	15,470
67	15,805
68	16,141
69	16,477
70	16,815

■ 8. In § 845.15, revise paragraph (b) introductory text to read as follows:

§ 845.15 Assessment of separate violations for each day.

* * * * *

(b) In addition to the civil penalty provided for in paragraph (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than $2,522 will be assessed for each day during which such failure to abate continues, except that:

* * * * *

PART 846—INDIVIDUAL CIVIL PENALTIES

■ 9. The authority citation for part 846 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.,* and 31 U.S.C. 3701.

■ 10. In § 846.14, revise the first sentence of paragraph (b) to read as follows:

§ 846.14 Amount of individual civil penalty.

* * * * *

(b) The penalty will not exceed $16,815 for each violation. * * *

[FR Doc. 2019–05507 Filed 3–21–19; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2019–0155]

RIN 1625–AA09

Drawbridge Operation Regulations; Bayou Lafourche, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard is issuing a temporary deviation to the operating schedule that regulates six drawbridges across Bayou Lafourche, Lafourche Parish, Louisiana. These drawbridges are located south of the Gulf Intracoastal Waterway and cross Bayou Lafourche at miles 38.7, 36.3, 33.9, 30.6, 27.8 and 23.9. This deviation is needed to collect and analyze information on vehicle traffic congestion on SR 308 and LA–1 created when the drawbridges open to vessels and the impact to the reasonable needs of navigation when the bridges close to vessels during periods of high vehicle traffic. During this temporary deviation the drawbridge will remain closed to navigation.

DATES: This deviation is effective from 6 a.m. on March 25, 2019 to 6 a.m. on July 22, 2019. Comments and related material must be received by the Coast Guard on or before August 22, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0155 using Federal eRulemaking Portal at *http://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 rulemaking, call or email Mr. Doug Blakemore, Eighth Coast Guard District Bridge Administrator; telephone (504) 671–2128, email *Douglas.A.Blakemore@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
LADOTD Louisiana Department of Transportation and Development
GLPC Greater Lafourche Port Commission
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Greater Lafourche Port Commission (GLPC) has requested to change the operating requirements for the following bridges that cross Bayou Lafourche in Lafourche Parish, Louisiana: Larose vertical lift bridge, mile 38.7, Larose, LA; Cut Off vertical lift bridge, mile 36.3, Cut Off, LA; Cote Blanche pontoon bridge, mile 33.6, Cut Off, LA; Tarpon vertical lift bridge, mile 30.6, Galliano, LA; Galliano pontoon bridge, mile 27.8, Galliano, LA; Golden Meadow vertical lift bridge, mile 23.9, Golden Meadow, LA. These bridges currently open according to 33 CFR 117.465.

The GLPC requested changing these bridge operating regulations because vehicle and school bus traffic has become congested along SR 308 and LA–1 during morning commute hours. There are five schools located along this part of Bayou Lafourche. School buses must cross the drawbridges to pick up and deliver students to their respective schools. School buses recently began picking up students 15 minutes earlier in the morning. To alleviate bus and vehicle congestion GLPC has asked to align morning bridge closures with this shift in student pick-up times.

The 120-day temporary deviation to the regulation will allow GLPC to collect additional vehicle traffic data to measure the impact of bridge closures on traffic congestion. It will also allow the Coast Guard to collect data on the impact of the proposed regulation change on vessels.

During this temporary deviation these bridges will operate as follows:

The draws of the following bridges shall open on signal; except that, from August 1 through May 31, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 6:30 a.m. to 8:15 a.m.; from 2 p.m. to 4 p.m. and from 4:30 p.m. to 5:30 p.m., unless otherwise indicated:

(1) SR 308 (Golden Meadow) Bridge, mile 23.9, at Golden Meadow
(2) Galliano Pontoon Bridge, mile 27.8, at Galliano
(3) SR 308 (South Lafourche (Tarpon)) Bridge, mile 30.6, at Galliano
(4) Cote Blanche Pontoon Bridge, mile 33.9, at Cutoff
(5) Cutoff Vertical Lift Bridge, mile 36.3, at Cutoff
(6) LA–657 (Larose) Vertical Lift Bridge, mile 38.7, at Larose.

The bridge will open on signal for emergencies.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

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

III. Public Participation and Request for Comments

Public participation is essential to effective rulemaking. The Coast Guard will consider all comments and material received during the comment period. 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 *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact 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 *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this temporary rule change, and all public comments, are in our online docket at *http://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.

Dated: March 18, 2019.

Douglas A. Blakemore,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2019–05473 Filed 3–21–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0167]

RIN 1625–AA00

Safety Zone; Patuxent River, Patuxent River, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Patuxent River. This action is necessary to provide for the safety of life on these navigable waters of the Patuxent River at Patuxent River, MD, during salvage operations of the vessel YP–702 on March 24, 2019 (with alternate of March 25, 2019, or March 26, 2019). This action prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 9 a.m. on March 24, 2019, through 4 p.m. on March 26, 2019. This rule will be enforced from 9 a.m. until 4 p.m. on March 24, 2019, or, in the case of inclement weather, on those same hours on March 25, 2019, or March 26, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2019–0167 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The vessel YP–702, a 108-foot-long vessel with a wooden hull and aluminum superstructure, took on water

and sank while anchored outside the channel in the Patuxent River at Patuxent River, MD. The vessel is presently lying in a sunken condition resting on the river bottom in 12 to 15 feet of water in approximate position latitude 38°18′03.96″ N, longitude 076°27′39.90″ W. Salvage operations will be taking place on March 24, 2019, with alternate dates of March 25, 2019, or March 26, 2019.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be impracticable and contrary to the public interest. Waiting to return the waterway to conditions that accommodate the safe, full resumption of boating and fishing in the immediate area is contrary to the public interest. It is impracticable to publish an NPRM because recovery assets will be on scene on or about March 24, 2019, and the safety zone needs to be in place at that time to protect vessels and persons in the vicinity of vessel salvage operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest. Immediate action is needed to protect vessels, equipment and persons conducting diving and salvage operations of the vessel YP–702, as well as vessels transiting nearby, from the potential hazards associated with these operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with salvage operations will be a safety concern for anyone within 100 yards of the vessel YP–702 salvage operations. This rule is needed to protect personnel, vessels, equipment, and the marine environment in the navigable waters within the safety zone while the sunken vessel is being removed.

IV. Discussion of the Rule

This rule establishes a safety zone to be enforced from 9 a.m. to 4 p.m. on March 24, 2019, or if necessary due to inclement weather, those same hours on either March 25, 2019, or March 26, 2019. The safety zone covers all navigable waters of the Patuxent River within 100 yards of the vessel YP–702 in approximate position latitude 38°18′03.96″ N, longitude 076°27′39.90″ W, located at Patuxent River, MD. The duration and enforcement of the zone is intended to protect personnel, vessels, equipment, and the marine environment in these navigable waters while the sunken vessel is being removed. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this 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 rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Patuxent River for 7 total enforcement hours, during the month of March when vessel traffic in the Patuxent River is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

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 rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will 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 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 rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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 rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined 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 rule involves a safety zone to be enforced for only seven hours during the vessel YP–702 salvage operations that will prohibit entry within 100 yards of vessels and equipment being used by personnel to remove the sunken vessel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact 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.

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 amends 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.T05–0167 to read as follows:

§ 165.T05–0167 Safety Zone; Patuxent River, Patuxent River, MD.

(a) *Location.* The following area is a safety zone: All navigable waters of the Patuxent River within 100 yards of the vessel YP–702 in approximate position latitude 38°18′03.96″ N, longitude 076°27′39.90″ W, located at Patuxent River, MD. All coordinates refer to datum NAD 1983.

(b) *Definitions.* As used in this section:

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To request permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(4) The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 providing updates about the zone.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 9 a.m. until 4 p.m. on March 24, 2019, or if necessary due to inclement weather, those same hours on either March 25, 2019, or March 26, 2019.

Dated: March 19, 2019.

Joseph B. Loring,

Captain, U.S. Coast Guard Captain of the Port Maryland-National Capital Region.

[FR Doc. 2019–05550 Filed 3–21–19; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2018–7]

Filing of Schedules by Rights Owners and Contact Information by Transmitting Entities Relating to Pre-1972 Sound Recordings

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: Pursuant to the Classics Protection and Access Act, title II of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (''MMA''), the U.S. Copyright Office is adopting as final a rule regarding the filing of schedules by rights owners listing their sound recordings fixed before February 15, 1972, and the filing of contact information by entities publicly performing these sound recordings by means of digital audio transmission. This rule largely finalizes the interim rule published on October 16, 2018, with some adjustments adopted in response to public comment.

DATES: The effective date of the final rule is April 22, 2019.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* or Anna Chauvet, Assistant General Counsel, by email at *achau@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

On October 16, 2018, the Copyright Office issued an interim rule with

request for comments regarding certain filings necessitated by title II of the MMA, the Classics Protection and Access Act (the ''Act'').[1] As explained in the interim rule, the Act created chapter 14 of the copyright law, title 17, United States Code, which, among other things, extends remedies for copyright infringement to owners of sound recordings fixed before February 15, 1972 (''Pre-1972 Sound Recordings''). Under the provision, rights owners may be eligible to recover statutory damages and/or attorneys' fees for the unauthorized use of their Pre-1972 Sound Recordings if certain requirements are met.

Specifically, to be eligible for these remedies, rights owners must typically file schedules listing their Pre-1972 Sound Recordings (''Pre-1972 Schedules'') with the Copyright Office, which are then indexed into the Office's public records.[2] The remedies are only available for unauthorized uses of a sound recording that have occurred more than 90 days after indexing.[3] Pre-1972 Schedules must include the name of the rights owner, title, and featured artist for each recording listed, and ''such other information, as practicable, that the Register of Copyrights prescribes by regulation.'' [4] The filing requirement ''is designed to operate in place of a formal registration requirement that normally applies to claims involving statutory damages.'' [5] In addition, the Pre-1972 Schedules are important to the Act's new exemption for noncommercial uses of Pre-1972 Sound Recordings that are not being commercially exploited.[6] Under that provision, persons seeking to use the exemption are exempt from liability for unauthorized use if they make a ''good faith, reasonable search for'' a given sound recording in the Office's records of Pre-1972 Schedules before determining that the recording is not being commercially exploited.[7] In establishing a filing mechanism for Pre-1972 Schedules, the Office must also provide a means for individuals to request and receive timely notification when such filings are indexed into the Office's public record.[8]

Under the Act, rights owners must also provide specific notice of unauthorized use to certain entities that were previously transmitting Pre-1972 Sound Recordings before pursuing certain remedies against them. To be entitled to receive direct notice of unauthorized activity from a rights owner, an entity must have been publicly performing a Pre-1972 Sound Recording by means of digital audio transmission at the time of enactment of section 1401 and must file its contact information with the Copyright Office within 180 days of enactment, that is, by April 9, 2019.[9] Where a valid notice of contact information has been filed, the rights owner may be eligible to obtain statutory damages and/or attorneys' fees only after directly sending the transmitting entity a notice stating that it is not legally authorized to use the Pre-1972 Sound Recording, and identifying the Pre-1972 Sound Recording in a schedule conforming to the requirements by the Office for filing Pre-1972 Schedules.[10] For any eligible transmitting entities that do not file contact information by April 9, 2019, rights owners may seek statutory damages and/or attorneys' fees resulting from unauthorized uses by those entities after filing Pre-1972 Schedules as described above.[11]

The interim rule established regulations governing each of these new filing mechanisms: The filing of Pre-1972 Schedules by rights owners, the filing of contact information by entities publicly performing these sound recordings by means of digital audio transmission, and specifying how individuals may request timely notification of the filing of Pre-1972 Schedules with the Office.[12] In response to its request for public comment, the Office received one joint comment from the American Association of Independent Music (''A2IM''), Recording Industry Association of America, Inc. (''RIAA''), and SoundExchange, Inc.[13] Having reviewed and carefully considered this comment, the Office is now adopting the interim rule as final, with a few adjustments as described below.

II. Final Rule

A. Pre-1972 Schedules

1. Content of Pre-1972 Schedules

Under the interim rule, rights owners desiring to file Pre-1972 Schedules with the Office must use a form provided on the Office's website,[14] which is an Excel spreadsheet template. This format allows the Office to timely ingest the Pre-1972 Schedules and index them into an online searchable database available to prospective users, including persons who may otherwise wish to make noncommercial uses of these works, and the general public.[15]

Currently, for each sound recording, the Pre-1972 Schedule must include the rights owner's name, sound recording title, and featured artist.[16] Rights owners may also include additional optional information pursuant to the instructions on the form and the Office's website, namely, album title information, alternate sound recording title(s), publication date, label, and rights owner's contact information.[17] In their joint comments, A2IM, RIAA, and SoundExchange request that the following fields be added to the Office's Pre-1972 Schedule form: International Standard Recording Code (''ISRC''), sound recording version, and alternate artist name.[18] They also ask the Office to group the three required fields together from left to right on the form, followed by the optional fields to the right.[19]

These suggestions have been adopted by the final rule. The Office agrees that including the ISRC will help to distinguish between different Pre-1972 Sound Recordings by the same artist with the same title, including with respect to the new exemption for noncommercial uses of Pre-1972 Sound Recordings that are not being commercially exploited.[20] Accordingly, the final rule requires the ISRC to be included for each recording listed in a Pre-1972 Schedule, if known by the filer and practicable to include. Similarly, the final rule permits versions and alternate artist names to be provided on

[1] 83 FR 52150 (Oct. 16, 2018).

[2] 17 U.S.C. 1401(f)(5)(A)(i)(I)–(II).

[3] *Id.* at 1401(f)(5)(A)(i)(II).

[4] *Id.* at 1401(f)(5)(A)(i)(I).

[5] H.R. Rep. No. 115–651, at 16 (2018); *see* S. Rep. No. 115–339, at 18 (2018).

[6] 17 U.S.C. 1401(c)(1)(A)(i). The Copyright Office has issued a separate notice of proposed rulemaking regarding the exception for noncommercial uses. 84 FR 1661 (Feb. 5, 2019).

[7] *Id.* at 1401(c)(1)(A).

[8] *Id.* at 1401(f)(5)(A)(ii)(II)–(III).

[9] *Id.* at 1401(f)(5)(B)(i)–(ii).

[10] *Id.* at 1401(f)(5)(B)(iii). A transmitting entity will be liable only for unauthorized uses occurring 90 days after receipt of the notice. *See id.*

[11] H.R. Rep. No. 115–651, at 16 (2018); *see* S. Rep. No. 115–339, at 19 (2018).

[12] 83 FR 52150, 52153–54 (Oct. 16, 2018).

[13] The comments submitted in response to the interim rule can be found on the Copyright Office's website at *https://www.copyright.gov/rulemaking/pre1972-soundrecordings-schedules/.*

[14] 37 CFR 201.35(c).

[15] The Office received no comments regarding the Excel spreadsheet format or considering a Pre-1972 Schedule to be ''indexed'' once it is made publicly available through the Office's online database of Pre-1972 Schedules. *See* 83 FR at 52151. The database of Pre-1972 Schedules is available on the Office's website at *https://copyright.gov/music-modernization/pre1972-soundrecordings/search-soundrecordings.html.*

[16] 37 CFR 201.35(d)(1).

[17] *See id.* at 201.35(d)(3).

[18] A2IM, RIAA & SoundExchange Comments at 7.

[19] *Id.* at 8.

[20] 17 U.S.C. 1401(c)(1)(A)(i).

an optional basis.[21] While the final rule otherwise retains the required and optional fields from the interim rule, the Office has revised its Pre-1972 Schedule form so that the fields for rights owner's name, the sound recording title, and the featured artist are grouped together from left to right, followed on the right by the ISRC and the optional fields.

As noted by the Office in its rulemaking regarding the noncommercial use exception to unauthorized uses of Pre-1972 Sound Recordings, classical music sound recordings frequently require more information to sufficiently identify the sound recording.[22] The final rule adopts a definition of ''title'' and ''featured artist(s)'' for pre-1972 sound recordings of classical music, including opera, as recently proposed in the noncommercial use exception rulemaking.[23] Because the Office is proposing that users search the database of Pre-1972 Schedules using specialized terms for this genre to locate these recordings, this rule harmonizes the terms that rights owners are asked to list on the schedules. To the extent that the rule adopted through the noncommercial use rulemaking adjusts this definition, the Office may further reconcile this language.

Regarding the name of the rights owner, A2IM, RIAA, and SoundExchange note that ''there has been considerable consolidation in the recorded music business'' and that because many Pre-1972 Sound Recordings were originally released on labels no longer in existence, the rights to these sound recordings ''are sometimes exercised by a label in existence today in its own name on behalf of the original owner.'' [24] They ask that the Office ''borrow'' from the language in 17 U.S.C. 1401(c)(6)(B)(i) and for each Pre-1972 Sound Recording listed in a Pre-1972 Schedule, allow ''a person 'authorized to act on behalf of the rights owner' '' to be listed instead of the rights owner's name.[25]

Because chapter 14 expressly requires that the Pre-1972 Schedule filed with the Office include the ''rights owner of the sound recording,'' [26] the Office declines to make this adjustment. Section 1401(c)(6)(B)(i), which concerns civil penalties for persons fraudulently filing opt-out notices for noncommercial uses, necessarily relates to the person *filing* the opt-out notices, rather than the requirement to identify a particular rights owner.[27] The legislative history also indicates that the Office's database should reflect ''works by copyright owners.'' [28] The final rule does clarify, however, that an authorized agent of a rights owner may submit the filing on behalf of the rights owner.

A2IM, RIAA, and SoundExchange also assert that the Office's database of Pre-1972 Schedules should allow for ''robust search[ing],'' including ''fuzzy searching'' (*e.g.,* search results yield results for common misspellings) and ''wildcard searching'' (*i.e.,* allowing a user to search on a truncated version of a word with a wildcard character, such as an asterisk).[29] The database of Pre-1972 Schedules already allows for wildcard searching by using an asterisk to fill in partial words. The Office has updated the search instructions on its database web page so users are aware of this search capability. While the current technology does not permit ''fuzzy'' searching, that limitation is also noted on the web page to guide user expectations. The following fields in the Office's database of Pre-1972 Schedules are now searchable: Rights owner, sound recording title (which includes alternate titles), album, label, featured artist (which includes alternate artist name(s)), and ISRC. A user can export and download the search results based on those fields into an Excel spreadsheet to view (and search) additional data.

2. Correcting or Supplementing Information Included in Filed Pre-1972 Schedules

The interim rule did not create a mechanism for rights owners to correct limited mistakes or supplement information regarding sound recordings included in Pre-1972 Schedules indexed into the Office's public record. Instead, the Office invited public comment on whether and how to provide a mechanism for the correction of mistakes or for supplementing information in Pre-1972 Schedules, including the potential effect on a Schedule's index date and how to keep administrative costs low.[30]

In response, A2IM, RIAA, and SoundExchange maintain that the Office should allow rights owners (or their authorized agents) to correct limited mistakes, as well as supplement information included in already-filed Pre-1972 Schedules, without affecting a schedule's index date.[31] They note that limited mistakes may occur where Pre-1972 Schedules list thousands of sound recordings, and that allowing supplementation will benefit users of the Office's database of Pre-1972 Schedules—''particularly those performing good faith, reasonable searches in connection with the potential noncommercial use of a pre-72 recording'' under section 1401(c)—''because users will be able to search a greater number of fields and use a wider array of search terms, thus increasing the likelihood of finding a match if one exists.'' [32] They suggest that rights owners should be allowed to file Pre-1972 Schedules with the required fields to secure an index date, and supplement information for those Pre-1972 Sound Recordings at a later date.[33] They propose having ''a secure web portal'' that allows rights owners to supplement information and correct mistakes relating to their Pre-1972 Sound Recordings.[34]

Considering these concerns in light of the purpose of the Pre-1972 Schedules, which operates ''in place of a formal registration requirement'' for rights owners and also must be searched by users before claiming the noncommercial use exception for these recordings,[35] the final rule adopts a provision allowing a rights owner (or her authorized agent) to correct or amplify information regarding a Pre-1972 Sound Recording where that sound recording was included in a Pre-1972 Schedule previously filed by or on behalf of that same rights owner. The rule will operate in a similar, but not identical, manner, to other filings accepted by the Office to correct or amplify previous filings, including supplementary registrations.[36]

[21] The version of a Pre-1972 Sound Recording may include, among other things, its length of playing time or location of performance.

[22] 84 FR 1661, 1669 (Feb. 5, 2019).

[23] *Id.* at 1676.

[24] A2IM, RIAA & SoundExchange Comments at 9.

[25] *Id.*

[26] 17 U.S.C. 1401(f)(5)(A)(i)(I).

[27] *Id.* at 1401(c)(6)(B)(i). The final rule retains the requirements that the individual submitting the Pre-1972 Schedule must certify that she has appropriate authority to submit the schedule and that all information submitted to the Office is true, accurate, and complete to the best of the individual's knowledge, and is made in good faith.

[28] H.R. Rep. No. 115–651 at 16; S. Rep. No. 115–339 at 19.

[29] A2IM, RIAA & SoundExchange Comments at 8–9.

[30] 83 FR at 52152.

[31] A2IM, RIAA & SoundExchange Comments at 5. Commenters did not address the Office's level of review of Pre-1972 Schedules under the interim rule, and the final rule retains a provision adopted on an interim basis specifying that the Office will not review Pre-1972 Schedules for legal sufficiency, interpret their content, or screen them for errors or discrepancies. Rather, the Office's review is limited to whether the procedural requirements established by the Office (including payment of the proper filing fee) have been met.

[32] *Id.*

[33] *Id.* at 4–5.

[34] *Id.* at 5–6.

[35] H. Rep. No. 115–651 at 16.

[36] *See* U.S. Copyright Office, *About Supplementary Registration, https://www.copyright.gov/eco/help-supplementary.html* (last visited Mar. 4, 2019); U.S. Copyright Office,

Continued

Information regarding a Pre-1972 Sound Recording may be corrected if the information was incorrect at the time the Pre-1972 Schedule was submitted to the Office, or supplemented to include information that was omitted at the time the Pre-1972 Schedule was submitted to the Office.

The rule provides that the operative index date for a given Pre-1972 Recording will change only in the event that information in one of the statutorily required fields (title, featured artist(s), and rights owner) is amended or amplified. As noted by A2IM, RIAA, and SoundExchange, the index date of a Pre-1972 Schedule is of ''critical importance to rights owners, as it starts the running of a 90-day clock after which the listed sound recordings become eligible for statutory damages and attorneys' fees.'' [37] To encourage rights owners to supplement optional information regarding their Pre-1972 Sound Recordings, the final rule permits amending or supplementing information for an optional field or ISRC without losing the index date for the relevant Pre-1972 Sound Recording. But because the schedules serve a notice function for prospective licensees and other users of these recordings, the Office concludes that a new index date should attach when information in one of the three statutorily required fields changes, such that the earlier-filed schedule no longer provides the same notice as to those fields.

To ensure transparency, as currently designed, links to filed Pre-1972 Schedules and Supplemental Pre-1972 Schedules (showing their respective index dates) will be provided through the Office's database under the ''More Info'' tab for the relevant Pre-1972 Sound Recording. Due to technological constraints in the current database, the ''Index Date'' field displayed on the Copyright Office's website for a given Pre-1972 Sound Recording will reflect the index date of the latest-filed schedule (which may not govern eligibility for statutory damages if it only amends or supplements information for an optional field). Accordingly, users are cautioned to review the ''More Info'' tab or download information into an Excel spreadsheet for a given Pre-1972 Sound Recording to determine whether more than one schedule has been filed, which may or may not affect the operative index date.[38]

Rights owners (or their authorized agents) will be required to file a Supplemental Schedule of Pre-1972 Sound Recordings using a form and instructions specified on the Office's website. At present, the form is an Excel spreadsheet template. This format is required so that the Office can timely ingest Supplemental Pre-1972 Schedules and index them into the Office's database of Pre-1972 Schedules.[39] For each Pre-1972 Sound Recording for which the rights owner desires to correct or supplement information, the Supplemental Pre-1972 Schedule must include the Copyright Office's unique identifier assigned to that sound recording in the Office's database.[40] Because the data on the Supplemental Pre-1972 Schedule will overwrite the preexisting data displayed and searchable in the Office's database, for each sound recording, the Supplemental Pre-1972 Schedule must include the rights owner's name, sound recording title, featured artist(s), and, if known and practicable, ISRC (inclusive of any corrections or amendments to such information). The Supplemental Pre-1972 Schedule must also include all optional information the rights owner would like to provide to the Copyright Office (including information already provided to the Office on a previously filed Pre-1972 Schedule for that sound recording), inclusive of any corrections or amendments to such information.

Finally, A2IM, RIAA, and SoundExchange request the ability to remove errantly listed recordings, without affecting the index date of the other recordings included on a Pre-1972 Schedule.[41] The final rule will allow a rights owner (or her authorized agent) to remove a Pre-1972 Sound Recording from the Office's database of Pre-1972 Schedules where the sound recording was included in a Pre-1972 Schedule filed by or on behalf of that same rights owner, without affecting the index date of the other recordings included on the schedule. A recording may be removed if there was a substantive defect in the Pre-1972 Schedule regarding the Pre-1972 Sound Recording at the time the Pre-1972 Schedule was submitted to the Office, or, upon a showing of good cause, at the discretion of the Copyright Office. Similar to the Office's process for voluntary cancellation of a copyright registration,[42] a rights owner (or her authorized agent) will be required to file a Removal Form, using a form and instructions specified on the Office's website. As currently envisioned, a Removal Form may not include more than one Pre-1972 Sound Recording to be deleted, and must include the sound recording title, featured artist(s), and the Copyright Office's unique identifier assigned to that sound recording in the Office's database. The Office will keep a record of Pre-1972 Sound Recordings removed from the Office's database, and a timestamp of when each deletion occurs. Once removed, the sound recording is no longer considered ''indexed'' for purposes of eligibility to recover statutory damages and/or attorneys' fees for the unauthorized use of that sound recording, or included in the Office's database to preclude a user from taking advantage of the noncommercial use exception.[43] The rights owner (or her agent) would need to file a new Pre-1972 Schedule containing the sound recording to become eligible to recover statutory damages and/or attorneys' fees, or to preclude a user from taking advantage of the noncommercial use exception regarding that sound recording.

3. Filing Fees

A2IM, RIAA, and SoundExchange request the ability to pay filing fees for Pre-1972 Schedules by credit card, check, money order, or bank draft, instead of by deposit account, as instructed on the Office's website.[44] In consideration of such comments, the

Compendium of U.S. Copyright Office Practices sec. 1802 (3d ed.2017) (''*Compendium* (Third)'') (describing supplementary registration practices). Amended filings are also permitted for DMCA agent designations, contact information for transmitting entities publicly performing pre-1972 sound recordings by means of digital audio transmission, statements of account for cable operators, satellite carriers, or manufacturers or importers distributing digital audio recording devices or media, and notices of digital transmission of sound recording. *See* 37 CFR 201.3(c)(18)–(19), (e)(2), (e)(4) (providing filing fees for such amendments).

[37] A2IM, RIAA & SoundExchange Comments at 4.

[38] The Office has updated the search instructions on its database web page to note this limitation and guide user expectations.

[39] A2IM, RIAA & SoundExchange suggest that a secure web portal be set up allowing owners to supplement their own schedules and correct their own mistakes. *See* A2IM, RIAA & SoundExchange Comments at 5–6. But as they anticipate, current technology precludes this option and in fact, severely limits the operational choices available to implement a supplementary filing option. *Id.* As requested, the Office will consider adjusting this functionality as part of its forthcoming technology upgrades.

[40] The unique identifier is used by the Office to identify the sound recordings for which information should be updated when the Supplement Pre-1972 Schedule is ingested into the database. It can be located in Office's database of Pre-1972 Schedules by clicking the ''More Info'' button in the line entry for a particular sound recording, or by downloading and exporting data for that sound recording into an Excel spreadsheet.

[41] A2IM, RIAA & SoundExchange Comments at 5.

[42] *See Compendium* (Third) sec. 1804(E).

[43] 17 U.S.C. 1401(f)(5)(A)(i)(I)–(II); *id.* at 1401(c)(1)(A)(i).

[44] A2IM, RIAA & SoundExchange Comments at 9–10; *Requirements and Instructions for Completing and Submitting Schedules of Pre-1972 Sound Recordings,* U.S. Copyright Office, *https://www.copyright.gov/music-modernization/pre1972-soundrecordings/schedulefiling-instructions.html.*

Office will allow filers to pay filing fees for Pre-1972 Schedules, Supplemental Pre-1972 Schedules, and Removal Forms using either a credit card or a deposit account with the Office. So that schedules may be submitted to the Office electronically, a rights owner currently submits her Pre-1972 Schedule via email, along with a cover sheet providing her deposit account information to pay the filing fee. Under the final rule, if a filer wishes to pay using a credit card, instead of providing the deposit account information on the cover sheet, she should indicate her desire to pay by credit card on the cover sheet. The same process will be available for filers wishing to pay using a credit card to file Removal Forms. For privacy and security reasons, the filer should *not* provide credit card information on the cover sheet or Removal Form. Rather, the Office will call the filer for the credit card information. Because the processing of Pre-1972 Schedules, Supplemental Pre-1972 Schedules, and Removal Forms will not occur until after the Office has obtained credit card information from the filer, filers are urged to provide accurate contact information on the cover sheet or Removal Form and to respond to the Office in a timely manner.

Because the Office anticipates that the processing and indexing of Supplemental Pre-1972 Schedules will be similar to originating Pre-1972 Schedules, it is setting the fee for supplemental filings at the same amount. Similarly, because the Office anticipates that processing a Removal Form will be similar to the processing of a Pre-1972 Schedule including a single sound recording, it is setting the fee to file a Removal Form at the same amount. In line with its general approach to fee-setting, the Office will consider whether adjustment is necessary after data regarding these filings are available.

As a technical change, the final rule also clarifies that the fee charged for Pre-1972 Schedules and Supplemental Pre-1972 Schedules is per sound recording, not per title, since the Copyright Office is encouraging rights owners to list alternate titles of recordings on schedules to improve the public record.

C. Recordation of Transfers of Ownership Pertaining to Pre-1972 Sound Recordings

The final rule retains the language of the interim rule providing that, if ownership of a Pre-1972 Sound Recording changes after its inclusion in a Pre-1972 Schedule filed with the Office, the Office will consider the schedule to be effective as to any successor in interest.[45] Accordingly, a successor in interest may, but is not required, to file a new schedule.

The Office invited public comment on whether it should record transfers of rights ownership and other documents pertaining to a Pre-1972 Sound Recording, even though they are not transfers of copyright ownership or documents pertaining to a copyright under 17 U.S.C. 205.[46] A2IM, RIAA, and SoundExchange responded that the Office should accept for recordation transfer documents and other documents pertaining to Pre-1972 Sound Recordings, contending that accepting such voluntarily-submitted information would serve a public notice function.[47]

The Office concludes that it may record transfers of ownership pertaining to Pre-1972 Sound Recordings through its established recordation processes.[48] Section 1401(h)(1) provides that certain provisions relating to the transfers of copyright ownership set forth in sections 201 and 204 (including requirements for execution of transfers) of the Copyright Act ''shall apply to a transfer'' by a pre-1972 rights owner ''to the same extent as with respect to a transfer of copyright ownership.'' [49] In turn, section 205 authorizes the Copyright Office to record ''transfer[s] of copyright ownership'' under certain conditions, and the effective recordation of these documents provides constructive notice of the facts stated in the recorded document.[50] The Office has previously concluded that ''any transfer that is valid under section 204 should be recordable under section 205.'' [51] The Office concludes that it is prudent and sound for it to similarly accept transfers of ownership pertaining to Pre-1972 Sound Recordings for voluntary recordation into the Office's public database pursuant to the general recordation requirements set forth in 37 CFR 201.4.[52] That said, because registration is not available for U.S. Pre-1972 Sound Recordings (instead, the Pre-1972 Schedules operate in lieu of a registration requirement), it is unclear whether recordation can provide the same statutory benefits of constructive notice and priority between conflicting transfers under section 205.[53]

Accordingly, the final rule mimics other Office regulations applying the Office's general recordation rules to certain types of documents that do not actually pertain to copyrighted works, namely, those concerning mask works under chapter 9 and vessel designs under chapter 13.[54] Because chapter 14 does not incorporate sections 203 or 304(c) or (d), this rule does not permit recordation of notices of termination of transfers and licenses pursuant to those sections and 37 CFR 201.10.

Finally, A2IM, RIAA, and SoundExchange request, if practicable, that transfers of rights ownership and other documents be cross-referenced against an earlier-filed Pre-1972 Schedule to maximize the benefit of recordation.[55] While the Office supports the goal of facilitating improved chain-of-title information for these documents, as well as recorded documents more generally,[56] its current technology does

[45] *See* A2IM, RIAA & SoundExchange Comments at 2–3 and fn. 1 (supporting interim rule, noting it parallels the registration requirement for copyrighted works, which are effective for purposes of eligibility for statutory damages and attorneys' fees as to successors in interest).

[46] 83 FR at 52152.

[47] A2IM, RIAA & SoundExchange Comments at 2–3.

[48] A transfer of ownership ''is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.'' 17 U.S.C. 101.

[49] *Id.* at 1401(h)(1)(A) (''[S]ubsections (d) and (e) of section 201 and section 204 shall apply to a transfer described in subsection (l)(2)(B) to the same extent as with respect to a transfer of copyright ownership.''); *see id.* at 1401(l)(2) (Defining ''rights owner'' in relevant part as ''any person to which a right to enforce a violation of this section may be transferred, in whole or in part'' under ''subsections (d) and (e) of section 201 and section 204). Notably, chapter 14 alternatively defines ''rights owner'' as ''the person that has the exclusive right to reproduce a sound recording under the laws of any State, as of the day before the date of enactment of this section.'' *Id.* It therefore does not incorporate other provisions of chapter 2, such as those pertaining to initial ownership, works made for hire, contributions to collective works, or a mechanism for termination of transfers and licenses granted by the author.

[50] *Id.* at 205.

[51] *Modernizing Copyright Recordation: Interim Rule,* 82 FR 52213, 52215 (Nov. 13, 2017).

[52] The relevant recordation regulation provides: ''The fact that the Office has recorded a document is not a determination by the Office of the document's validity or legal effect. Recordation of a document by the Copyright Office is without prejudice to any party claiming that the legal or formal requirements for recordation have not been met, including before a court of competent jurisdiction.'' 37 CFR 201.4(g).

[53] 17 U.S.C. 205(c)(2) (requiring that ''registration has been made for the work'' for constructive notice to attach).

[54] 37 CFR 211.2 (mask works); *id.* at 212.6 (vessel designs); *see Compendium* (Third) sec. 1203 (''Mask works are not protected by copyright law.''); *id.* at 1302 (''Vessel design protection is not a form of copyright protection.'').

[55] A2IM, RIAA & SoundExchange Comments at 3–4.

[56] *See also* 83 FR 52336, 52343 (Oct. 17, 2018) (soliciting information on how Copyright Office modernization should expand the online public record to connect registration and recordation

Continued

not permit linking recorded documents with its database of Pre-1972 Schedules. Meanwhile, the Office will provide notice in connection with its database of Pre-1972 Schedules that information pertaining to subsequent changes in ownership may be found in its public catalog; as noted, the Office will also accept additional schedules from successors-in-interest.[57]

D. Notices of Contact Information

Under the interim rule, transmitting entities may currently file a Notice of Contact Information with the Office using a *pay.gov* form and following instructions specified on the Office's website.[58] A2IM, RIAA, and SoundExchange requested that individuals should ''be permitted to receive timely notification of such filings by subscribing to a weekly email notification service,'' similar to the email notification service instituted by the Office regarding recently-indexed Pre-1972 Schedules.[59] The MMA, however, specifically requires a notification mechanism for indexed Pre-1972 Schedules [60]; there is no similar requirement relating to Notices of Contact Information. Moreover, because the Office may not accept Notices of Contact Information after April 9, 2019,[61] establishing a notification service that would be operational for only a short period would not be an efficient use of resources.[62] The Office's online searchable directory currently allows searching by the name of a transmitting entity (and any alternate names), which should provide an easy way to determine whether a transmitting entity has filed a Notice of Contact Information.

In sum, apart from clarifying that the date of filing of a Notice of Contact Information (like Pre-1972 Schedules) is the date when a proper submission, including the prescribed fee, is received in the Copyright Office, the final rule otherwise adopts in full the interim regulations governing Notices of Contact Information.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Final Regulations

For the reasons set forth above, the interim rule amending 37 CFR part 201, which was published in the **Federal Register** at 83 FR 52150, on October 16, 2018, is adopted as final with the following changes:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Amend § 201.3 as follows:
■ a. Revise paragraph (c)(20).
■ b. Redesignate paragraphs (c)(21) and (c)(22) as paragraphs (c)(22) and (c)(23), respectively.
■ c. Add paragraph (c)(21).

The addition and revisions read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) * * *

Registration, recordation and related services	Fees ($)
* * * * * * *	
(20) Schedule of pre-1972 sound recordings, or supplemental schedule of pre-1972 sound recordings (single sound recording)	75
Additional sound recordings (per group of 1 to 100 sound recordings)	10
(21) Removal of pre-1972 sound recording from Office's database of indexed schedules (single sound recording)	75
* * * * * * *	

■ 3. Amend § 201.35 as follows:
■ a. Revise paragraph (a).
■ b. Add paragraph (b)(3).
■ c. Revise paragraph (c).
■ d. Redesignate paragraphs (d), (e), (f), (g), (h), and (i) as paragraphs (f), (g), (h), (i), (j), and (k), respectively.
■ e. Add paragraphs (d) and (e).
■ f. Revise newly designated paragraphs (f) and (h).
■ g. Add paragraph (l).

The additions and revisions read as follows:

§ 201.35 Schedules of Pre-1972 Sound Recordings; Recordation of Transfers and Other Documents Pertaining to Pre-1972 Sound Recordings.

(a) *General.* This section prescribes the rules under which rights owners, pursuant to 17 U.S.C. 1401(f)(5)(A), may file schedules listing their pre-1972 sound recordings with the Copyright Office to be eligible for statutory damages and/or attorneys' fees for violations of 17 U.S.C. 1401(a). This section also prescribes the rules for recordation of documents pertaining to the transfer of ownership of pre-1972 sound recordings.

(b) * * *

(3) For pre-1972 sound recordings of classical music, including opera:

(i) The *title* of the pre-1972 sound recording means, to the extent applicable and known by the rights owner, any and all title(s) of the sound recording and underlying musical composition known to the rights owner, and the composer and opus or catalogue number(s) of the underlying musical composition; and

(ii) The *featured artist(s)* of the pre-1972 sound recording means, to the extent applicable and known by the rights owner, the featured soloist(s), featured ensemble(s), featured conductor, and any other featured performer(s).

* * * * *

(c) *Form and submission.* A rights owner seeking to comply with 17 U.S.C. 1401(f)(5)(A) (or her authorized agent) must submit a schedule listing the owner's pre-1972 sound recordings, or amend such a schedule, using an appropriate form provided by the Copyright Office on its website and following the instructions for completion and submission provided on

records and provide improved chain of title information).

[57] *See* A2IM, RIAA & SoundExchange Comments at 4 (requesting same).

[58] 37 CFR 201.36(c); U.S. Copyright Office, *Interim Rule Regarding Pre-1972 Sound Recordings, https://www.copyright.gov/rulemaking/pre1972-soundrecordings-schedules/* (last visited, Mar. 1, 2019).

[59] A2IM, RIAA & SoundExchange Comments at 9. The Office notes that commenters did not raise concerns with the notification service instituted by the Office regarding recently-indexed Pre-1972 Schedules.

[60] 17 U.S.C. 1401 (f)(5)(A)(ii)(II)–(III).

[61] *Id.* at 1401(f)(5)(B)(ii).

[62] As of the date of this notice, only one Notice of Contact Information has been filed with the Office. U.S. Copyright Office, Directory of Notices, *https://www.copyright.gov/music-modernization/pre1972-soundrecordings/notices-contact-information.html.*

the Office's website or the form itself. The Office may reject any submission that fails to comply with these requirements.

(d) *Amendment or supplementation.* A rights owner (or her authorized agent) may amend or supplement information regarding a pre-1972 sound recording included in a schedule filed under paragraph (c) of this section by or on behalf of the same rights owner. Information may be corrected if it was incorrect at the time the pre-1972 schedule was submitted to the Office, or supplemented to include information that was omitted at the time the schedule was submitted to the Office. For each recording included in a schedule filed under this paragraph, where the information specified in paragraph (f)(1) of this section does not change from the previously-filed schedule, the date the previously-filed schedule was indexed into the Office's public records remains operative for purposes of 17 U.S.C. 1401(f)(5)(A)(i)(II).

(e) *Removal of record.* A rights owner (or her authorized agent) may remove information regarding a pre-1972 sound recording from the Office's database of schedules if the sound recording was included in a schedule filed under paragraph (c) of this section by or on behalf of the same rights owner, using an appropriate form provided by the Copyright Office on its website and following the instructions for completion and submission provided on the Office's website or the form itself. Removal may be made if there was a substantive defect in the pre-1972 schedule regarding the specific sound recording at the time the schedule was submitted to the Office, or, upon a showing of good cause, at the discretion of the Copyright Office. Once a pre-1972 sound recording has been removed from the Office's database of schedules of pre-1972 sound recordings, the sound recording is no longer considered indexed into the Office's records.

(f) *Content.* A schedule of pre-1972 sound recordings filed under paragraphs (c) or (d) of this section shall contain the following:

(1) For each sound recording listed, the right's owner name, sound recording title, and featured artist(s);

(2) If known and practicable, for each sound recording listed, the International Standard Recording Code (''ISRC'');

(3) A certification that the individual submitting the schedule of pre-1972 sound recordings has appropriate authority to submit the schedule and that all information submitted to the Office is true, accurate, and complete to the best of the individual's knowledge, information, and belief, and is made in good faith; and

(4) For each sound recording listed, the rights owner may opt to include additional information as permitted and in the format specified by the Office's form or instructions, such as the alternate title, alternate artist name(s), album, version, label, or publication date.

* * * * *

(h) *Legal sufficiency of schedules.* The Copyright Office does not review schedules submitted under paragraphs (c) or (d) of this section for legal sufficiency, interpret their content, or screen them for errors or discrepancies. The Office's review is limited to whether the procedural requirements established by the Office (including payment of the proper filing fee) have been met. Rights owners are therefore cautioned to review and scrutinize schedules to assure their legal sufficiency before submitting them to the Office.

* * * * *

(l) *Recordation of transfers.* The conditions prescribed in § 201.4 of this chapter for recordation of transfers of copyright ownership are applicable to the recordation of documents relating to the transfer of ownership of pre-1972 sound recordings under 17 U.S.C. chapter 14.

* * * * *

■ 5. Amend § 201.36 as follows:

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

■ b. Add paragraph (e) to read as follows:

§ 201.36 Notices of contact information for transmitting entities publicly performing pre-1972 sound recordings.

* * * * *

(e) *Filing Date.* The date of filing of a notice of contact information pursuant to this section is the date when a proper submission, including the prescribed fee, is received in the Copyright Office.

* * * * *

Dated: March 11, 2019.

Karyn A. Temple,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2019–05549 Filed 3–21–19; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201, 203, and 210

[Docket No. 2018–10]

Notices of Intention and Statements of Account Under Compulsory License To Make and Distribute Phonorecords of Musical Works

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is issuing final regulations pursuant to the Musical Works Modernization Act, title I of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act. This rule adopts previously issued interim regulations as final. The interim rule amended the Office's prior regulations pertaining to the compulsory license to make and distribute phonorecords of musical works so as to conform the prior regulations to the new law, including with respect to the operation of notices of intention and statements of account. In addition to adopting the interim rule as final, this final rule makes further technical changes to update cross-references to regulations that were recently amended by the Copyright Royalty Judges.

DATES: Effective March 22, 2019.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* Steve Ruwe, Assistant General Counsel, by email at *sruwe@copyright.gov,* or Jason E. Sloan, Assistant General Counsel, by email at *jslo@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION: On October 11, 2018, the president signed into law the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (''MMA'') which, among other things, substantially modified the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works available under 17 U.S.C. 115.[1] On December 7, 2018, the Copyright Office published in the **Federal Register** an interim rule amending the Office's section 115-related regulations to harmonize them with the MMA's requirements, and to make other minor technical updates.[2] The amendments largely concerned statements of account and notices of

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] 83 FR 63061 (Dec. 7, 2018).

intention to obtain a compulsory license. The Office did not receive any comments from the public in response to the interim rule. As a result, the Office is adopting the amendments promulgated through the interim rule as final without change.

In addition to adopting the interim rule as final, the final rule makes further technical changes to update cross-references to regulations that were recently amended by the Copyright Royalty Judges (''CRJs''). On February 5, 2019, the CRJs published in the **Federal Register** a final determination in *In re Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords III),* Docket No. 16–CRB–0003–PR (2018–2022).[3] The CRJs' final determination amended 37 CFR part 385, which contains regulations setting forth the rates and terms of royalty payments for use of the section 115 license. The CRJs' changes have rendered obsolete some of the cross-references to part 385 contained in the Copyright Office's regulations governing statements of account under the section 115 license, and the final rule updates the relevant cross-references.

Because the updates are technical and non-substantive changes that do not ''alter the rights or interests of parties,'' they are not subject to the notice and comment requirements of the Administrative Procedure Act.[4] Furthermore, the Office finds good cause that providing notice and comment is ''impracticable'' and ''contrary to the public interest'' in this instance because the CRJs' new regulations are already effective, and delaying removal of the obsolete cross-references in the Office's regulations may cause confusion among those parties required to serve statements of account under the compulsory license.[5] For these same reasons, the Office finds it appropriate to make the final rule effective upon publication.[6]

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 203

Freedom of information.

37 CFR Part 210

Copyright, Phonorecords, Recordings.

[3] 84 FR 1918 (Feb. 5, 2019).

[4] *See Nat'l Mining Ass'n* v. *McCarthy,* 758 F.3d 243, 250 (DC Cir. 2014); 5 U.S.C. 553(b) (notice and comment not required for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'').

[5] *See* 5 U.S.C. 553(b).

[6] *See id.* at 553(d).

Final Regulations

For the reasons set forth above, the Copyright Office adopts the interim rule amending 37 CFR parts 201, 203, and 210 which was published at 83 FR 63061 on December 7, 2018, as final with the following changes:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

§ 210.16 [Amended]

■ 2. Amend § 210.16 as follows:
■ a. In paragraph (b)(8):
■ i. In the first sentence, remove ''records of any promotional uses of the copyright owner's works that are required to be maintained or provided under § 385.14 or § 385.24 of this title, or other applicable provision, including, where applicable, records required to be maintained or provided by any third parties that were authorized by the compulsory licensee to engage in promotional uses during'' and add in its place ''records of any promotional or free trial uses of the copyright owner's works that are required to be maintained or provided under applicable provisions of part 385 of this title, or any other provisions, including, where applicable, records required to be maintained or provided by any third parties that were authorized by the compulsory licensee to engage in such uses during''.
■ ii. In the second sentence, remove ''subject to the promotional royalty rate provided in § 385.14 or § 385.24 of this title, or any similar promotional royalty rate of zero'' and add in its place ''subject to any promotional or free trial royalty rate of zero''.
■ b. In paragraph (c)(1), remove ''subject to part 385, subpart A of this title or any other provisions requiring'' and add in its place ''subject to applicable provisions of part 385 of this title, or any other provisions, requiring''.
■ c. In paragraph (c)(2), remove ''subject to part 385, subparts B or C of this title, or any other provisions requiring computation of applicable royalties on a percentage-rate basis, include a detailed and step-by-step accounting of the calculation of royalties under § 385.12, § 385.22, or other provisions of part 385 of this title as applicable, sufficient'' and add in its place ''subject to applicable provisions of part 385 of this title, or any other provisions, requiring computation of applicable royalties on a percentage-rate basis, include a detailed and step-by-step accounting of the calculation of royalties under applicable provisions of part 385 of this title, sufficient''.
■ d. In paragraph (d)(2), remove ''subject to part 385, subpart A of this title, or any other applicable royalties computed on a'' and add in its place ''subject to applicable provisions of part 385 of this title, or any other provisions, requiring computation of applicable royalties on a''.
■ e. In paragraph (d)(2)(v), remove ''set forth in § 385.3 or other provisions of part 385 of this title as applicable'' and add in its place ''set forth in applicable provisions of part 385 of this title''.
■ f. In paragraph (d)(3), remove ''subject to part 385, subparts B or C of this title, or any other applicable royalties computed on a percentage-rate basis, the amount of the royalty payment shall be calculated as provided in § 385.12, § 385.22, or other provisions of part 385 of this title as applicable'' and add in its place ''subject to applicable provisions of part 385 of this title, or any other provisions, requiring computation of applicable royalties on a percentage-rate basis, the amount of the royalty payment shall be calculated as provided in applicable provisions of part 385 of this title''.
■ g. In paragraph (d)(3)(ii), remove ''as described in § 385.12(b)(4), § 385.22(b)(3), or any similar provisions of part 385 of this title as applicable, an'' and add in its place ''as described in applicable provisions of part 385 of this title, an''.

§ 210.17 [Amended]

■ 3. Amend § 210.17 as follows:
■ a. In paragraph (c)(6), remove ''pursuant to part 385, subparts B or C of this title, or any other provision requiring computation of applicable royalties on a percentage-rate basis, calculations showing in detail how the royalty was computed (for these purposes, the applicable royalty as specified in part 385, subpart A of this title shall'' and add in its place ''pursuant to applicable provisions of part 385 of this title, or any other provisions, requiring computation of applicable royalties on a percentage-rate basis, calculations showing in detail how the royalty was computed (for these purposes, the applicable royalty as specified in applicable provisions of part 385 of this title, or any other provisions, requiring computation of applicable royalties on a cents-per-unit basis shall''.
■ b. In paragraph (d)(1), remove ''subject to part 385, subpart A of this title, or any other provision requiring'' and add

in its place ''subject to applicable provisions of part 385 of this title, or any other provisions, requiring''.

■ c. In paragraph (d)(2)(i), remove ''subject to part 385, subparts B or C of this title, or any other provision requiring'' and add in its place ''subject to applicable provisions of part 385 of this title, or any other provisions, requiring''.

Dated: March 11, 2019.

Karyn A. Temple,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2019–05548 Filed 3–21–19; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–2018; FRL–9990–38–Region 4]

Air Plan Approval; South Carolina; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notification of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the South Carolina state implementation plan (SIP). The regulations affected by this update have been previously submitted by South Carolina and approved by EPA. This update affects the materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This rule will be effective March 22, 2019.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303; and the National Archives and Records Administration. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* To view the materials at the Region 4 Office, EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can be reached via telephone at (404) 562–9089 and via electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the proposed SIP revisions to EPA. Once these control measures and strategies are approved by EPA, and after notice and comment, they are incorporated into the federally-approved SIP and are identified in part 52—''Approval and Promulgation of Implementation Plans,'' title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52, but is ''incorporated by reference.'' This means that EPA has approved a given state regulation or specified changes to the given regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements a SIP to attain and maintain the NAAQS and to take enforcement action for violations of the SIP.

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on proposed revisions containing new and/or revised state regulations. A submission from a state can revise one or more rules in their entirety or portions of rules, or even change a single word. The state indicates the changes in the submission (such as, by using redline/strikethrough) and EPA then takes action on the requested changes. EPA establishes a docket for its actions using a unique Docket Identification Number, which is listed in each action. These dockets and the complete submission are available for viewing on *www.regulations.gov.*

On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference, into the Code of Federal Regulations, materials approved by EPA into each SIP. These changes revised the format for the identification of the SIP in 40 CFR part 52, streamlined the mechanisms for announcing EPA approval of revisions to a SIP, and streamlined the mechanisms for EPA's updating of the IBR information contained for each SIP in 40 CFR part 52. The revised procedures also called for EPA to maintain ''SIP Compilations'' that contain the federally-approved regulations and source specific permits submitted by each state agency.

These SIP Compilations are updated primarily on an annual basis. Under the revised procedures, EPA must periodically publish an informational document in the rules section of the **Federal Register** notifying the public that updates have been made to a SIP Compilation for a particular state. EPA applied the 1997 revised procedures to South Carolina on July 1, 1997 (62 FR 35441).

II. EPA Action

This action represents EPA's publication of the South Carolina SIP Compilation update, appearing in 40 CFR part 52: specifically, the materials in paragraphs (c) and (d) at 40 CFR 52.2120. In addition, notice is provided of the following corrections to paragraph (c) of § 52.2120, as described below.

Changes Applicable to EPA-Approved South Carolina Regulations

A. Revising the heading of paragraph (c) to read ''EPA-Approved regulations'' and the heading of the table in paragraph (c) to read ''EPA-Approved South Carolina Regulations.''

B. Correcting **Federal Register** citations and entries listed in § 52.2120(c), as described below:

1. Under Regulation No. 62.1, entries for the state effective date and EPA approval date were removed because the entry represents only the title of the Regulation, while the Sections under the heading of the Regulation include specific approval information.

2. Under Regulation No. 62.1, ''Section I,'' the EPA approval date was

corrected to read ''6/26/2018, 83 FR 29696.''

3. Under Regulation No. 62.2, the EPA approval date was corrected to read ''6/25/2018, 83 FR 29455.''

4. Under Regulation No. 62.5, *Standard No. 1,* ''Section I,'' the EPA approval date was corrected to read ''6/25/2018, 83 FR 29455.''

5. Under Regulation No. 62.5, *Standard No. 1,* ''Section II,'' the EPA approval date was corrected to read ''6/25/2018, 83 FR 29455.''

6. Under Regulation No. 62.5, *Standard No. 1,* ''Section III,'' the EPA approval date was corrected to read ''6/25/2018, 83 FR 29455.''

7. Under Regulation No. 62.5, *Standard No. 1,* ''Section IV,'' the EPA approval date was corrected to read ''6/25/2018, 83 FR 29455.''

8. Under Regulation No. 62.5, *Standard No. 1,* ''Section VI,'' the EPA approval date was corrected to read ''6/25/2018, 83 FR 29455.''

9. Under Regulation No. 62.5, *Standard No. 4,* ''Section II,'' the EPA approval date was corrected to read ''6/25/2018, 83 FR 29455.''

10. Under Regulation No. 62.5, *Standard No. 4,* ''Section III,'' the EPA approval date was corrected to read ''6/25/2018, 83 FR 29455.''

11. Under Regulation No. 62.5, *Standard No. 4,* ''Section V,'' the EPA approval date was corrected to read ''6/25/2018, 83 FR 29455.''

12. Under Regulation No. 62.5, *Standard No. 4,* ''Section VIII,'' the EPA approval date was corrected to read ''6/25/2018, 83 FR 29455.''

13. Under Regulation No. 62.5, *Standard No. 4,* ''Section XI,'' the EPA approval date was corrected to read ''6/25/2018, 83 FR 29455.''

14. Under Regulation No. 62.5, *Standard No. 4,* ''Section XII,'' the EPA approval date was corrected to read ''6/25/2018, 83 FR 29455.''

15. Under Regulation No. 62.5, *Standard No. 5,* ''Section I,'' entries for the state effective date and EPA approval date were removed because the entry represents only the title of the Section, while the Parts under the heading of the Section include specific approval information.

16. Under Regulation No. 62.5, *Standard No. 7.1,* the explanation column was corrected to remove language applicable to Standard No. 7 and to clarify the applicable state-effective dates for Standard No. 7.1.

17. Under Regulation No. 62.6, entries for the state effective date and EPA approval date were removed because the entry represents only the title of the Regulation, while the Sections under the heading of the Regulation include specific approval information.

18. Under Regulation No. 62.7, entries for the state effective date and EPA approval date were removed because the entry represents only the title of the Regulation, while the Sections under the heading of the Regulation include specific approval information.

19. Under ''Regulation No. 62.97,'' the EPA approval date was corrected to read ''10/13/2017, 82 FR 47936.''

III. Good Cause Exemption

EPA has determined that this action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs, corrects typographical errors appearing in the CFR, and makes ministerial changes to the prefatory heading to the tables in the CFR. Under section 553(b)(3)(B) of the APA, an agency may find good cause where procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Public comment for this administrative action is ''unnecessary'' and ''contrary to the public interest'' since the codification (and typographical corrections) only reflect existing law and the changes to the prefatory heading to the tables is ministerial in nature. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notice of the updated South Carolina SIP Compilation and notice of typographical corrections and ministerial changes to the South Carolina ''Identification of Plan'' portion of the **Federal Register**. Further, pursuant to section 553(d)(3), making this action immediately effective benefits the public by immediately updating both the SIP Compilation and the CFR ''Identification of plan'' section (which includes table entry corrections).

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of previously EPA-approved regulations promulgated by South Carolina and federally effective prior to October 1, 2018. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

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

In addition, this notice of administrative change for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

EPA also believes that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. This is because prior EPA rulemaking actions for each individual component of the South Carolina SIP Compilation previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA believes judicial review of this action under section 307(b)(1) is not available.

List of Subjects in 40 CFR Part 52

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

Dated: February 20, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart PP—South Carolina

■ 2. In § 52.2120, paragraphs (b), (c), and (d) are revised to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) (Volume 1) and (d) (Volume 2) of this section with an EPA approval date prior to October 1, 2018, was approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) (Volume 1) and (d) (Volume 2) of this section with EPA approval dates after October 1, 2018, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street SW, Atlanta, GA 30303. To obtain the material, please call (404) 562–9022. You may inspect the material with an EPA approval date prior to October 1, 2018, for South Carolina at the National Archives and Records Administration. For information on the availability of this material at NARA go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(c) *EPA-Approved regulations.*

EPA-APPROVED SOUTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Regulation No. 62.1	Definitions and General Requirements.			
Section I	Definitions	8/25/2017	6/26/2018, 83 FR 29696.	
Section II	Permit Requirements	6/24/2005	6/2/2008, 73 FR 31369.	
Section III	Emission Inventory and Emissions Statement.	9/23/2016	5/31/2017, 82 FR 24853.	
Section IV	Source Tests	6/27/2014	8/21/2017, 82 FR 39537.	
Section V	Credible Evidence	6/27/2014	8/21/2017, 82 FR 39537.	
Regulation No. 62.2	Prohibition of Open Burning.	12/27/2013	6/25/2018, 83 FR 29455.	
Regulation No. 62.3	Air Pollution Episodes.			
Section I	Episode Criteria	4/26/2013	8/21/2017, 82 FR 39541.	
Section II	Emission Reduction Requirements.	4/22/1988	10/3/1989, 54 FR 40659.	
Regulation No. 62.4	Hazardous Air Pollution Conditions.	12/20/1978	1/29/1980, 45 FR 6572.	
Regulation No. 62.5	Air Pollution Control Standards.			
Standard No. 1	Emissions from Fuel Burning Operations.			

EPA-APPROVED SOUTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section I	Visible Emissions	6/27/2014	6/25/2018, 83 FR 29455	Except for subparagraph C "Special Provisions," including those versions submitted by the State on July 18, 2011, and August 12, 2015. Therefore, subparagraph C retains the version that was state effective October 26, 2001.
Section II	Particulate Matter Emissions.	6/27/2014	6/25/2018, 83 FR 29455.	
Section III	Sulfur Dioxide Emissions.	6/27/2014	6/25/2018, 83 FR 29455.	
Section IV	Opacity Monitoring Requirements.	9/23/2016	6/25/2018, 83 FR 29455	Except subparagraph B "Continuous Opacity Monitor Reporting Requirements," including those versions submitted by the State on August 8, 2014, and August 12, 2015. Therefore, subparagraph B retains the version that was state effective September 28, 2012.
Section V	Exemptions	5/24/1985	10/3/1989, 54 FR 40659.	
Section VI	Periodic Testing	6/27/2014	6/25/2018, 83 FR 29455.	
Standard No. 2	Ambient Air Quality Standards.	9/23/2016	6/29/2017, 82 FR 29418.	
Standard No. 4	Emissions From Process Industries.			
Section I	General	2/28/1986	2/17/1987, 52 FR 4772.	
Section II	Sulfuric Acid Manufacturing.	6/27/2014	6/25/2018, 83 FR 29455.	
Section III	Kraft Pulp and Paper Manufacturing Plants.	6/27/2014	6/25/2018, 83 FR 29455.	
Section V	Cotton Gins	6/27/2014	6/25/2018, 83 FR 29455.	
Section VI	Hot Mix Asphalt Manufacturing.	5/24/1985	10/3/1989, 54 FR 40659.	
Section VII	Metal Refining	2/28/1986	2/17/1987, 52 FR 4772.	
Section VIII	Other Manufacturing	6/24/2016	6/25/2018, 83 FR 29455.	
Section IX	Visible Emissions	4/22/1988	7/2/1990, 55 FR 27226.	
Section X	Non-Enclosed Operations.	4/22/1988	7/2/1990, 55 FR 27226.	
Section XI	Total Reduced Sulfur Emissions of Kraft Pulp Mills.	6/27/2014	6/25/2018, 83 FR 29455.	
Section XII	Periodic Testing	6/24/2016	6/25/2018, 83 FR 29455.	
Standard No. 5	Volatile Organic Compounds.			
Section I	General Provisions.			
Part A	Definitions	4/26/2013	8/16/2017, 82 FR 38825.	
Part B	General Applicability	10/26/2001	5/7/2002, 67 FR 30594.	
Part C	Alternatives and Exceptions to Control Requirements.	10/26/2001	5/7/2002, 67 FR 30594.	
Part D	Compliance Schedules	10/26/2001	5/7/2002, 67 FR 30594.	
Part E	Volatile Organic Compound Compliance Testing.	6/26/1998	8/10/2004, 69 FR 48395.	
Part F	Recordkeeping, Reporting, Monitoring.	10/26/2001	5/7/2002, 67 FR 30594.	
Part G	Equivalency Calculations.	4/26/2013	8/16/2017, 82 FR 38825.	
Section II	Provisions for Specific Sources.			
Part A	Surface Coating of Cans	11/27/2015	8/16/2017, 82 FR 38825.	
Part B	Surface Coating of Coils	11/27/2015	8/16/2017, 82 FR 38825.	
Part C	Surface Coating of Paper, Vinyl, and Fabric.	8/24/1990	2/4/1992, 57 FR 4158.	
Part D	Surface Coating of Metal Furniture and Large Appliances.	8/24/1990	2/4/1992, 57 FR 4158.	
Part E	Surface Coating of Magnet Wire.	10/26/2001	5/7/2002, 67 FR 30594.	
Part F	Surface Coating of Miscellaneous Metal Parts and Products.	10/26/2001	5/7/2002, 67 FR 30594.	

EPA-APPROVED SOUTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Part G	Surface Coating of Flat Wood Paneling.	2/25/1983	10/31/1983, 48 FR 50078.	
Part H	Graphic Arts—Rotogravure Flexography.	2/25/1983	10/31/1983, 48 FR 50078.	
Part N	Solvent Metal Cleaning	10/26/2001	5/7/2002, 67 FR 30594.	
Part O	Petroleum Liquid Storage in Fixed Roof Tanks.	2/25/1983	10/31/1983, 48 FR 50078.	
Part P	Petroleum Liquid Storage in External Floating Roof Tanks.	2/25/1983	10/31/1983, 48 FR 50078.	
Part Q	Manufacture of Synthesized Pharmaceutical Products.	4/26/2013	8/16/2017, 82 FR 38825.	
Part R	Manufacture of Pneumatic Rubber Tires.	2/25/1983	10/31/1983, 48 FR 50078.	
Part S	Cutback Asphalt	6/13/1979	12/16/1981, 46 FR 61268.	
Part T	Bulk Gasoline Terminals and Vapor Collection Systems.	2/25/1983	10/31/1983, 48 FR 50078.	
Standard No. 5.2	Control of Oxides of Nitrogen (NO_X).	6/25/2004	8/26/2005, 70 FR 50195.	
Standard No. 7	Prevention of Significant Deterioration.	8/25/2017	2/13/2019, 84 FR 3705	The SIP does not include the August 25, 2017 state-effective version of Standard No. 7, paragraphs (b)(32)(i)(a), (b)(32)(iii)(b)(t), and (i)(1)(vii)(t). Instead, the SIP includes the June 25, 2005 state-effective version of these paragraphs, conditionally approved by EPA on June 2, 2008, and fully approved on June 23, 2011. The SIP does not include Standard No. 7, paragraphs (b)(30)(v) and (b)(34)(iii)(d) because the state withdrew these paragraphs from EPA's consideration for approval on December 20, 2016. The SIP does not include the August 25, 2017 state-effective version of Standard No. 7, paragraph (b)(34)(iii)(c) because the state withdrew the August 25, 2017 state-effective version of this paragraph from EPA's consideration for approval on June 27, 2017. Instead, the SIP includes the June 25, 2005 state-effective version of this paragraph conditionally approved by EPA on June 2, 2008, and fully approved on June 23, 2011.
Standard No. 7.1	Nonattainment New Source Review.	11/27/2015	8/10/2017, 82 FR 37299	The SIP does not include the November 27, 2015 state-effective version of Standard No. 7.1, paragraphs (c)7(C)(xx) and (e)(T). Instead, the SIP includes the June 25, 2005 state-effective version of these paragraphs, conditionally approved by EPA on June 2, 2008, and fully approved on June 23, 2011.
Regulation No. 62.6	Control of Fugitive Particulate Matter.			
Section I	Control of Fugitive Particulate Matter in Non-Attainment Areas.	11/27/2015	8/21/2017, 82 FR 39541.	
Section II	Control of Fugitive Particulate Matter in Problem Areas.	5/24/1985	10/3/1989, 54 FR 40659.	
Section III	Control of Fugitive Particulate Matter Statewide.	12/27/2013	8/21/2017, 82 FR 39541.	
Section IV	Effective Date	5/24/1985	10/3/1989, 54 FR 40659.	
Regulation No. 62.7	Good Engineering Practice Stack Height.			
Section I	General	5/23/1986	5/28/1987, 52 FR 19858.	
Section II	Applicability	5/23/1986	5/28/1987, 52 FR 19858.	

EPA-APPROVED SOUTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section III	Definitions and Conditions.	5/23/1986	5/28/1987, 52 FR 19858.	
Section IV	Public Participation	5/23/1986	5/28/1987, 52 FR 19858.	
Regulation No. 62.96	Nitrogen Oxides (NO_X) and Sulfur Dioxide (SO_2) Budget Trading Program General Provisions.	10/24/2008	10/16/2009, 74 FR 53167.	
Regulation No. 62.97	Cross-State Air Pollution Rule (CSAPR) Trading Program.	8/25/2017	10/13/2017, 82 FR 47936.	
Regulation No. 62.99	Nitrogen Oxides (NO_X) Budget Program Requirements for Stationary Sources Not in the Trading Program.	5/24/2002	6/28/2002, 67 FR 43546.	
S.C. Code Ann.	Ethics Reform Act.			
Section 8–13–100(31)	Definitions	1/1/1992	8/1/2012, 77 FR 45492.	
Section 8–13–700(A) and (B).	Use of official position or office for financial gain; disclosure of potential conflict of interest.	1/1/1992	8/1/2012, 77 FR 45492.	
Section 8–13–730	Membership on or employment by regulatory agency of person associated with regulated business.	1/1/1992	8/1/2012, 77 FR 45492.	

(d) *EPA-Approved State source-specific requirements.*

EPA-APPROVED SOUTH CAROLINA STATE SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Comments
Transcontinental Gas Pipeline Corporation Station 140.	2060–0179–CD	4/27/2004	4/23/2009, 74 FR 18471	This permit is incorporated in fulfillment of the NO_X SIP Call Phase II requirements for South Carolina.

* * * * *

[FR Doc. 2019–04499 Filed 3–21–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0700; FRL–9991–10–Region 5]

Air Plan Approval; Indiana; Attainment Plan for Indianapolis and Terre Haute SO_2 Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions that Indiana submitted to EPA on October 2, 2015 for attaining the 2010 sulfur dioxide (SO_2) national ambient air quality standard (NAAQS) for the Indianapolis (Marion County) and Terre Haute (Vigo County) areas. EPA proposed this action on August 15, 2018 and did not receive any relevant public comments. These revisions (herein called the ''attainment plans'' or ''plans'') include Indiana's attainment demonstration and other elements required under the Clean Air Act (CAA) for the two areas. In addition to an attainment demonstration, the plans address: The requirement for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology (RACM/RACT), emission inventories, and contingency measures. EPA further concludes that Indiana has demonstrated that the plans provide for attainment of the 2010 SO_2 NAAQS in the Indianapolis and Terre Haute areas by the attainment date of October 4, 2018.

DATES: This final rule is effective on April 22, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2015–0700. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly

available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at 312–886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *Arra.Sarah@epa.gov*.

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

I. What action did EPA propose and why?

On August 15, 2018 (83 FR 40487), EPA proposed to approve an attainment plan submittal as a revision to Indiana's SIP, submitted on October 2, 2015, for the 2010 SO_2 NAAQS for the Indianapolis (Marion County), Southwest Indiana (Daviess and Pike Counties), and Terre Haute (Vigo County) areas. This action finalizes approval for the Indianapolis and Terre Haute areas only.

The dispersion modeling results submitted by Indiana show design values that are less than the standard of 75 parts per billion (ppb), specifically 73 ppb for the Indianapolis area and 72.6 ppb for the Terre Haute area. EPA proposed that these areas demonstrate attainment of the 2010 SO_2 standard and meet the applicable requirements of CAA sections 110, 172, 191, and 192 including emission inventories, RACT/RACM, RFP, and contingency measures, and that Indiana has previously addressed requirements regarding nonattainment area new source review (NSR).

II. What comments did EPA receive, and what are EPA's responses?

EPA's August 15, 2018 proposed action received one public comment pertaining to the Southwest Indiana area, but no comments pertaining to the Indianapolis and Terre Haute areas. Because this final action is acting on the Indianapolis and Terre Haute areas only, EPA will respond to the comment for the Southwest Indiana in the applicable, separate rulemaking. EPA also received two anonymous comments that address subjects outside the scope of our proposed action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the substantive aspects of the proposed action. Consequently, these comments are not germane to this rulemaking and require no further response.

III. What action is EPA taking?

EPA is approving Indiana's attainment plans as submitted to EPA on October 2, 2015, as a revision to Indiana's SIP, for attaining the 2010 SO_2 NAAQS for the Indianapolis (Marion County) and Terre Haute (Vigo County) areas. The attainment plans include Indiana's attainment demonstrations for the Indianapolis and Terre Haute nonattainment areas using dispersion modeling to demonstrate that the emission limits that Indiana adopted into 326 Indiana Administrative Code Article 7, and submitted for EPA approval, provide for air quality meeting the SO_2 NAAQS.

The attainment plans also satisfy requirements for emission inventories, RACT/RACM, RFP, and contingency measures. Additionally, Indiana has previously addressed requirements regarding nonattainment area NSR rules [1]. Therefore, EPA has determined that Indiana's SO_2 attainment plans meet the applicable requirements of CAA sections 110, 172, 191, and 192.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[2]

V. Statutory and Executive Order Reviews

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

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

[1] See 94 FR 24838 (October 7, 1994).

[2] 62 FR 27968 (May 22, 1997).

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 21, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 11, 2019.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770, the table in paragraph (c) under the heading ''Article 7. Sulfur Dioxide Rules'' is amended by:

■ a. Adding, in numerical order, an entry for ''7–1.1–3'' under ''Rule 1.1. Sulfur Dioxide Emission Limitations'';

■ b. Revising the entry for ''7–2–1'' under ''Rule 2. Compliance'';

■ c. Removing the entries for ''7–4–2'' and ''7–4–3''; and

■ d. Adding, in numerical order, the entries for ''7–4–2.1'' and ''7–4–3.1'' under ''Rule 4. Emission Limitations and Requirements by County''.

The additions and revisions read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
Article 7. Sulfur Dioxide Rules				
Rule 1.1 Sulfur Dioxide Emission Limitations				
*	*	*	*	*
7–1.1–3	Compliance Date	10/5/2015	3/22/2019, [Insert **Federal Register** citation].	
Rule 2. Compliance				
7–2–1	Reporting Requirements; methods to determine compliance.	10/5/2015	3/22/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
Rule 4. Emission Limitations and Requirements by County				
7–4–2.1	Marion County sulfur dioxide emission limitations.	1/1/2017	3/22/2019, [Insert **Federal Register** citation].	
7–4–3.1	Vigo County sulfur dioxide emission limitations.	1/1/2017	3/22/2019, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2019–05282 Filed 3–21–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0671; FRL–9987–25]

Mandipropamid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of mandipropamid in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 22, 2019. Objections and requests for hearings must be received on or before May 21, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0671, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0671 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 21, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0671, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 24, 2018 (83 FR 34968) (FRL–9980–31), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E8629) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of NJ, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of mandipropamid, 4-chloro-*N*-[2-(3-methoxy-4-(2-propynyloxy)phenyl]ethyl]-α-(2-propynyloxy)-benzeneacetamide], in or on the raw agricultural commodities: Asparagus bean, edible podded at 0.90 parts per million (ppm); Bean (Phaseolus spp.), edible podded at 0.90 ppm; Bean (Vigna spp.), edible podded at 0.90 ppm; *Brassica,* leafy greens, subgroup 4–16B at 25 ppm; Catjang bean, edible podded at 0.90 ppm; Celtuce at 20 ppm; Chinese longbean, edible podded at 0.90 ppm; Citrus, dried pulp at 0.14 ppm; Citrus, oil at 2.2 ppm; Cowpea, edible podded at 0.90 ppm; Florence fennel at 20 ppm; French bean, edible podded at 0.90 ppm; Fruit, citrus, group 10–10 at 0.5 ppm; Garden bean, edible podded at 0.90 ppm; Goa bean, edible podded at 0.90 ppm; Green bean, edible podded at 0.90 ppm; Guar bean, edible podded at 0.90 ppm; Jackbean, edible podded at 0.90 ppm; Kidney bean, edible podded at 0.90 ppm; Kohlrabi at 3 ppm; Lablab bean, edible podded at 0.90 ppm; Leaf petiole vegetable subgroup 22B at 20 ppm; Leafy greens subgroup 4–16A at 25 ppm; Moth bean, edible podded at 0.90 ppm; Mung bean, edible podded at 0.90 ppm; Navy bean, edible podded at 0.90 ppm; Rice bean, edible podded at 0.90 ppm; Scarlet runner bean, edible podded at 0.90 ppm; Snap bean, edible podded at 0.90 ppm; Sword bean, edible podded at 0.90 ppm; Urd bean, edible podded at 0.90 ppm; Vegetable soybean, edible podded at 0.90 ppm; Vegetable, *Brassica,* head and stem, group 5–16 at

3 ppm; Velvet bean, edible podded at 0.90 ppm; Wax bean, edible podded at 0.90 ppm; Winged pea, edible podded at 0.90 ppm; and Yardlong bean, edible podded at 0.90 ppm.

Additionally, the petition requested to amend 40 CFR 180.637 by removing the tolerances for residues of mandipropamid in or on the raw agricultural commodities Bean, snap at 0.90 ppm; *Brassica,* head and stem, subgroup 5A at 3 ppm; *Brassica,* leafy greens, subgroup 5B at 25 ppm; and Vegetable, leafy except *Brassica,* group 4 at 20 ppm.

That document referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the levels at which some tolerances are being established as well as some of the commodities in which tolerances are being established. The reason for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for mandipropamid including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with mandipropamid follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Subchronic and chronic studies indicate that the liver and kidney are the primary target organs for mandipropamid. Liver effects observed in subchronic studies with rats, mice and dogs included periportal hypertrophy (rats), increased eosinophilia (rats and mice), increased plasma albumin, total protein, cholesterol, and gamma-glutamyl transferase (rats), increased liver weights (rats, mice and dogs), increased liver enzymes (dogs), increased pigment in hepatocytes and Kupffer cells (dogs), and centrilobular hepatocyte vacuolation (dogs). In the chronic dog study, increases in microscopic pigment in the liver, and increased liver enzymes were observed. In the chronic rat and mouse studies, liver toxicity was not observed. Nephrotoxicity was observed in the chronic rat study; however, in the chronic mouse study, only decreased body weight and food utilization were observed. The findings of liver toxicity and nephrotoxicity are consistent with the results from metabolism studies, in which radioactivity levels in liver and kidney were typically higher than other tissues. There were no consistent sex-related differences in target organ toxicity, although male rats appeared to be more sensitive to body weight effects.

No evidence of neurotoxicity was observed in the database, including rat acute or subchronic neurotoxicity studies. No systemic or dermal toxicity was observed in the rat following dermal exposure for 28 days up to the limit dose.

No evidence of increased pre- or postnatal quantitative or qualitative susceptibility was observed. No fetal or maternal toxicity was observed in developmental toxicity studies in the rat and rabbit. Decreased pup weights were observed in the rat two-generation reproduction study in the presence of decreased parental body weight and food utilization.

There was no evidence of a treatment-related increase in tumor incidence in the mouse carcinogenicity study or the rat chronic/carcinogenicity study. There was no evidence of genotoxicity in bacterial reverse gene mutation, mammalian in vitro forward gene mutation, mammalian in vivo clastogenicity, or unscheduled DNA synthesis assays. Therefore, mandipropamid is classified as ''not likely to be carcinogenic to humans.''

Specific information on the studies received and the nature of the adverse effects caused by mandipropamid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Mandipropamid. Aggregate Human Health Risk Assessment Supporting Section 3 Registration of Proposed New Uses on Citrus Fruits Group 10–10 and Succulent Beans, Along with Various Crop Group and Subgroup Conversions'' on pages 35–39 in docket ID number EPA–HQ–OPP–2017–0671.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for mandipropamid used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR MANDIPROPAMID FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary(All populations, including infants and children, and females 13–49).	No appropriate endpoint for a single exposure was identified in the database.		
Chronic dietary (All populations)	NOAEL= 5 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.05 mg/kg/day cPAD = 0.05 mg/kg/day	Chronic toxicity study—dog. LOAEL = 40 mg/kg/day, based on increased incidence and severity of microscopic pigment in the liver, and increased alkaline phosphatase activity in both sexes, as well as increased alanine aminotransferase activity in males.
Cancer (Oral, dermal, inhalation)	Classified as not likely to be carcinogenic to humans.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. mg/kg/day = milligram/kilogram/day. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to mandipropamid, EPA considered exposure under the petitioned-for tolerances as well as all existing mandipropamid tolerances in 40 CFR 180.637. EPA assessed dietary exposures from mandipropamid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for mandipropamid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16, which uses food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, ''What We Eat in America'' (NHANES/WWEIA) from 2003 through 2008. As to residue levels in food, the chronic dietary risk assessment assumed tolerance-level residues in all commodities with existing tolerances except tuberous and corm vegetable subgroup 1C. For the chronic dietary risk assessment, this subgroup was assessed at 0.115 ppm, which assumes tolerance-level residues of parent mandipropamid (0.09 ppm), and includes metabolite SYN 500003 in parent-equivalents (at 0.025 ppm). Tolerance-level residues associated with the proposed new uses and crop group conversions were also used in the assessment. The Agency's 2018 Default Processing Factors were used for all processed commodities for which they were available. The empirical processing factor from the grape processing study was used for grape wine/sherry (1.5X). A processing factor was not used for grape raisin because a tolerance is currently established in raisin. Similarly, processing factors were not used for citrus oil and dried pulp because the Agency is establishing separate tolerances in these commodities.

iii. *Cancer.* Based on the lack of evidence of carcinogenicity or genotoxicity, the Agency has classified mandipropamid as ''not likely to be a human carcinogen'' and therefore, there is no concern for cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the dietary assessment for mandipropamid. Tolerance level residues and 100 PCT were assumed for all food commodities except as noted in section III.C.ii.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for mandipropamid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of mandipropamid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the FQPA Index Reservoir Screening Tool (FIRST) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of mandipropamid for chronic exposures are estimated to be 9.0 ppb for surface water and 79 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the chronic dietary risk assessment, the water concentration value of 79 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Mandipropamid is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found mandipropamid to share a common mechanism of toxicity with any other substances, and mandipropamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has

assumed that mandipropamid does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No evidence of increased pre- or postnatal quantitative or qualitative susceptibility was observed. No fetal or maternal toxicity was observed in developmental toxicity studies in the rat and rabbit. Decreased pup weights were observed in the rat two-generation reproduction study in the presence of decreased parental body weight and food utilization.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for mandipropamid is complete.

ii. There is no indication that mandipropamid is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that mandipropamid results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues except as noted in section III.C.ii. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to mandipropamid in drinking water. These assessments will not underestimate the exposure and risks posed by mandipropamid.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, mandipropamid is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to mandipropamid from food and water will utilize 49% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for mandipropamid.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short- and intermediate-term adverse effects were identified; however, mandipropamid is not registered for any use patterns that would result in either short- or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for mandipropamid.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, mandipropamid is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to mandipropamid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

There is an adequate enforcement method available for the quantitation of mandipropamid in plant commodities. Method RAM 415/01, using high performance liquid chromatography with tandem mass spectrometric detection (LC/MS/MS), has been adequately validated by an independent laboratory. It has a validated limit of quantitation (LOQ) of 0.01 ppm. An acceptable confirmatory method is also available.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no harmonization issues with Codex regarding the new use on citrus fruits because Codex has not established MRLs for mandipropamid in citrus commodities. Additionally, Codex has not established an MRL in

snap beans, so this is not a harmonization issue. Regarding the updated crop group/subgroup conversions, the tolerance in leafy vegetable group 4–16 is harmonized with the corresponding Codex MRLs. The tolerance in Brassica head and stem vegetable group 5–16, and the individual tolerance in kohlrabi, is harmonized with the Codex MRLs in cabbage and Chinese napa cabbage, but not the Codex MRL in broccoli. There are no Codex MRLs in Brussels sprouts, cauliflower or kohlrabi. The EPA is not harmonizing with the Codex MRL in broccoli because it is lower than the U.S. tolerance in *Brassica* head and stem vegetable group 5–16; setting a lower tolerance in broccoli could result in violative residues for U.S. growers. The tolerance in leaf petiole subgroup 22B, with individual tolerances in celtuce and Florence fennel, is harmonized with the Codex MRL in celery.

C. Revisions to Petitioned-For Tolerances

EPA's tolerance levels are expressed to provide sufficient precision for enforcement purposes, and this may include the addition of trailing zeros (0.50 ppm rather than the proposed 0.5 ppm). The Agency does this in order to avoid the situation where rounding of an observed violative residue to the level of precision of the tolerance expression would result in a residue being considered non-violative (such as 0.54 ppm being rounded to 0.5 ppm). EPA made this revision for Fruit, citrus, group 10–10, Kohlrabi, and Vegetable, *Brassica,* head and stem, group 5–16.

Because the petitioner proposed separate tolerances in both subgroups 4–16A and 4–16B at 25 ppm, the Agency is establishing a single tolerance in leafy vegetable group 4–16 at 25 ppm rather than separate tolerances in the two subgroups. In addition, the Agency revised the commodity terminology to use the correct commodity definition for Florence fennel, which is Fennel, Florence, fresh leaves and stalk.

The proposed tolerance in citrus dried pulp (0.14 ppm) was incorrectly based on the dried pulp processing factor (2.9X) multiplied by the lowest average field trial value (LAFT) of 0.049 ppm from the orange field trials. However, per Office of Chemical Safety and Pollution Prevention (OCSPP) Residue Chemistry Test Guideline 860.1520, EPA based the tolerance on the processing factor (2.9X) multiplied by the highest average field trial value (HAFT) of 0.231 ppm from the lemon field trials (which had the highest HAFT of the three representative commodities), yielding a result of 0.67 ppm. Per the rounding protocol in the Organization for Economic Cooperation and Development (OECD) MRL Calculator User Guide, this result was increased to 0.70 ppm.

Similarly, the proposed tolerance in citrus oil (2.2 ppm) was incorrectly based on the oil processing factor (45X) multiplied by the LAFT of 0.049 ppm from the orange field trials. As for dried pulp, EPA based the tolerance in citrus oil on the processing factor (45X) multiplied by the HAFT of 0.231 ppm from the lemon field trials, yielding a result of 10.4 ppm. Per the rounding protocol in the OECD's MRL Calculator User Guide this result was increased to 15 ppm.

V. Conclusion

Therefore, tolerances are established for residues of mandipropamid in or on Asparagus bean, edible podded at 0.90 ppm; Bean (Phaseolus spp.), edible podded at 0.90 ppm; Bean (Vigna spp.), edible podded at 0.90 ppm; Catjang bean, edible podded at 0.90 ppm; Celtuce at 20 ppm; Chinese longbean, edible podded at 0.90 ppm; Citrus, dried pulp at 0.70 ppm; Citrus, oil at 15 ppm; Cowpea, edible podded at 0.90 ppm; Fennel, Florence, fresh leaves and stalk at 20 ppm; French bean, edible podded at 0.90 ppm; Fruit, citrus, group 10–10 at 0.50 ppm; Garden bean, edible podded at 0.90 ppm; Goa bean, edible podded at 0.90 ppm; Green bean, edible podded at 0.90 ppm; Guar bean, edible podded at 0.90 ppm; Jackbean, edible podded at 0.90 ppm; Kidney bean, edible podded at 0.90 ppm; Kohlrabi at 3.0 ppm; Lablab bean, edible podded at 0.90 ppm; Leaf petiole vegetable subgroup 22B at 20 ppm; Moth bean, edible podded at 0.90 ppm; Mung bean, edible podded at 0.90 ppm; Navy bean, edible podded at 0.90 ppm; Rice bean, edible podded at 0.90 ppm; Scarlet runner bean, edible podded at 0.90 ppm; Snap bean, edible podded at 0.90 ppm; Sword bean, edible podded at 0.90 ppm; Urd bean, edible podded at 0.90 ppm; Vegetable, *Brassica,* head and stem, group 5–16 at 3.0 ppm; Vegetable, leafy, group 4–16 at 25 ppm; Vegetable soybean, edible podded at 0.90 ppm; Velvet bean, edible podded at 0.90 ppm; Wax bean, edible podded at 0.90 ppm; Winged pea, edible podded at 0.90 ppm; and Yardlong bean, edible podded at 0.90 ppm.

Additionally, the existing tolerances in/on Bean, snap at 0.90 ppm; *Brassica,* head and stem, subgroup 5A at 3 ppm; *Brassica,* leafy greens, subgroup 5B at 25 ppm; and Vegetable, leafy except *Brassica,* group 4 at 20 ppm are removed as unnecessary since they are covered by the new tolerances.

VI. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175,

entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: March 14, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.637, in the table to paragraph (a):
■ a. Add alphabetically the entry ''Asparagus bean, edible podded'';
■ b. Remove the entry for ''Bean, snap'';
■ c. Add alphabetically the entries ''Bean (Phaseolus spp.), edible podded'' and ''Bean (Vigna spp.), edible podded'';
■ d. Remove the entries for ''Brassica, head and stem, subgroup 5A'' and ''Brassica, leafy greens, subgroup 5B''; and
■ e. Add alphabetically the entries ''Catjang bean, edible podded''; ''Celtuce''; ''Chinese longbean, edible podded''; ''Citrus, dried pulp''; ''Citrus, oil''; ''Cowpea, edible podded''; ''Fennel, Florence, fresh leaves and stalk''; ''French bean, edible podded''; ''Fruit, citrus, group 10–10''; ''Garden bean, edible podded''; ''Goa bean, edible podded''; ''Green bean, edible podded''; ''Guar bean, edible podded''; ''Jackbean, edible podded''; ''Kidney bean, edible podded''; ''Kohlrabi''; ''Lablab bean, edible podded''; ''Leaf petiole vegetable subgroup 22B''; ''Moth bean, edible podded''; ''Mung bean, edible podded''; ''Navy bean, edible podded''; ''Rice bean, edible podded''; ''Scarlet runner bean, edible podded''; ''Snap bean, edible podded''; ''Sword bean, edible podded''; ''Urd bean, edible podded''; ''Vegetable, *Brassica,* head and stem, group 5–16''; and ''Vegetable, leafy, group 4–16'';
■ f. Remove the entry for ''Vegetable, leafy except Brassica, group 4''; and
■ g. Add alphabetically the entries ''Vegetable soybean, edible podded''; ''Velvet bean, edible podded''; ''Wax bean, edible podded''; ''Winged pea, edible podded''; and ''Yardlong bean, edible podded''.

The additions read as follows:

§ 180.637 Mandipropamid; tolerances for residues.

(a) * * *

Commodity	Parts per million
Asparagus bean, edible podded	0.90
* * * * *	
Bean (Phaseolus spp.), edible podded	0.90
Bean (Vigna spp.), edible podded	0.90
Catjang bean, edible podded	0.90
Celtuce	20
Chinese longbean, edible podded	0.90
Citrus, dried pulp	0.70
Citrus, oil	15
Cowpea, edible podded	0.90
Fennel, Florence, fresh leaves and stalk	20
French bean, edible podded	0.90
Fruit, citrus, group 10–10	0.50
* * * * *	
Garden bean, edible podded	0.90
* * * * *	
Goa bean, edible podded	0.90
* * * * *	
Green bean, edible podded	0.90
Guar bean, edible podded	0.90
* * * * *	
Jackbean, edible podded	0.90
Kidney bean, edible podded	0.90
Kohlrabi	3.0
Lablab bean, edible podded	0.90
Leaf petiole vegetable subgroup 22B	20
Moth bean, edible podded	0.90
Mung bean, edible podded	0.90
Navy bean, edible podded	0.90
* * * * *	
Rice bean, edible podded	0.90
Scarlet runner bean, edible podded	0.90
Snap bean, edible podded	0.90
Sword bean, edible podded	0.90
Urd bean, edible podded	0.90
Vegetable, *Brassica,* head and stem, group 5–16	3.0
* * * * *	
Vegetable, leafy, group 4–16	25
Vegetable soybean, edible podded	0.90
* * * * *	
Velvet bean, edible podded	0.90
Wax bean, edible podded	0.90
Winged pea, edible podded	0.90
Yardlong bean, edible podded	0.90

* * * * *

[FR Doc. 2019–05406 Filed 3–21–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 455

Office of Inspector General

42 CFR Part 1007

RIN 0936–AA07

Medicaid; Revisions to State Medicaid Fraud Control Unit Rules

AGENCIES: Office of Inspector General (OIG) and Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule amends the regulation governing State Medicaid Fraud Control Units (MFCUs or Units). The rule incorporates statutory changes affecting the Units as well as policy and practice changes that have occurred since the regulation was initially issued in 1978. These changes include a recognition of OIG's delegated authority; Unit authority, functions, and responsibilities; disallowances; and issues related to organization, prosecutorial authority, staffing, recertification, and the Units' relationship with Medicaid agencies. The rule is designed to assist the MFCUs in understanding their authorities and responsibilities under the grant program, clarify the flexibilities the MFCUs have to operate their programs, and reduce administrative burden, where

appropriate, by eliminating duplicative and unnecessary reporting requirements.

DATES: These regulations are effective on May 21, 2019.

FOR FURTHER INFORMATION CONTACT: Susan Burbach, (202) 708–9789, or Richard Stern, (202) 205–0572, Office of Inspector General.

SUPPLEMENTARY INFORMATION:

Legal Authority

The legal authority for this regulatory action is found in the Social Security Act (the Act) as follows:

Part 1007: Sections 1902(a)(61), 1903(a)(6), 1903(b)(3), 1903(q), and 1102 of the Act.

Part 455: Section 1102 of the Act.

Executive Summary

A. Purpose of Regulatory Action

The mission of the MFCUs, as described in section 1903(q) of the Act, is to investigate and prosecute Medicaid provider fraud and patient abuse or neglect that occurs in health care facilities or board and care facilities. The OIG, on behalf of HHS, has the responsibility to administer a grant award to each of the MFCUs and to provide oversight for MFCU operations. The purpose of this regulatory action is to revise regulations that were initially issued after the inception of the MFCU grant program in 1977.

We are amending this regulation for three specific reasons. First, we are incorporating into the rule statutory changes that have occurred since the 1977 enactment of the Medicare-Medicaid Anti-Fraud and Abuse Amendments (Pub. L. 95–142), which amended section 1903(a) of the Act to provide for Federal participation in the costs attributable to establishing and operating a MFCU. Second, we are aligning the rule with practices and policies that have developed and evolved since the initial version of the rule was issued in 1978, 43 FR 32078 (July 24, 1978), now codified at 42 CFR part 1007. Finally, we are revising the regulation to reduce burden on the Units, when doing so does not undermine OIG's oversight role or the Units' mission.

For ease of reading, we have republished the entirety of part 1007 and incorporated the changes as part of that publication. However, for some sections within part 1007, we did not make substantive changes.

B. Summary of Major Provisions

(1) *Statutory Changes.* We incorporate statutory changes that have occurred since 1977, including (1) extending funding for State MFCUs by authorizing a Federal matching rate of 90 percent for the first 3 years of operation and a Federal matching rate of 75 percent thereafter, (2) establishing a Medicaid State plan requirement that a State must operate an effective Unit, (3) requiring the Secretary of Health and Human Services to establish standards under which Units must be operated, (4) allowing Units to seek approval from the relevant Inspector General to investigate and prosecute violations of State law related to fraud in any aspect of the provision of health care services and activities of providers of such services under any Federal health care program, including Medicare, as long as the fraud is primarily related to Medicaid, and (5) giving Units the option to investigate and prosecute patient abuse or neglect in board and care facilities, regardless of whether the facilities receive Medicaid payments. With the exception of the establishment of standards, all of these statutory changes were self-implementing and have been operational since their statutory effective dates. Performance standards for MFCU operations were initially published in the **Federal Register** in 1994 and revised in 2012.

(2) *Office of Inspector General Authority.* The final rule, in referring to OIG as the oversight agency for the MFCUs, recognizes that the authority for certification and recertification of the Units, as well as the administration of a Federal grant award to operate the Units, was transferred from the predecessor agency of CMS (the Health Care Financing Administration) to OIG on July 27, 1979.

(3) *Definition of Key Terms.* The final rule adds definitions of key terms that clarify issues related to MFCU authority under the grant. All the definitions are consistent with other regulatory definitions and with longstanding practice.

(4) *Organizational Requirements.* The final rule clarifies, consistent with OIG policy and longstanding MFCU practice, what it means to be a ''single, identifiable entity of State government'' as required under the statute. The regulations specify that a MFCU must have a single director to whom all staff report, operate under a budget that is separate from that of its parent agency, and generally have offices in their own contiguous space.

(5) *Prosecutorial Authority Requirements.* The final rule, consistent with statutory changes and longstanding practice, makes amendments to the prosecutorial authority requirement options to include the prosecution of patient or resident abuse and neglect and to include formal written procedures for making referrals to the State Attorney General or another office with statewide prosecutorial authority.

(6) *Agreement with Medicaid Agency.* The final rule requires that the agreement with the Medicaid agency establish regular communication, procedures for coordination, and procedures by which the Unit will receive referrals of potential fraud from managed care organizations. This revision is consistent with the recent changes to the Medicaid managed care regulation in 42 CFR part 438 that require managed care organizations to refer potential fraud to the Medicaid agency or to the MFCU.

(7) *Duties and Responsibilities.* The final rule, consistent with published performance standards, requires that Units submit all convictions to OIG for purposes of program exclusion within 30 days of sentencing or as soon as practicable if a Unit encounters delays from the courts. The final rule also clarifies, consistent with existing practice, the requirement that a Unit make information available to, and coordinate with, OIG investigators and attorneys, or with other Federal investigators and prosecutors, on Medicaid fraud and investigations or prosecutions involving the same suspects or allegations.

(8) *Staffing Requirements.* The final rule clarifies that Units may choose to employ professional employees as full- or part-time employees so long as they devote their ''exclusive effort'' to Unit functions. The final rule also establishes that a Unit will employ a director and that all Unit employees will be under the direction and supervision of the Unit director. The rule establishes that Unit professional employees may also obtain outside employment with some restriction and may perform temporary assignments that are not a required function of the Unit, but may not receive Federal financial participation for those assignments. The rule also clarifies that Units may employ employees or consultants with specialized knowledge and skills, but that investigation and prosecution functions may not be outsourced through consultant agreements or other contracts. Finally, the rule requires Units to provide training for professional employees on Medicaid fraud and patient or resident abuse and neglect matters. These requirements all codify and are consistent with current Unit operations and OIG policy on Unit staffing.

(9) *Recertification Requirements.* The final rule amends the regulation to reflect the Unit recertification process.

This includes describing what OIG requires annually as part of recertification, including submission of reapplication materials and statistical data. The final rule also eliminates the requirement to submit an ''annual report,'' thus reducing burden. The final rule clarifies the factors that OIG considers when recertifying a Unit. The rule also creates a process for notifying the Unit of approval or denial of recertification and procedures for reconsideration should OIG deny recertification.

(10) *Federal Financial Participation (FFP).* The final rule reflects that, except for Units with OIG approval to conduct data mining under this part, Units may not receive FFP for data mining activities that duplicate surveillance and utilization review responsibilities of State Medicaid agencies, but may engage in activities other than data mining to identify situations in which fraud may exist, such as efforts to increase referrals through program outreach activities.

(11) *Disallowance Procedures.* The final rule sets forth procedures for OIG disallowances of FFP and for Unit requests for reconsideration and appeal of disallowances. These procedures are consistent with, and prompted by, a 2008 amendment to the Act, adding section 1116(e), which provided States the option to seek reconsideration of a disallowance by an agency prior to an appeal to the Departmental Appeals Board. The procedures are intended to mirror those that were implemented earlier for CMS disallowances to the States, 42 CFR 430.42.

(12) *CMS Companion Regulation.* To ensure that both the Unit and the Medicaid agency are required to have an agreement with each other, the final rule includes amendments to the CMS regulation at 42 CFR 455.21 to require that the Medicaid agency has an agreement with the Unit. The amendments to this section were developed in collaboration with CMS.

C. Costs and Benefits

There are no significant costs associated with the regulatory revisions, and the revisions do not impose any mandates on State, local, or Tribal governments or on the private sector that would represent significant costs.

I. Background

A. Statutory Changes Since 1977 Implemented by This Rulemaking

(1) *Omnibus Reconciliation Act of 1980 (Pub. L. 96–499).* The Medicare-Medicaid Anti-Fraud and Abuse Amendments added section 1903(a)(6) of the Social Security Act (the Act), which authorized a Federal matching rate of 90 percent for the establishment and operation of State Medicaid Fraud Control Units (MFCUs) for fiscal years 1978 through 1980. The Omnibus Reconciliation Act of 1980 extended funding for State MFCUs by amending section 1903(a)(6) of the Act to authorize a Federal matching rate of 90 percent for the first 3 years of operation and a Federal matching rate of 75 percent thereafter.

(2) *Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66).* The Omnibus Budget Reconciliation Act of 1993 added section 1902(a)(61) to the Act, establishing a Medicaid State plan requirement that a State must operate an effective MFCU, unless the State demonstrates that effective operation of a Unit would not be cost effective and that, in the absence of a Unit, beneficiaries will be protected from abuse and neglect. The statute further requires that the Units be operated in accordance with standards established by the Secretary of Health and Human Services (HHS).

(3) *Ticket to Work and Work Incentives Improvement Act of 1999 (Pub. L. 106–170).* In the Ticket to Work and Work Incentives Improvement Act of 1999, Congress amended section 1903(q) of the Act to extend the authority of MFCUs in two ways. First, the Units may seek approval from the relevant Federal Inspector General (in most circumstances the HHS Inspector General) to investigate and prosecute violations of State law related to any aspect of fraud in connection with ''the provision of health care services and activities of providers of such services under any Federal health care program,'' including Medicare, ''if the suspected fraud or violation of State law is primarily related to'' Medicaid. Second, the law gives Units the option to investigate and prosecute patient abuse or neglect in ''board and care facilities,'' regardless of whether those facilities receive Medicaid payments.

B. Regulatory, Practice, and Policy Changes to the MFCU Program Since 1978

Prior to the publication of this final rule, the regulation was amended on two occasions. First, the regulation was amended at § 1007.9(e)–(g) (76 FR 5970 (February 2, 2011)) to implement payment suspension provisions found in the Patient Protection and Affordable Care Act, Public Law 111–148. Second, the regulation was modified at § 1007.20 to allow FFP for data mining under certain circumstances (78 FR 29055 (May 17, 2013)). With the exception of these two revisions, the regulation had not received a revision since it was originally published in 1978. In the ensuing years, growth of the MFCU program to 50 Units (49 States and the District of Columbia), as well as changes in MFCU practice, health care, and the workplace, have led to the need to revise the regulation. Further, in 1994, pursuant to section 1902(a)(61) of the Act, the Office of Inspector General (OIG), in consultation with the Units, developed 12 performance standards to be used in assessing the operations of MFCUs. These performance standards have since been revised at 77 FR 32645 (June 1, 2012). OIG uses the performance standards to annually recertify each Unit and to determine if a Unit is effectively and efficiently carrying out its duties and responsibilities. On September 20, 2016, OIG published in the **Federal Register** (81 FR 64383) a Notice of Proposed Rulemaking (Proposed Rule), which we are finalizing with publication of this final rule.

C. Summary of the 2016 Proposed Rule

The Proposed Rule set forth proposed amendments to the State Medicaid Fraud Control Unit regulations. With respect to definitions, we proposed to modify the current definition of ''provider,'' eliminate the definition of ''employ or employee,'' and add definitions for ''full-time employee,'' ''part-time employee,'' ''professional employee,'' ''exclusive effort,'' ''director,'' ''fraud,'' ''abuse of patients,'' ''board and care facility,'' ''health care facility,'' ''misappropriation of patient funds,'' ''neglect of patients,'' and ''program abuse.''

With respect to requirements for certification, we proposed to define the phrase ''single, identifiable entity,'' specifically, that a Unit must (1) be a single organization reporting to the single Unit director; (2) operate under its own budget that is separate from that of its parent division or agency; and (3) have the headquarters office and any field offices each in their own contiguous space. We also proposed to clarify that Units must satisfy the definition to be certified and recertified.

With respect to prosecutorial authority requirements, we proposed that the regulation be amended to include the establishment of formal procedures for referring cases of patient abuse and neglect to the appropriate prosecuting authority when there is no State agency with statewide authority and capability for patient abuse prosecutions. We proposed that the regulation be amended to reference the office of the State Attorney General ''or

another office with statewide prosecutorial authority'' and to clarify that the formal procedures should be written procedures.

With respect to the Unit's relationship to and its agreement with the Medicaid agency, in the joint Proposed Rule, OIG and the Centers for Medicare & Medicaid Services (CMS) proposed to add additional guidance to the MFCU rule and the CMS rule to clarify that both the Medicaid agency and the Unit must enter into a written agreement, such as a memorandum of understanding. We also proposed to add to both rules that the written agreement include certain required elements. Finally, we proposed an amendment to require, consistent with changes to the law and regulation governing the referral of credible allegations of fraud, that the Unit provide certification to the Medicaid agency, upon request on a quarterly basis, that any matter accepted on the basis of a referral continues to be under investigation and thus warrants continuation of payment suspension.

With respect to functions and responsibilities of a Unit, we proposed to require the Unit to review complaints involving misappropriation of funds, as we believed that making the review of such complaints mandatory, rather than optional, is consistent with the broad statutory responsibility for patient abuse or neglect. Consistent with the statute, we also proposed to revise the regulation to specify that the MFCU must obtain written permission from the relevant Federal Inspector General to investigate cases of provider fraud in health care programs other than Medicaid and that the Units report annually to OIG on any approvals for extended investigative authority from any Federal Inspector General. To be consistent with the statute, we also proposed to permit investigations of patient abuse or neglect in board and care facilities. We proposed that applicable State laws pertaining to Medicaid fraud include criminal statutes as well as civil false claims statutes or other civil authorities. We further proposed that if no State civil fraud statute exists, Units should make appropriate referrals of meritorious civil cases to Federal investigators or prosecutors, such as the U.S. Department of Justice (DOJ) or the U.S. Attorney's Office, as well as to the OIG Office of Investigations and Office of Counsel to the Inspector General. We proposed to clarify that when a Unit discovers that overpayments have been made to a provider or facility, the Unit must either recover the overpayment as part of its resolution of a fraud case or refer the matter to the proper State agency for collection.

With respect to coordination with Federal partners, we proposed to retain the current requirement that a Unit make available to Federal investigators and prosecutors and OIG attorneys all information in its possession concerning Medicaid fraud and that the Unit coordinate with such officials any Federal and State investigations or prosecutions involving the same suspects or allegations. However, we also proposed to expand the requirement to further ensure effective collaboration between the Units and OIG investigators and attorneys, or other Federal investigators and Federal prosecutors by (1) establishing a practice of regular meetings or communication; (2) making appropriate referrals to OIG investigators and attorneys, other Federal investigators, and Federal prosecutors; and (3) developing written procedures for those coordinating actions.

We proposed to require a Unit to provide adequate safeguards to protect sensitive information and data under the Unit's control, updating a requirement that had largely referred to paper case files and other case-related materials, such as evidence.

We proposed to amend the regulations to require that a Unit transmit to OIG, for purposes of excluding convicted individuals and entities from participation in Federal health care programs under section 1128 of the Act, pertinent documentation on all convictions obtained by the Unit, including those cases investigated jointly with another law enforcement agency, as well as those prosecuted by another agency at the local, State, or Federal level. We proposed that such information be provided within 30 days of sentencing or, if Units are unable to obtain pertinent information from the sentencing court within 30 days, as soon as reasonably practicable.

With respect to staffing requirements, we proposed to revise the regulations to clarify that Unit professional employees do not need to be ''full time'' to receive FFP, but to retain the longstanding policy and practice that FFP is permitted only for Unit professional employees who are devoted ''exclusively'' to the MFCU mission except for limited circumstances that are specifically described in the regulation. We also proposed that, to be eligible for FFP, professional employees may not be employed by other State agencies during nonduty hours and that professional employees may obtain employment outside of State government, if State law allows it, but only if the outside employment presents no conflict of interest to Unit activities. We proposed to permit Unit professional employees to engage in temporary assignments that are not within the functions and responsibilities of a Unit only if such assignments are truly limited in duration. Such assignments would not be funded by the Federal MFCU grant. We proposed to add a requirement that the Unit must employ a director who supervises all Unit employees, either directly or through subordinate Unit managers.

We also proposed to clarify that a Unit may not receive FFP when it relies on individuals not employed directly by the Unit for the investigation or prosecution of cases, including individuals retained through consultant agreements or other contractual arrangements, but that Units may receive FFP for the employment, or retention through consultant agreements or other arrangements, of individuals with particular knowledge, skills, and/or expertise that a Unit believes will support the Unit in the investigation or prosecution of cases. We also proposed to add a requirement that, consistent with MFCU performance standards, a Unit must provide training for its professional employees for the purpose of establishing and maintaining proficiency in the investigation and prosecution of Medicaid fraud and patient abuse and neglect. We proposed to clarify that a Unit may hire administrative and support staff on a part-time basis. Finally, we proposed minor clarifications to the qualifications of attorneys, auditors, and the senior investigator.

With respect to certification, we proposed to clarify that initial certification will be based on the information and documentation specified in the initial application and to eliminate the requirement that an initial application include a projection of caseload.

With respect to recertification, we proposed to revise regulations to reflect the recertification process that has evolved since the program began. Specifically, we proposed that the regulation would (1) describe the information that must be provided to OIG on an annual basis, including the recertification application and statistical data; (2) describe other information considered for recertification; (3) clarify the basis for recertification by OIG; (4) create a procedure in which OIG notifies the Unit whether the reapplication is approved or denied by the Unit's recertification date; (5) clarify that an approved reapplication may be subject

to special conditions; and (6) establish basic procedures for reconsideration of an OIG denial of recertification. We also proposed modifications to the annual report.

With respect to FFP rates and eligible costs, we proposed to modify the regulation to reflect that, under law, FFP is available at the rate of 90 percent during the first 12 quarters of a Unit's operation and at 75 percent thereafter, beginning with the 13th quarter of a Unit's operation. We also proposed to clarify that each quarter of reimbursement at the 90 percent matching rate is counted in determining when the 13th quarter begins and that quarters of Unit operation do not have to be consecutive to accumulate for purposes of determining when the 90 percent matching period has ended. Additionally, we proposed to clarify in regulation that a Unit may receive FFP for its efforts to increase referrals through program outreach activities. We also proposed to clarify the prohibition on the ability of Units to receive FFP to ''identify situations in which a question of fraud may exist'' by clarifying the ability of Units to engage in activities, other than data mining, to identify potential civil or criminal fraud in the Medicaid program.

In addition, we proposed to clarify that the longstanding FFP prohibition for beneficiary fraud (unless the suspected fraud involves conspiracy with a provider) is narrowly focused on cases involving the establishment of eligibility for Medicaid, such as the suspected fraudulent statement of assets and income. On the other hand, consistent with OIG policy, the proposed revision would permit FFP for the investigation or prosecution of cases in which a beneficiary is alleged to have submitted, or caused the submission of, a fraudulent claim to the program for particular items or services that are unrelated to the beneficiary's status as a beneficiary. One scenario in which such cases may arise involves Medicaid personal care services ''self-directed'' programs, where the beneficiary may submit claims and receive payment from Medicaid, may be responsible for hiring his or her own caregivers, and may be required to monitor the activities of caregivers.

With respect to disallowance procedures, we proposed to amend the regulation to establish procedures for taking formal disallowances of FFP, for Units to request reconsideration of disallowances, and to appeal to the HHS Departmental Appeals Board.

Finally, we proposed to update the listing of other applicable HHS regulations that were amended after the MFCU regulations were initially promulgated.

II. Summary of Public Comments and OIG Responses

A. General

We received responsive comments from 10 distinct commenters, including trade associations (such as the national association that represents the MFCUs), individual Units, a health plan, and a State medical society. Some of the commenters provided comments on multiple topics. Commenters generally supported our proposals, but many of them recommended certain changes and requested certain clarifications. We have divided the public comment summaries and our responses into sections pertaining to the part of the regulation to which they apply.

B. Definition of Fraud and Other Criminal Conduct

Comment: One commenter expressed concern that OIG, in its Proposed Rule, both adopted State law definitions for types of criminal conduct, including ''abuse of patients,'' ''fraud,'' ''misappropriation of patient funds,'' and ''neglect of patients,'' and provided examples of the essential elements of the crime. The commenter stated that the definitions are ''overly expansive and inappropriate'' and that ''[e]ach MFCU must be able to defer to its state law definitions and not be expected to comply with overarching federal definitions.'' The commenter recommended that OIG delete all of the proposed language in each of the definitions following the reference to State law.

Response: We proposed to define ''fraud'' as any act that constitutes criminal fraud under applicable State law including the deception, concealment of material fact, or misrepresentation made by a person intentionally, in deliberate ignorance of the truth or in reckless disregard of the truth.

It was not our intent to require States to comply with an overarching definition, and this is the reason we defer to the definitions contained in State law. The purpose in describing the elements of the crime was to provide guidance on those elements that are typically contained in State law.

Therefore, as specified in § 1007.1 of our regulations, we are finalizing the definition of fraud by retaining the first sentence of the proposed definition of fraud as contained in the Proposed Rule but have revised the language in the second sentence to clarify that the crime ''may'' include the noted elements. We have also made a technical change in eliminating the phrase ''by a person'' since the crime could be committed by an organization as well. We have made similar revisions to the other definitions that rely on State law definitions: ''abuse of patients or residents'' and ''neglect of patients or residents.''

C. Definition of Abuse of Patients

Comment: Concerning the proposed definition of ''abuse of patients,'' one commenter raised three concerns regarding the definition. First, the commenter observed that the reference to abuse of a ''patient'' is too narrow, since Unit authority may extend to residents of facilities who are not considered ''patients'' under State law. The commenter recommended that the definition be expanded to include ''patient and/or resident of a care facility'' and that, whenever the term ''patient'' is used throughout the regulation, the word ''resident'' be added as well. Secondly, the commenter believed that the term ''willful'' is problematic for States that define ''abuse'' as conduct that is not willful, such as reckless conduct. Finally, the commenter observed the wide variation in what constitutes abuse under State law and recommended that we eliminate the examples entirely in the definition.

Response: We agree with the comments regarding the definition of abuse. Under section 1903(q)(4) of the Act—as implemented by § 1007.11(b)(2) of this rulemaking—the Units may receive FFP for abuse or neglect cases arising in ''board and care facilities.'' Expanding the definition to include abuse of ''residents,'' in addition to ''patients,'' is consistent with the statutory definition of ''board and care facility'' in section 1903(q)(4)(B) of the Act. Adding the reference to ''residents'' is also consistent with the Units' longstanding lack of statutory authority to receive FFP for the investigation and prosecution of cases of patient abuse or neglect that occur in the home or other nonfacility settings.

We have also revised the definition to eliminate reference to ''willful'' conduct and to provide examples of what constitutes abuse.

We have made a similar revision to include both patients and residents in the definition of ''neglect of patients'' to § 1007.11(b) as well, which describes a Unit's responsibilities regarding abuse or neglect.

D. Definition of Data Mining

Comment: One commenter expressed a concern that the proposed definition at § 1007.1 of ''data mining'' did not

consider the analysis of data that might occur during the course of an investigation, rather than as part of activities designed to identify new potential cases. For example, the commenter stated that in the course of investigations, it is often necessary to conduct a ''peer comparison'' between or among providers and present that information to a jury or other fact finder for the purpose of demonstrating what is usual and customary. The commenter stated that the activities related to such analysis should be considered as eligible for FFP without receiving a waiver from OIG to conduct data mining.

Response: We agree with the commenter that the use of data analysis in an ongoing case should not be subject to the prohibition on FFP for data mining and that Units need not receive a data mining waiver to conduct such activities.

We believe, however, that the existing regulatory definition permits such case-related activities by describing those activities that require a data mining waiver from OIG to be limited to:

> . . . the practice of electronically sorting Medicaid or other relevant data, including, but not limited to, the use of statistical models and intelligent technologies, to uncover patterns and relationships within that data to identify aberrant utilization, billing, or other practices that are potentially fraudulent.

By limiting the activities needing a waiver to those which involve the ''sorting [of] Medicaid or other relevant data,'' we believe that the existing definition excludes the type of case-related activities referred to by the commenter. This position is consistent with the 2013 preamble to the rulemaking establishing the data mining waiver authority. In a response to a comment, we stated:

> We agree that the intent of the regulation is not to limit other types of Medicaid data analysis being conducted in the normal course of an investigation. Units may analyze relevant Medicaid data as part of the evidence-gathering process while investigating a particular possible fraud. In some instances, this data analysis conducted as part of a particular investigation might allow the Unit to identify other potential targets, which would result in opening new fraud cases. Such data analysis is an accepted part of a MFCU's investigative function and does not implicate the prohibition contained in § 1007.19(e)(2).

78 FR 29055, 29057 (May 17, 2013).

E. Definition of Director

Comment: One commenter agreed that the proposed definition of ''director'' is beneficial but suggested that the role of the director would be clarified, and the working relationship between the Unit and OIG improved, by amending the definition to also state that the director ''serves as the chief liaison with OIG for all Unit-related activities.''

Response: We agree with the commenter about the importance of maintaining effective working relationships between the Units and OIG. However, while the director plays the role of liaison with OIG in most Units, we decline to modify the definition to require this, as other Units may choose to designate another individual or individuals to play that role. Also, even if the director plays the role of primary liaison, some Units may choose to designate another individual to be the liaison to OIG for particular Unit activities, such as investigation-related activities.

F. Definition of Health Care Facility

Comment: One commenter objected to the definition of ''health care facility,'' for purposes of the Units' investigations of patient abuse or neglect, as a provider that ''furnishes . . . services to four or more persons unrelated to the proprietor.'' The commenter suggested that the definition be revised to include providers who furnish services to two or more persons. The commenter acknowledged that facilities with fewer than four residents could be investigated under the ''board and care'' authority, but that the authority for board and care cases is optional, and the authority to investigate patient abuse or neglect at a health care facility is mandatory.

Response: We do not believe it is appropriate to establish our own definition of health care facility for purposes of the MFCU program. The definition of health care facility was adopted from the CMS definition, contained in 42 CFR 447.10(b), of a ''facility'' as ''an institution that furnishes health care services to inpatients'' and 42 CFR 435.1010, which defines an ''institution'' as ''an establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor . . . .''

We therefore decline to revise the definition of health care facility.

G. Definition of Program Abuse

Comment: One commenter expressed concern that the proposed definition of ''program abuse'' at § 1007.1, in providing examples such as an ''unnecessary cost to Medicaid'' and ''reimbursement for services that are not medically necessary,'' blurs the line between administrative misconduct on the one hand and criminal conduct on the other.

Response: We agree with the commenter that the examples cited do not clearly illustrate the distinction between administrative and criminal misconduct. In revising the definition, we are not including the examples. We also simplified the definition, as suggested by the commenter, and revised the definition to refer to civil or criminal fraud under ''State law,'' rather than ''Federal and State law,'' since the Units' statutory function extends only to ''violations of all applicable State laws . . . .''

H. Definition of Provider

Comment: One commenter stated that the proposed definition of ''provider'' insufficiently addresses the wide range of providers whose actions fall within the scope of the Units' authority. The commenter suggested that, along with several other definitions contained in the Proposed Rule, the definition be expanded to incorporate definitions of ''provider'' that would be accepted under a State's laws.

The commenter also suggested that the definition be expanded to include ''prescribing'' physicians, in addition to ''ordering'' or ''referring'' physicians, since State law may authorize the ability to prescribe as distinct from ordering or referring.

Response: We agree that the definition for ''provider'' should be expanded to reflect varying definitions under State law for health care providers, as well as to clarify that it applies to ''prescribing physicians'' as one example of a provider. We are therefore expanding the definition of provider to include ''any individual or entity that may operate as a health care provider under applicable State law'' as well as ''an individual or entity that is required to enroll in a State Medicaid program, such as an ordering, prescribing, or referring physician.''

Comment: Two commenters expressed concern that the definition of provider be expanded to specifically reference providers who provide items or services in a managed care setting, as well as managed care companies themselves, which do not provide items or services directly but instead provide management services for other providers. The commenters suggested that the definition of provider refer specifically to managed care plans as well as individuals or entities that provide items or services in a managed care network and who subcontract with those plans.

Response: With respect to providers operating in a managed care network, we agree and have clarified in the definition that a provider includes individuals and entities that are part of a managed care network. We had intended in the Proposed Rule that such providers were included as ''an individual or entity that furnishes items or services for which payment is claimed under Medicaid,'' but have added the specific reference to managed care organizations (MCOs) and other contracting entities because of the increasing role of managed care networks in providing Medicaid items and services.

With respect to MCOs themselves, we decline to expand the definition to specifically mention MCOs as a type of provider. While MCOs play an integral and growing role in most State Medicaid programs, they do not appear to be universally regarded as a type of ''provider.'' However, MCOs may play varying roles depending on the terms of their contract with the State. To the extent that an MCO's actions (or those of other entities or persons) are implicated in the potentially fraudulent submission of claims by or on behalf of a Medicaid provider, they may be the subject of a MFCU investigation or prosecution, regardless of their own status as a provider.

Comment: One commenter objected that the regulation would expand the definition of provider to include ordering and referring physicians, arguing that this is not appropriate, since such physicians do not participate in the program, may render services free of charge, and have little or no reason or opportunity to game the system. Therefore, the commenter expressed the view that these physicians should not be subject to the administrative requirements of the program.

Response: The definition of provider describes those individuals or entities who may be subject to an investigation, but does not expand the current authority of the Units. The MFCU mission is the ''investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with . . . any aspect of the provision of medical assistance and the activities of providers of such assistance . . . .'' To the extent that an ordering or referring physician violates State law regarding Medicaid fraud, the Units currently have the authority to include ordering or referring physicians as the subject of an investigation or prosecution.

MFCU investigative authority is not limited to participating providers or to individuals who may have an obvious financial incentive to defraud the program. Fraud is an intent-based crime, so an investigation or ultimate prosecution would reveal whether an ordering or referring physician had the requisite intent to commit fraud. By excluding ordering or referring physicians from the definition of provider, Units might be unable to hold responsible under State law those individuals responsible for a fraudulent claim to the program.

We therefore do not believe that the comment warrants a change to the definition of ''provider.''

I. Single Identifiable Entity Requirements

Comment: Two commenters expressed concerns with the proposed requirement at § 1007.5(b)(3) that all Units ''[h]ave the headquarters office and any field offices each in their own contiguous space.''

One commenter stated that, while this arrangement is a best practice for Unit operations, ''some Units may need special exceptions based on the history of their respective Units and unique difficulties recruiting employees.'' The commenter suggested that OIG grant an exception to existing Units with other arrangements on either a temporary or permanent basis.

Another commenter requested that the proposed rule be rewritten to allow flexibility in the physical location of Unit employees while still requiring effective, multidisciplinary collaboration. The commenter requested that the wording of § 1007.5(b)(3) be revised to require that Unit offices be in their own contiguous space, ''or otherwise ensure that all employees have a work location arrangement that allows for real-time collaboration with the other professional disciplines within the Unit, that non-Unit personnel have no unauthorized access to Unit files, and that Unit personnel exert 100 percent of their efforts on Unit business.'' Alternatively, the commenter requested, similar to the request of the other commenter on this topic, that existing Units with noncontiguous space arrangements be granted an exception when the arrangement allows for effective collaboration.

Response: Our purpose in proposing a requirement regarding physical office space was to ensure that Units exist as a ''single, identifiable entity'' and to reflect our observation that Units generally exist in contiguous space that is separate from the other parts of the Office of Attorney General or other parent organization. As stated in the Proposed Rule, we believe that having Unit offices in a single space contributes to the team concept of the Units and helps to ensure that employees are devoted exclusively to the mission of the Unit.

We recognize, however, that there can be extenuating circumstances for locating staff in noncontiguous space when there are advantages for Unit operations in such an arrangement. Therefore, as suggested by both commenters, we have provided Units with the opportunity to demonstrate to OIG that certain employees warrant a different arrangement. OIG will review arrangements and approve or disapprove of exceptions to the contiguous space requirement based on a demonstration by the Unit that circumstances warrant a different arrangement for certain employees. We have not provided a ''grandfathering'' process, but we are prepared to review any existing arrangements that do not comport with a single space requirement.

Therefore, we have revised the requirement in § 1007.5 to specify that the headquarters office and any field offices must have their own contiguous space unless the Unit demonstrates to OIG that circumstances warrant a different arrangement for certain employees.

In considering exceptions to the space requirement, OIG would consider favorably the following situations as examples of when employees could be located in noncontiguous space:

- Employees working at home on a temporary or long-term basis.
- Employees sharing space with OIG or other agencies that provide advantages to the Unit's collaboration with those agencies.
- Employees assigned to small offices, including field offices, where space is limited and the only available office space is not contiguous.

J. Relationship With Medicaid Agency

Comment: One commenter suggested several clarifications, not contained in the sections of the Proposed Rule proposed to be modified by OIG. Specifically, the commenter requested that we clarify the current regulation at § 1007.9(b).

The commenter expressed that the language of the paragraph should be revised to clarify that (1) the phrase ''Medicaid agency'' is intended to refer to the agency in the same State in which the Unit exists, (2) the proscription on the Medicaid agency to not ''review or overrule the referral of a suspected criminal violation'' be expanded to refer to ''decisions'' of the Unit in addition to referrals, and (3) the Medicaid agency's and the Unit's respective roles be clear

and distinct, particularly with regard to decisions as to ''which law enforcement or prosecutorial authority is best for a given matter.''

Response: We generally agree with the substance of the commenter's concerns but decline to make the suggested revisions.

First, in the Proposed Rule OIG did not propose to modify the paragraph of the regulation relating to the role of the Medicaid agency in reviewing the activities of the Unit, so the comment is beyond the scope of the Proposed Rule.

Secondly, in referring to the ''Medicaid agency'' throughout the regulation, OIG is referring to the Medicaid agency for the same State in which the Unit exists, not that of another State. We do not believe that text of the regulation needs to be modified to clarify this.

With respect to whether the proscription on interference by the Medicaid agency should refer to ''decisions'' of the Unit in addition to ''activities,'' we agree that the Medicaid agency does not have the authority to interfere with decisions pertaining to the investigation or prosecution of a Unit's cases. On the other hand, we note that there may be administrative actions in which both the Unit and Medicaid agency are both involved. For example, a Unit as part of a criminal or civil case may make a decision or recommendation regarding an administrative remedy or action. Such decisions may in fact be subject to some type of review by the Medicaid agency. As another example, for those Units with authority to conduct data mining under § 1007.20, the decision of whether to develop a data mining algorithm is subject to review and input by the Medicaid agency.

We therefore decline to expand the proscription on interference by the Medicaid agency to include all ''decisions'' by the Unit.

Finally, with regard to the respective roles of the Medicaid agency and the Unit, we agree that law enforcement decisions pertaining to the appropriate investigative and prosecutorial authority for a particular case are the province of the Unit, not the Medicaid agency. We believe this separation of roles is widely understood in the MFCU and State agency community and is how OIG interprets the existing language of § 1007.9(b).

K. Role of Managed Care Organizations (MCOs) in the Agreement With the Medicaid Agency

Comment: Several commenters observed the important role of MCOs in those States that provide Medicaid services in a managed care setting and suggested that the section of the regulation addressing the relationship of the MFCU to the Medicaid agency, 42 CFR 1007.9, be expanded to describe the role of MCOs. One commenter observed that activities to combat Medicaid fraud, waste, and abuse would be more effective if Units collaborated with MCOs on a routine basis to share information. Another commenter, noting the important role of MCOs, suggested that the proposed regulation's provision regarding regular communication between the Unit and the Medicaid agency be expanded to include managed care plans. The commenter specifically requested that MCO Special Investigation Units (SIUs) be permitted to attend the meetings between the Unit and the Medicaid agency, since SIUs can contribute valuable information to the meetings.

Response: We agree about the critical role of MCOs in those States that have chosen to provide Medicaid services in this manner. We also believe it is a best practice that the Unit or State program integrity officials collaborate with the MCO SIUs and that SIU officials attend regular meetings on referral issues. However, we are also mindful that States should have the discretion to define the relationship with MCOs within the confines of existing law and regulation. States should have the ability to choose the manner in which the Unit and Medicaid program integrity unit communicate with the MCOs.

Comment: Another commenter requested more narrowly regarding § 1007.9 that the written agreement between the Unit and the Medicaid agency include a provision regarding how the Unit will receive referrals of potential fraud from MCOs either directly or through the Medicaid agency.

Response: Medicaid regulations pertaining to MCOs, 42 CFR 438.608(a)(7), require that MCOs, under the terms of their contracts with the Medicaid agency, refer any case of potential fraud, waste, or abuse to the Medicaid agency's program integrity unit or any potential fraud directly to the Unit. Also, under 42 CFR 455.21, the Medicaid agency must refer all cases of suspected provider fraud to the Unit.

Consistent with these requirements, we agree that the inclusion of a provision in the written agreement between the Unit and the Medicaid agency regarding referrals from MCOs would be consistent with other requirements and would be an appropriate addition to the MFCU regulations and the CMS companion regulation. We have thus modified the rules to include such a provision.

L. Payment Suspension

Comment: One commenter requested that, to effectuate MCO involvement in the payment suspension process, payment suspension information be communicated to MCOs in a timely manner. The commenter also requested that clarification of MCO responsibilities with respect to payment suspension be included in this final rule.

Response: These suggestions are outside the scope of this rulemaking. State Medicaid agencies, not the Units, suspend payments.

M. Civil Authorities

Comment: One commenter stated that § 1007.11(a)(3), in defining applicable State laws to include both criminal statutes ''as well as civil false claims statutes or other civil authorities,'' seems misplaced, affecting the flow of the description of the fraud-focused mission of the Units. The commenter recommended instead that the regulation, in describing the broad function of the Units in paragraph (a), be expanded to state ''[t]he Unit must conduct a statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws, including criminal statutes as well as civil false claims statutes or other civil authorities . . . .''

Response: We agree and have modified the rule.

N. Misappropriation of Patient or Resident Funds

Comment: A commenter expressed concern about language in the Proposed Rule that would make mandatory the review of complaints of ''misappropriation of a patient's funds . . .'' when that review is currently optional for the Units. The commenter noted that the current regulation at § 1007.11(b)(1) states that the ''Unit will also review complaints alleging abuse or neglect of patients in health care facilities . . .,'' but the Unit ''may review complaints of the misappropriation of patient's private funds in such facilities.'' In the Proposed Rule, those two clauses are combined and would require in paragraph (b)(2) that the Unit ''must also review complaints alleging abuse or neglect of patients, including complaints of the misappropriation of a patient's funds, in health care facilities receiving payments under Medicaid.'' The commenter expressed concern that making financial cases mandatory ''may

stretch already scare resources within the Units.''

Response: We have accepted the comment and have retained language in the final rule to the effect that Units ''may'' review complaints of misappropriation of a patient's or resident's private funds. In addition to the concern about workload, we believe this language is consistent with the changes we are making to the definition of abuse of patients or residents, where we have recognized the existence of differing State legal definitions of what constitutes abuse.

Although we have retained the option for financial misappropriation cases, we continue to believe that financial misappropriation is a significant issue and that Units should continue to devote resources to such cases. Financial misappropriation may arise when family members or others are granted power of attorney for a patient or resident and abuse the patient's or resident's trust by diverting funds to their own or another's benefit. Financial misappropriation may arise in conjunction with physical abuse or may occur in isolation.

O. MFCU Authority in Board and Care Facilities

Comment: Several commenters expressed policy concerns about the expansion of MFCU authority in board and care facilities, which typically do not participate in State Medicaid programs or receive Medicaid funding.

Response: The authority to investigate patient abuse or neglect in non-Medicaid board and care facilities is a feature of the Ticket to Work and Work Incentives Improvement Act of 1999. The addition to the MFCU regulations merely codifies that statutory requirement. The policy concerns raised by the commenters are therefore outside the scope of this rulemaking.

P. Duties and Responsibilities of Units

Comment: In the Proposed Rule, we proposed at § 1007.11(a), (b)(1), (b)(3), (b)(4), (c), and (d) to replace the word ''will'' with ''must'' to highlight the mandatory nature of the responsibilities of a Unit. A commenter expressed reservations about this change and requested that we retain the term ''will'' in the paragraphs. The commenter stated that the word ''will'' would make the responsibilities of the Unit sufficiently clear. The commenter also expressed that the term ''will'' would provide the appropriate discretion for a Unit in determining whether to accept a referral, thus promoting the Unit's efficient use of resources.

Response: We have retained the term ''will'' in § 1007.11 and, for consistency, in other parts of the regulation, including § 1007.13, for staffing requirements. We did not intend to propose a revision to the mandatory nature of a Unit's responsibilities and agree that retaining the term ''will'' would avoid confusion in this regard.

Comment: One commenter noted that proposed § 1007.11(c) addresses the responsibilities of the Units to recover overpayments or refer the overpayment recovery to an appropriate ''State'' agency. The commenter noted that there are governmental programs in various States which process and expend Medicaid dollars at the local level (county or city). For instance, some States operate single- or multi-county special needs programs or mental health programs. If an overpayment is identified in one of these county-administered programs, for example, the responsibility for the recovery may more appropriately rest with county officials rather than State officials. The commenter suggested that the last clause in § 1007.11(c) should include ''or refer the matter to an *appropriate* agency for collection'' [emphasis added].

Response: We agree with the suggestion and have modified the regulation text.

Comment: One commenter expressed a technical concern with a longstanding provision in the regulations at § 1007.11(d) that requires Units, for cases that are tried by non-Unit prosecutors, to provide the prosecutors with ''the fullest opportunity to participate in the investigation from its inception.'' The commenter, while not disputing the importance of cooperating with non-Unit prosecutors, suggested that this section, as written, is not consistent with patient confidentiality obligations as required by performance standards. The commenter suggested that Units, consistent with those obligations, must have the discretion to determine what cases will be investigated and when to notify the prosecuting authority to control the flow of confidential information outside of the Unit. Therefore, the commenter suggested that the original regulation language of § 1007.11(d) be rewritten to eliminate the language about participation in the investigations from their inception: Specifically, the commenter stated that the language should specify that where a prosecuting authority other than the Unit is to assume responsibility for the prosecution of a case investigated by the Unit, the Unit will ensure that those responsible for the prosecutorial decision and the preparation of the case for trial are provided all necessary assistance.

Response: While we generally agree with the commenter's position that the Units must have the discretion to determine what cases will be investigated and when to notify an outside prosecuting authority, we cannot make the requested change, as we did not propose to modify this provision. We also do not believe the suggested change is necessary to address the commenter's concern. While the current provision permits non-Unit prosecutors the fullest opportunity to participate in the MFCU's investigation, it is the Unit's responsibility to determine if that participation is appropriate or would interfere with the effective investigation of a case. We thus believe that the current provision affords the Unit discretion in determining when to involve prosecutors, as long as there is full cooperation.

Q. Coordination With Federal Authorities

Comment: One commenter expressed concern with a provision of the Proposed Rule that requires a Unit to disclose case information to Federal investigators and attorneys not involved with a particular case. Proposed § 1007.11(e)(1), similar to the existing requirement contained in paragraph (e), states that the Unit, if requested, will make available to OIG investigators and attorneys, other Federal investigators, and prosecutors all information in the Unit's possession concerning investigations or prosecutions conducted by the Unit.

Existing paragraph (e) reads the same, except that it does not clarify that information be provided ''if requested.''

The commenter agreed that case information should be shared with Federal investigators and attorneys working jointly on a case, but expressed concern about broadly requiring the Unit to disclose case information to Federal officials who have no involvement in the case. The commenter noted that case information could include confidential grand jury or other information with legal restrictions on its disclosure. Therefore, the commenter suggested that proposed § 1007.11(e)(1) should be revised to state that the Unit, if requested, will make available to OIG investigators and attorneys, or other Federal investigators and prosecutors, on the case, all information in the Unit's possession concerning investigations or prosecutions conducted by the Unit.

Response: We do not agree that a revision is necessary to the longstanding requirement contained in § 1007.11(e) that Unit information be shared with Federal investigators and attorneys. We agree there could be State grand jury and other information that, because of criminal law restrictions on the use of the information, may not be disclosed to Federal investigators and attorneys who are not involved with a case. However, the Unit, OIG, and DOJ have contemporaneous jurisdiction for all allegations of Medicaid provider fraud. While unusual, we believe there could be situations in which OIG or DOJ personnel would have a legitimate need to seek information about an ongoing investigation or prosecution.

Comment: At proposed § 1007.11(e)(1) and (2), Units are required to make all information pertaining to Medicaid fraud available to Federal investigators, prosecutors, and OIG attorneys, and subsequently the Unit must coordinate with such officials on any Federal and State investigations or prosecutions involving the same suspects or allegations. One commenter noted that MCOs are very likely to possess information to assist in fraud detection and requested that Units be required to make information available to MCOs during fraud investigations. The commenter also requested that MCOs be included in the coordination of investigations and prosecutions by asking prosecutors to include MCO encounter information, and not only State fee-for-service claims, in investigated and/or charged conduct. In addition, the commenter asked for clarification as to the disposition of MCO funds recovered as a result of investigations, civil suits, and prosecutions.

Response: We decline these suggestions. We have observed that MCOs in many States are successfully included in the sharing of information about ongoing and potential fraud cases and believe that this participation by MCOs is a best practice. However, MCOs are private, nongovernmental entities, and States should have the ability to restrict the sharing of information with them. The suggestions about including MCO encounter information in prosecutions and the disposition of MCO recoveries are beyond the scope of this regulation.

Comment: One commenter noted that proposed § 1007.11(e)(2) does not clearly state what it means to ''coordinate with'' Federal investigators, Federal attorneys, and Federal prosecutors. The commenter noted that coordination can include deconfliction of case lists and joint investigative activities, including avoiding duplication of efforts in joint cases.

Response: We agree with this comment and believe that the commenter has described appropriate examples of coordination—deconfliction of case lists and joint investigative activities. We decline to further revise § 1007.11(e) beyond the expectation that the Unit establish a practice of regular meetings or communication with OIG investigators and Federal prosecutors. Our intention is for Units to have flexibility to coordinate in a manner that is appropriate for that State, as coordination may look different depending on variables such as the type of case, size of the State, or the presence or absence of Federal partners in the State.

Comment: Another commenter noted ambiguity in the language of proposed § 1007.11(e)(2) where we proposed that the Unit will coordinate with OIG investigators and attorneys, other Federal investigators, and prosecutors on any Unit cases involving the same suspects or allegations.

Specifically, the commenter was unclear as to which ''prosecutors'' are the focus of this provision. The commenter also believed that OIG should be permitted latitude to manage at its discretion those circumstances in which OIG's resources are limited and other Federal agencies are summoned to assist or supplement assistance as appropriate. To address these comments, the commenter recommended that § 1007.11(e)(2) be revised to state that the Unit will coordinate with OIG investigators and OIG attorneys, as OIG and the Unit deem appropriate, joint activities involving other Federal investigators and Federal prosecutors on Unit cases and Federal cases that involve the same suspects, providers, or allegations.

Response: We agree that the proposed provision does not make clear to which prosecutors the provision refers. We intended to specify ''Federal'' prosecutors and have modified the regulation text at paragraph (e)(2) as well as paragraph (e)(1) to remove the ambiguity. We also added wording to paragraph (e)(2) to improve clarity. However, we did not modify the text in paragraph (e)(2) to include the commenter's suggested language regarding ''as OIG and the Unit deem appropriate'' because we believe that considering the appropriateness of involvement in a case would be part of coordinating. We are also reluctant to limit coordination to ''joint activities'' involving the same suspects or allegations because we believe Units need to coordinate with their Federal counterparts even on cases not being worked jointly. Thus, we are modifying paragraph (e)(2) to state that the Unit will coordinate with OIG investigators and attorneys, *or with* other Federal investigators and prosecutors, on any Unit cases involving the same suspects or allegations *that are also under investigation or prosecution by OIG or other Federal investigators or prosecutors* [emphasis added].

Comment: Proposed § 1007.11(e)(3) specifies that a Unit establish a practice of regular meetings or communication with OIG investigators and Federal prosecutors. One commenter recommended that the SIUs of MCOs be permitted to attend these meetings, or that similar meetings be held with the SIUs of MCOs. The commenter also requested that at § 1007.11, paragraphs (a) through (c), MCOs also be included under references to ''Medicaid'' for which the Unit is responsible.

Response: We believe that attendance by MCOs at meetings may be a best practice, but we decline to identify in regulation those participants required at particular meetings. As noted previously, MCOs are private, nongovernmental entities, and States should have the ability to restrict the sharing of information with them.

Comment: One commenter noted that proposed § 1007.11(e)(5) requires the Unit to ''establish written procedures'' but leaves unclear the level of detail or depth of such written procedures. The commenter expressed concern about this paragraph posing a potential burden. To permit greater discretion, the commenter recommended revising the regulation to require Units to establish ''policy'' rather than written procedures.

Response: We agree with the suggestion that Units establish ''policy'' rather than the more prescriptive ''written procedures.'' We have revised the paragraph accordingly. This revision will reduce burden on Units and enhance Unit flexibility.

Comment: One commenter expressed support for proposed § 1007.11(g)(3) for the accommodation granted in allowing Units to transmit the requested information ''as soon as practicable'' due to the specified delays. However, the commenter observed that Units have encountered delays that are not due directly to the ''[receipt of] . . . information'' from the ''sentencing court,'' but that remained beyond the Unit's control or capacity. For example, long queues at court clerks' offices, sometimes in locations far away from the Unit, can compromise a Unit's ability to communicate effectively and timely with court staff, which can

further delay the Unit's efforts to finalize sentencing-related dispositions. As such, the commenter requested that the term ''court'' replace the term ''sentencing court'' so that the paragraph states that such information will be transmitted to OIG within 30 days of sentencing, or as soon as practicable if the Unit encounters delays, *such as* in receiving the necessary information from the *court* [emphasis added].

Response: OIG agrees that Units could encounter delays that are more broadly described as ''court delays'' rather than the more specific delays in receiving information from the ''sentencing court'' and accepts the commenter's suggestion. However, we do not intend for delays ''in receiving the necessary information from the court'' to be an example of a possible delay, but to be the only acceptable reason that transmitting information to OIG should be delayed. Therefore, we are replacing the term ''sentencing court'' with ''court,'' but we are not including the phrase ''such as'' as part of the paragraph.

R. Staffing Requirements

Comment: One commenter suggested that, in addition to modifying the attorney role in § 1007.13(b)(1) to more specifically convey the prosecution and advisory role of Unit attorneys, OIG should revise the description of the investigator role as well. Specifically, the commenter suggested that we clarify that investigators should be capable of conducting investigations of Medicaid fraud and patient abuse and neglect matters.

Response: We agree with the comment and have modified the final regulatory language.

Comment: One commenter expressed concern that the proposed minor change at § 1007.13(b)(2) concerning the qualifications of auditors did not include information on how the auditors would perform operational audits of health care entities.

Response: MFCU auditors do not conduct operational audits of health care entities. Units are restricted at § 1007.19(e)(1) from receiving FFP for expenditures attributable to cases involving ''program abuse or other failures to comply with applicable laws and regulations.'' Therefore, we decline to make modifications to the rule to address operational auditing.

Comment: A commenter expressed concern about the limitation in the proposed rule at § 1007.13(g)(2) that a Unit may not ''rely on individuals not employed directly by the Unit for the investigation or prosecution of cases.'' The commenter asked that we clarify that a Unit ''may hire special counsel or other investigative or litigation support services to work jointly with the Unit to assist in specific, discrete investigations or cases, where the Unit can demonstrate that additional assets or expertise may be needed for the discrete case.''

Response: We agree with the concern that Units should be able to hire experts to support the investigative and prosecutorial work of the Units, as long as the experts do not actually conduct investigations and prosecutions of Medicaid fraud or of patient or resident abuse or neglect. We believe, however, that this need is addressed by proposed paragraph (g)(1), which stated that the Unit may employ, or have available through consultant agreements or other contractual arrangements, individuals who have forensic or other specialized skills that support the investigation and prosecution of cases.

We believe that the proposed regulatory language provides the right distinction that Units may not ''rely'' on contractors to investigate or prosecute cases, but may have contracts or consultant agreements with experts who may ''support'' the investigation and prosecution.

S. Recertification Requirements

Comment: Proposed § 1007.17(a)(2)(iv) states that Units are to submit statistical reports on staffing, caseload, and outcomes, including monetary recoveries. A commenter made technical comments on the definitions of the types of monetary recoveries reported.

Response: While we appreciate the comments, we do not believe that addressing detailed technical comments about statistical reporting is appropriate in the rule itself. We will consider the commenter's concerns outside of the rulemaking.

Comment: Proposed § 1007.17(b)(2) requires the Units to provide ''other information OIG deems necessary or warranted.'' One commenter noted that in the past the Units have been asked to provide additional information to OIG, but the requested data is not routinely kept by the Units. The commenter also noted that while not every contingency can be predicted, a request for ''other information'' without prior notice is cumbersome and potentially void of a high level of accuracy. The commenter suggested adding language that advance notice would be provided to the Unit for other information OIG deems necessary and warranted.

Response: While we decline to accept this level of prescription in the final rule, we agree about the need to provide Units advance notice of information requests. OIG needs to maintain the ability to collect information from the Units but will always strive to provide advance notice and to be sensitive to requesting data that is not routinely kept by the Units.

T. Federal Financial Participation

Comment: A commenter endorsed the approach of the Proposed Rule to limit those situations, other than through ''data mining,'' in which FFP would be prohibited for the identification of potential fraud cases. The Proposed Rule accomplished this by proposing to modify the language in § 1007.19(e)(2), which currently prohibits FFP for ''efforts to identify [other than through an approved data mining waiver] situations in which a question of fraud may exist, including the screening of claims and analysis of patterns of practice . . .'' with ''efforts to identify situations of fraud . . . *by* the screening of claims and analysis of patterns of practice . . .'' [emphasis added]. The purpose of the change was to acknowledge ways in which a Unit may identify possible fraud that would not interfere with activities of the Medicaid agency, such as undercover operations. The commenter also suggested that we further clarify the issue by adding the following sentence to this preamble:

> This subsection is not intended to limit the Unit's ability to engage in activities, other than routine verification of services received and data mining, to identify potential civil or criminal fraud in the Medicaid program.

Response: We agree that the suggested additional sentence correctly describes those activities to identify potential fraud, in addition to an approved data mining program, that would be permissible for purposes of receiving FFP, and we adopt the sentence here. This clarification is consistent with the proposed changes to the subsection and does not require a change to the text of the regulation.

Comment: A commenter expressed concern with the longstanding prohibition, modified in the Proposed Rule at § 1007.19(e)(5), that a Unit may not receive FFP for cases ''involving a beneficiary's eligibility for benefits, unless the suspected fraud also involves conspiracy with a provider.'' The existing regulation similarly prohibits FFP for the ''investigation or prosecution of cases of suspected beneficiary fraud not involving suspected conspiracy with a provider.'' The commenter expressed that the language in § 1007.19(e)(5) is too limiting regarding the types of permissible beneficiary fraud cases because the word ''suspected'' modifies

the word ''fraud.'' The commenter observed that there are cases that involve conspiracy between a beneficiary and provider but that may involve suspected conduct other than fraud, such as alleged identity theft. The commenter suggested that the prohibition be modified to refer to conspiracy involving ''joint criminal conduct'' rather than narrowly to ''fraud.''

Response: We decline to make the proposed revision regarding the reference to ''suspected fraud.'' We agree that identity theft (or other activities not strictly involving fraudulent billing to the program) could be identified as integral to, or evidence of, a conspiracy between a beneficiary and provider. However, the underlying conduct, consistent with the authority of the Unit to receive FFP, must involve ''fraud.'' As long as the other criminal conduct identified as part of the conspiracy, such as identity theft, has a connection to the fraud allegations, the Unit may receive FFP for the investigation and prosecution of the case. To promote clarity, we have amended the provision to refer to the investigation or prosecution of ''fraud'' cases involving a beneficiary's eligibility for benefits, unless the suspected fraud ''cases'' also involve conspiracy with a provider.

U. Disallowances of FFP

Comment: One commenter suggested that the language proposed in § 1007.21(a), regarding OIG's determination that a claim or portion of a claim for grant funding is not allowable, should be consistent with the contents of the Federal regulation to which it refers, 42 CFR 430.42(a), by clarifying that OIG's determination should be made ''promptly.''

Response: We agree and have included the word ''promptly'' in the final regulation. The proposed changes were intended to mirror the disallowance procedures in 42 CFR 430.42(a), including that OIG's determination be made ''promptly.''

III. Provisions of the Final Rule

This final rule incorporates most of the provisions in the Proposed Rule but with some substantive and technical changes to the regulatory text that are described in this section and in section II above.

We are finalizing, with certain revisions described in section II, all of the proposed definitions. We made revisions to the definitions of several kinds of conduct, such as ''fraud'' and ''abuse of patients or residents,'' to more clearly adopt those definitions of conduct as contained in applicable State laws. We also similarly expanded the definition of ''provider'' to adopt applicable State law, as well as to reference managed care and prescribing physicians. We also expanded references to abuse and neglect of patients to include ''residents.''

We are finalizing the characteristics of what it means to be a single, identifiable entity at § 1007.5. We included a clarification to the requirement that the headquarters office and any field offices should each have their own contiguous space, unless a Unit demonstrates to OIG that circumstances may warrant a different arrangement for certain employees.

We are finalizing the proposed changes to the prosecutorial authority requirements of a Unit at § 1007.7, with one additional modification. At § 1007.7(b), we are finalizing the requirement for a Unit to establish formal written procedures for referring cases of patient or resident abuse and neglect prosecutions, in addition to fraud cases, to the appropriate prosecuting authority, when there is no State agency with statewide authority and capability for patient or resident abuse prosecutions. Similarly, we are making a technical amendment to § 1007.7(a) to clarify that if a Unit is located in the office of the State Attorney General or another office with statewide prosecutorial authority, it must have the authority to prosecute individuals for violations of criminal laws with respect to patient or resident abuse and neglect in addition to fraud.

We are finalizing the provisions pertaining to the Unit's relationship and agreement with the Medicaid agency at both § 1007.9 and the companion CMS regulation at § 455.21(c), with one additional provision. As described in detail in section II, we are adding a new paragraph at § 1007.9(d)(3) and at § 455.21(c)(3) requiring the Unit and the Medicaid agency to agree to establish procedures by which the Unit will receive referrals of potential fraud from MCOs, as applicable, either directly or through the Medicaid agency.

We are finalizing a number of provisions proposed, some with certain modifications, related to the duties and responsibilities of a Unit found at § 1007.11. However, for reasons explained above, we are not finalizing the proposal to make mandatory the review of complaints of misappropriation of patients' or residents' funds and have retained language in the final rule to continue that authority as optional. We are also not finalizing the word ''must'' to describe a Unit's responsibilities at § 1007.11(a), (b)(1), (b)(3), (b)(4), (c), and (d), and are retaining the word ''will'' in the final rule.

We are finalizing the provision to clarify that applicable State laws pertaining to Medicaid fraud include criminal statutes as well as civil false claims statutes and other civil authorities, but we have incorporated the clarification into § 1007.11(a) in the final rule, rather than in the proposed paragraph (a)(3). We are finalizing the provision at § 1007.11(c), with a slight modification, to clarify that when a Unit discovers that overpayments have been made to a provider or facility, the Unit will either recover the overpayment as part of its resolution of a fraud case or refer the matter to the appropriate agency for collection.

We are finalizing provisions pertaining to coordination with Federal investigators and attorneys at § 1007.11(e), with slight modifications to the proposed language. At paragraph (e)(5), we have modified the final rule such that a Unit will establish written policy consistent with paragraph (e), rather than establish written procedures.

We are finalizing a provision at § 1007.11(g) requiring a Unit to transmit to OIG, for purposes of excluding convicted individuals and entities from participation in Federal health care programs under section 1128 of the Act, pertinent documentation on all convictions obtained by the Unit. We made a minor modification to paragraph (3) requiring transmission of information within 30 days of sentencing, or as soon as practicable if the Unit encounters delays in receiving the necessary information from the ''court,'' rather than the ''sentencing court'' as was proposed.

We are finalizing all of the provisions in the Proposed Rule related to the staffing requirements of a Unit at § 1007.13, with the following modifications. We are finalizing clarifications at § 1007.13(b) to the qualifications of attorneys, auditors, and investigators, but we made one modification to paragraph (3) to specify that the investigators be capable of conducting investigations of health care fraud and patient or resident abuse and neglect matters. Additionally, we are not finalizing the use of the word ''must'' to describe a Unit's staffing requirements at § 1007.13(c), (d)(1), (d)(4), and (h) and have modified the final rule to use the sufficiently prescriptive word ''will.'' For consistency with the other paragraphs, we have modified paragraph (b) to use the word ''will'' rather than the original rule's use of ''must.''

In § 1007.17, to reduce burden on the Units, we are eliminating the specific requirement of providing an ''annual report'' to OIG. However, we continue to receive information from the Units that allows OIG to evaluate the Unit's performance for purposes of recertification.

Finally, we have made editorial and other nonsubstantive changes to the final rule, where appropriate, to clarify our meaning.

IV. Regulatory Impact Statement

We have examined the impact of this rule, as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold, and thus is not considered a major rule. Since the regulation only implements current practice and policy, we believe the economic impact to be negligible.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.5 million to $38.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We did not prepare an analysis for the RFA because we have determined, and the Secretary of Health and Human Services certifies, that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We did not prepare an analysis for section 1102(b) of the Act because we have determined, and the Secretary of Health and Human Services certifies, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. This rule has no consequential effect on State, local, or Tribal governments or on the private sector.

Executive Order 13132 establishes certain principles and criteria that an agency must follow when it implements a regulation or other policy that has Federalism implications, defined in Order 13132 to mean that the regulation or policy has substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Order 13132 also requires a level of consultation with State or local officials when an agency formulates and implements a regulation that has Federalism implications, imposes substantial direct compliance costs on State and local governments, and is not required by statute.

We do not believe that this regulation has Federalism implications as it does not have a substantial direct effect on the States or on the relationship or distribution of power and responsibilities among levels of government. Nor do we believe the regulation imposes substantial direct compliance costs on States. Rather, the regulation reflects certain statutory changes governing operation of the Units that have already been implemented and codifies policy and practice involving the organization and operation of the Units. We believe the content of the regulation is consistent with the partnership between the Federal and State Governments that has been established for the financing and administration of the larger Medicaid program. We further believe that any costs related to compliance with the regulation are minimal and not substantial.

However, to the extent that that the regulation is seen as having Federalism implications, the regulation is consistent with the principles and criteria established in Order 13132. The regulation would strictly adhere to constitutional principles and would be deferential to the States with respect to the policymaking and administration of State operations related to the investigation and prosecution of Medicaid provider fraud and patient or resident abuse or neglect. With regard to consultation, the policies contained in the regulation were developed in consultation and collaboration with the States.

Executive Order 13771 requires an agency to identify at least two deregulatory actions for each new regulation that the agency proposes or otherwise promulgates. Any new incremental costs associated with a new regulation must, to the extent permitted by law, be offset by the elimination of existing costs through deregulatory actions. It has been determined that this rule is a deregulatory action.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Paperwork Reduction Act

This rule revises the scope of our annual collection of information at 42 CFR 1007.17. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies generally must take certain steps, such as seeking public comment on proposed collections of information and submitting proposed collections for review and approval by the Office of Management and Budget, before requiring or requesting information from the public. Accordingly, we solicited public comment on the information required in proposed 42 CFR 1007.17 for OIG's annual review and recertification of Units. After we published the Proposed Rule, however, the Inspector General Empowerment Act of 2016 (Empowerment Act), Public Law No. 114–317, was signed into law on December 16, 2016. Section 2 of the Empowerment Act added subsection (k) to section 6 of the Inspector General Act of 1978. Under new subsection (k), the PRA does not apply to ''the collection of information during the conduct of an audit, investigation, inspection, evaluation, or other review conducted by . . . any Office of Inspector General

. . . .'' As a result, the collection of information under 42 CFR 1007.17 of this rule is exempt from the requirements of the PRA.

List of Subjects

42 CFR Part 455

Fraud, Grant programs-health, Health facilities, Health professions, Investigations, Medicaid, Reporting and recordkeeping requirements

42 CFR Part 1007

Administrative practice and procedure, Fraud, Grant programs-health, Medicaid, Reporting and recordkeeping requirements

The Centers for Medicare & Medicaid Services (CMS) and the Office of Inspector General (OIG), respectively, amend 42 CFR part 455 and 1007 as follows:

PART 455—PROGRAM INTEGRITY: MEDICAID

■ 1. The authority citation for part 455 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 455.21 is amended by adding paragraph (c) to read as follows:

§ 455.21 Cooperation with State Medicaid fraud control units.

* * * * *

(c) The agency must enter into a written agreement with the unit under which:

(1) The agency will agree to comply with all requirements of § 455.21(a);

(2) The unit will agree to comply with the requirements of § 1007.11(c) of this title; and

(3) The agency and the unit will agree to—

(i) Establish a practice of regular meetings or communication between the two entities;

(ii) Establish procedures for how they will coordinate their efforts;

(iii) Establish procedures for §§ 1007.9(e) through 1007.9(h) of this title;

(iv) Establish procedures by which the unit will receive referrals of potential fraud from managed care organizations, if applicable, either directly or through the agency, as required at § 438.608(a)(7) of this title; and

(v) Review and, as necessary, update the agreement no less frequently than every five (5) years to ensure that the agreement reflects current law and practice.

■ 3. Part 1007 is revised to read as follows:

PART 1007—STATE MEDICAID FRAUD CONTROL UNITS

Sec.

Authority: 42 U.S.C. 1302, 1396a(a)(61), 1396b(a)(6), 1396b(b)(3), and 1396b(q).

Subpart A—General Provisions and Definitions

§ 1007.1 Definitions.

As used in this part, unless otherwise indicated by the context:

Abuse of patients or residents means any act that constitutes abuse of a patient or resident of a health care facility or board and care facility under applicable State law. Such conduct may include the infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or financial harm, pain, or mental anguish.

Board and care facility means a residential setting that receives payment (regardless of whether such payment is made under Title XIX of the Social Security Act) from or on behalf of two or more unrelated adults who reside in such facility, and for whom one or both of the following is provided:

(1) Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse, or licensed nursing assistant.

(2) A substantial amount of personal care services that assist residents with the activities of daily living, including personal hygiene, dressing, bathing, eating, toileting, ambulation, transfer, positioning, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry, and housework.

Data mining means the practice of electronically sorting Medicaid or other relevant data, including, but not limited to, the use of statistical models and intelligent technologies, to uncover patterns and relationships within that data to identify aberrant utilization, billing, or other practices that are potentially fraudulent.

Director means a professional employee of the Unit who supervises all Unit employees, either directly or through other Unit managers.

Exclusive effort means that a Unit's professional employees, except as otherwise permitted in § 1007.13, dedicate their efforts ''exclusively'' to the functions and responsibilities of a Unit as described in this part. Exclusive effort requires that duty with the Unit be intended to last for at least one (1) year and includes an arrangement in which an employee is on detail or assignment from another government agency, but only if the detail or arrangement is intended to last for at least one (1) year.

Fraud means any act that constitutes criminal or civil fraud under applicable State law. Such conduct may include deception, concealment of material fact, or misrepresentation made intentionally, in deliberate ignorance of the truth, or in reckless disregard of the truth.

Full-time employee means an employee of the Unit who has full-time status as defined by the State.

Health care facility means a provider that receives payments under Medicaid and furnishes food, shelter, and some treatment or services to four or more persons unrelated to the proprietor in an inpatient setting.

Misappropriation of patient or resident funds means the wrongful taking or use, as defined under applicable State law, of funds or property of a patient or resident of a health care facility or board and care facility.

Neglect of patients or residents means any act that constitutes neglect of a patient or resident of a health care facility or board and care facility under applicable State law. Such conduct may include the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

Part-time employee means an employee of the Unit who has part-time status as defined by the State.

Professional employee means an investigator, attorney, or auditor.

Program abuse means provider practices that do not meet the definition of civil or criminal fraud under applicable State law, but nonetheless are inconsistent with sound fiscal, business, or medical practices.

Provider means:

(1) An individual or entity that furnishes or arranges for the furnishing of items or services for which payment is claimed under Medicaid, including an individual or entity in a managed care network;

(2) An individual or entity that is required to enroll in a State Medicaid program, such as an ordering, prescribing, or referring physician; or

(3) Any individual or entity that may operate as a health care provider under applicable State law.

Unit means State Medicaid Fraud Control Unit.

§ 1007.3 Statutory basis and organization of rule.

(a) *Statutory basis.* This part codifies sections 1903(a)(6) and 1903(b)(3) of the Social Security Act (the Act), which establish the amounts and conditions of Federal matching payments for expenditures incurred in establishing and operating a State MFCU. This part also implements section 1903(q) of the Act, which establishes the basic requirements and standards that Units must meet to demonstrate that they are effectively carrying out the functions of the Unit in order to be certified by OIG as eligible for FFP under Title XIX of the Act. Section 1902(a)(61) of the Act requires a State to provide in its Medicaid State plan that it operates a Unit that effectively carries out the functions and requirements described in this part, as determined in accordance with standards established by OIG, unless the State demonstrates that a Unit would not be cost effective because of minimal Medicaid fraud in the covered services under the plan and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a Unit. CMS retains the authority to determine a State's compliance with Medicaid State plan requirements in accordance with section 1902(a) of the Act.

(b) *Organization of this part.* Subpart A of this part defines terms used in this part and sets forth the statutory basis and organization of this part. Subpart B specifies the certification requirements that a Unit must meet to be eligible for FFP, including requirements for applying and reapplying for certification. Subpart C specifies FFP rates, costs eligible and not eligible for FFP, and FFP disallowance procedures. Subpart D specifies other HHS regulations applicable to the MFCU grants.

Subpart B—Requirements for Certification

§ 1007.5 Single, identifiable entity requirements of Unit.

(a) A Unit must be a single, identifiable entity of the State government.

(b) To be considered a single, identifiable entity of the State government, the Unit must:

(1) Be a single organization reporting to the Unit director;

(2) Operate under a budget that is separate from that of its parent agency; and

(3) Have the headquarters office and any field offices each in their own contiguous space, unless the Unit demonstrates to OIG that circumstances warrant a different arrangement for certain employees.

§ 1007.7 Prosecutorial authority requirements of Unit.

A Unit must be organized according to one of the following three options related to a Unit's prosecutorial authority:

(a) The Unit is in the office of the State Attorney General or another department of State government that has statewide authority to prosecute individuals for violations of criminal laws with respect to fraud and patient or resident abuse or neglect in the provision or administration of medical assistance under a State plan implementing Title XIX of the Act.

(b) If there is no State agency with statewide authority and capability for criminal fraud or patient or resident abuse or neglect prosecutions, the Unit has established formal written procedures ensuring that the Unit refers suspected cases of criminal fraud in the State Medicaid program or of patient or resident abuse and neglect to the appropriate prosecuting authority or authorities, and coordinates with and assists such authority or authorities in the prosecution of such cases.

(c) The Unit has a formal working relationship with the office of the State Attorney General, or another office with statewide prosecutorial authority, and has formal written procedures for referring to the State Attorney General or other office suspected criminal violations and for effective coordination of the activities of both entities relating to the detection, investigation, and prosecution of those violations relating to the State Medicaid program. Under this working relationship, the office of the State Attorney General, or other office, must agree to assume responsibility for prosecuting alleged criminal violations referred to it by the Unit. However, if the State Attorney General finds that another prosecuting authority has the demonstrated capacity, experience, and willingness to prosecute an alleged violation, he or she may refer a case to that prosecuting authority, as long as the office of the State Attorney General maintains oversight responsibility for the prosecution and for coordination between the Unit and the prosecuting authority.

§ 1007.9 Relationship and agreement between Unit and Medicaid agency.

(a) The Unit must be separate and distinct from the Medicaid agency.

(b) No official of the Medicaid agency will have authority to review the activities of the Unit or to review or overrule the referral of a suspected criminal violation to an appropriate prosecuting authority.

(c) The Unit will not receive funds paid under this part either from or through the Medicaid agency.

(d) The Unit must enter into a written agreement with the Medicaid agency under which:

(1) The Medicaid agency will agree to comply with all requirements of § 455.21(a) of this title;

(2) The Unit will agree to comply with the requirements of § 1007.11(c) of this title; and

(3) The Medicaid agency and the Unit will agree to:

(i) Establish a practice of regular meetings or communication between the two entities;

(ii) Establish procedures for how they will coordinate their efforts;

(iii) Establish procedures for §§ 1007.9(e) through 1007.9(h) of this title;

(iv) Establish procedures by which the Unit will receive referrals of potential fraud from managed care organizations, if applicable, either directly or through the Medicaid agency, as required at § 438.608(a)(7) of this title; and

(v) Review and, as necessary, update the agreement no less frequently than every five (5) years to ensure that the agreement reflects current law and practice.

(e)(1) The Unit may refer any provider with respect to which there is pending an investigation of a credible allegation of fraud under the Medicaid program to the Medicaid agency for payment suspension in whole or part under § 455.23 of this title.

(2) Referrals may be brief but must be in writing and include sufficient information to allow the Medicaid agency to identify the provider and to explain the credible allegations forming the grounds for the payment suspension.

(f) Any request by the Unit to the Medicaid agency to delay notification to the provider of a payment suspension under § 455.23 of this title must be made promptly in writing.

(g) The Unit should reach a decision on whether to accept a case referred by the Medicaid agency in a timely fashion. When the Unit accepts or declines a case referred by the Medicaid agency, the Unit promptly notifies the Medicaid agency in writing of the acceptance or declination of the case.

(h) Upon request from the Medicaid agency on a quarterly basis under § 455.23(d)(3)(ii), the Unit will certify that any matter accepted on the basis of a referral continues to be under investigation, thus warranting continuation of the payment suspension.

§ 1007.11 Duties and responsibilities of Unit.

(a) The Unit will conduct a statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws, including criminal statutes as well as civil false claims statutes or other civil authorities, pertaining to the following:

(1) Fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of providers.

(2) Fraud in any aspect of the provision of health care services and activities of providers of such services under any Federal health care program (as defined in section 1128B(f)(1)of the Act), if the Unit obtains the written approval of the Inspector General of the relevant agency and the suspected fraud or violation of law in such case or investigation is primarily related to the State Medicaid program.

(b)(1) The Unit will also review complaints alleging abuse or neglect of patients or residents in health care facilities receiving payments under Medicaid and may review complaints of the misappropriation of funds or property of patients or residents of such facilities.

(2) At the option of the Unit, it may review complaints of abuse or neglect, including misappropriation of funds or property, of patients or residents of board and care facilities, regardless of whether payment to such facilities is made under Medicaid.

(3) If the initial review of the complaint indicates substantial potential for criminal prosecution, the Unit will investigate the complaint or refer it to an appropriate criminal investigative or prosecutorial authority.

(4) If the initial review does not indicate a substantial potential for criminal prosecution, the Unit will, if appropriate, refer the complaint to the proper Federal, State, or local agency.

(c) If the Unit, in carrying out its duties and responsibilities under paragraphs (a) and (b) of this section, discovers that overpayments have been made to a health care facility or other provider, the Unit will either recover such overpayment as part of its resolution of a fraud case or refer the matter to the appropriate State agency for collection.

(d) Where a prosecuting authority other than the Unit is to assume responsibility for the prosecution of a case investigated by the Unit, the Unit will ensure that those responsible for the prosecutorial decision and the preparation of the case for trial have the fullest possible opportunity to participate in the investigation from its inception and will provide all necessary assistance to the prosecuting authority throughout all resulting prosecutions.

(e)(1) The Unit, if requested, will make available to OIG investigators and attorneys, or to other Federal investigators and prosecutors, all information in the Unit's possession concerning investigations or prosecutions conducted by the Unit.

(2) The Unit will coordinate with OIG investigators and attorneys, or with other Federal investigators and prosecutors, on any Unit cases involving the same suspects or allegations that are also under investigation or prosecution by OIG or other Federal investigators or prosecutors.

(3) The Unit will establish a practice of regular Unit meetings or communication with OIG investigators and Federal prosecutors.

(4) When the Unit lacks the authority or resources to pursue a case, including for allegations of Medicare fraud and for civil false claims actions in a State without a civil false claims act or other State authority, the Unit will make appropriate referrals to OIG investigators and attorneys or other Federal investigators or prosecutors.

(5) The Unit will establish written policy consistent with paragraphs (e)(1) through (4) of this section.

(f) The Unit will guard the privacy rights of all beneficiaries and other individuals whose data is under the Unit's control and will provide adequate safeguards to protect sensitive information and data under the Unit's control.

(g)(1) The Unit will transmit to OIG pertinent information on all convictions, including charging documents, plea agreements, and sentencing orders, for purposes of program exclusion under section 1128 of the Act.

(2) Convictions include those obtained either by Unit prosecutors or non-Unit prosecutors in any case investigated by the Unit.

(3) Such information will be transmitted to OIG within 30 days of sentencing, or as soon as practicable if the Unit encounters delays in receiving the necessary information from the court.

§ 1007.13 Staffing requirements of Unit.

(a) The Unit will employ sufficient professional, administrative, and support staff to carry out its duties and responsibilities in an effective and efficient manner.

(b) The Unit will employ individuals from each of the following categories of professional employees, whose exclusive effort, as defined in § 1007.1, is devoted to the work of the Unit:

(1) One or more attorneys capable of prosecuting the Unit's health care fraud or criminal cases and capable of giving informed advice on applicable law and procedures and providing effective prosecution or liaison with other prosecutors;

(2) One or more experienced auditors capable of reviewing financial records and advising or assisting in the investigation of alleged health care fraud and patient or resident abuse and neglect; and

(3) One or more investigators capable of conducting investigations of health care fraud and patient or resident abuse and neglect matters, including a senior investigator who is capable of supervising and directing the investigative activities of the Unit.

(c) The Unit will employ a director, as defined in § 1007.1, who supervises all Unit employees.

(d) Professional employees:

(1) Will devote their exclusive effort to the work of the Unit, as defined in § 1007.1 and except as provided in paragraphs (d)(2) and (3) of this section;

(2) May be employed outside the Unit during nonduty hours, only if the employee is not:

(i) Employed with a State agency (other than the Unit itself) or its contractors; or

(ii) Employed with an entity whose mission poses a conflict of interest with Unit function and duties;

(3) May perform non-Unit assignments for the State government only to the extent that such duties are limited in duration; and

(4) Will be under the direction and supervision of the Unit director.

(e) The Unit may employ administrative and support staff, such as

paralegals, information technology personnel, interns, and secretaries, who may be full-time or part-time employees and must report to the Unit director or other Unit supervisor.

(f) The Unit will employ, or have available to it, individuals who are knowledgeable about the provision of medical assistance under Title XIX of the Act and about the operations of health care providers.

(g)(1) The Unit may employ, or have available through consultant agreements or other contractual arrangements, individuals who have forensic or other specialized skills that support the investigation and prosecution of cases.

(2) The Unit may not, through consultant agreements or other contractual arrangements, rely on individuals not employed directly by the Unit for the investigation or prosecution of cases.

(h) The Unit will provide training for its professional employees for the purpose of establishing and maintaining proficiency in Medicaid fraud and patient or resident abuse and neglect matters.

§ 1007.15 Establishment and certification of Unit.

(a) *Initial application.* In order to demonstrate that it meets the requirements for certification, the State or territory must submit to OIG an application approved by the Governor or chief executive, containing the following:

(1) A description of the applicant's organization, structure, and location within State government, and a statement of whether it seeks certification under § 1007.7(a), (b), or (c);

(2) A statement from the State Attorney General that the applicant has authority to carry out the functions and responsibilities set forth in Subpart B. If the applicant seeks certification under § 1007.7(b), the statement must also specify either that:

(i) There is no State agency with the authority to exercise statewide prosecuting authority for the violations with which the Unit is concerned, or

(ii) Although the State Attorney General may have common law authority for statewide criminal prosecutions, he or she has not exercised that authority;

(3) A copy of whatever memorandum of agreement, regulation, or other document sets forth the formal procedures required under § 1007.7(b), or the formal working relationship and procedures required under § 1007.7(c);

(4) A copy of the agreement with the Medicaid agency required under §§ 1007.9 and 455.21(c);

(5) A statement of the procedures to be followed in carrying out the functions and responsibilities of this part;

(6) A proposed budget for the 12-month period for which certification is sought; and

(7) Current and projected staffing, including the names, education, and experience of all senior professional employees already employed and job descriptions, with minimum qualifications, for all professional positions.

(b) *Basis for, and notification of, certification.* (1) OIG will make a determination as to whether the initial application under paragraph (a) of this section meets the requirements of §§ 1007.5 through 1007.13 and whether a Unit will be effective in using its resources in investigating Medicaid fraud and patient or resident abuse and neglect.

(2) OIG will certify a Unit only if OIG specifically approves the applicant's formal written procedures under § 1007.7(b) or (c), if either of those provisions is applicable.

(3) If the application is not approved, the applicant may submit a revised application at any time.

(4) OIG will certify a Unit that meets the requirements of this Subpart B for 12 months.

§ 1007.17 Annual recertification of Unit.

(a) *Information required annually for recertification.* To continue receiving payments under this part, a Unit must submit to OIG:

(1) *Reapplication for recertification.* Reapplication is due at least 60 days prior to the expiration of the 12-month certification period. A reapplication must include:

(i) A brief narrative that evaluates the Unit's performance, describes any specific problems it has had in connection with the procedures and agreements required under this part, and discusses any other matters that have impaired its effectiveness. The narrative should include any extended investigative authority approvals obtained pursuant to § 1007.11(a)(2).

(ii) For those Units approved to conduct data mining under § 1007.20, all costs expended by the Unit attributed to data mining activities; the amount of staff time devoted to data mining activities; the number of cases generated from those activities; the outcome and status of those cases, including the expected and actual monetary recoveries (both Federal and non-Federal share); and any other relevant indicia of return on investment from such activities.

(iii) Information requested by OIG to assess compliance with this part and adherence to MFCU performance standards, including any significant changes in the information or documentation provided to OIG in the previous reporting period.

(2) *Statistical reporting.* By November 30 of each year, the Unit will submit statistical reporting for the Federal fiscal year that ended on the prior September 30 containing the following statistics:

(i) *Unit staffing.* The number of Unit employees, categorized by attorneys, investigators, auditors, and other employees, on board, and total number of approved Unit positions;

(ii) *Caseload.* The number of open, new, and closed cases categorized by type of case and the number of open criminal and civil cases categorized by type of provider;

(iii) *Criminal case outcomes.* The number of criminal convictions and indictments categorized by type of case and by type of provider; the number of acquittals, dismissals, referrals for prosecution, sentences, and other nonmonetary penalties categorized by type of case; and the amount of total ordered criminal recoveries categorized by type of provider; the amount of ordered Medicaid restitution, fines ordered, investigative costs ordered, and other monetary payment ordered categorized by type of case;

(iv) *Civil case outcomes.* The number of civil settlements and judgments and recoveries categorized by type of provider; the number of global (coordinated among a group of States) civil settlements and successful judgments; the amount of global civil recoveries to the Medicaid program; the amount of other global civil monetary recoveries; the number of other civil cases opened, filed, or referred for filing; the number of other civil case settlements and successful judgments; the amount of other civil case recoveries to the Medicaid program; the amount of other monetary recoveries; and the number of other civil cases declined or closed without successful settlement or judgment;

(v) *Collections.* The monies actually collected on criminal and civil cases categorized by type of case; and

(vi) *Referrals.* The number of referrals received categorized by source of referral and type of case; the number of cases opened categorized by source of referral and type of case; and the number of referrals made to other agencies categorized by type of case.

(b) *Other information reviewed for recertification.* In addition to reviewing information required at § 1007.17(a), OIG will review, as appropriate, the following information when considering recertification of a Unit:

(1) Information obtained through onsite reviews and

(2) Other information OIG deems necessary or warranted.

(c) *Basis for recertification.* In reviewing the information described at § 1007.17(a) and (b), OIG will evaluate whether the Unit has demonstrated that it effectively carries out the functions and requirements described in section 1903(q) of the Act as implemented by this part. In making that determination, OIG will take into consideration the following factors:

(1) Unit's compliance with this part and other Federal regulations, including those specified in § 1007.23;

(2) Unit's compliance with OIG policy transmittals;

(3) Unit's adherence to MFCU performance standards as published in the **Federal Register**;

(4) Unit's effectiveness in using its resources in investigating cases of possible fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of providers of medical assistance under the State Medicaid plan, and in prosecuting cases or cooperating with the prosecuting authorities; and

(5) Unit's effectiveness in using its resources in reviewing and investigating, referring for investigation or prosecution, or criminally prosecuting complaints alleging abuse or neglect of patients or residents in health care facilities receiving payments under the State Medicaid plan and, at the Unit's option, in board and care facilities.

(d) *Notification.* OIG will notify the Unit by the Unit's recertification date of approval or denial of the recertification reapplication.

(1) *Approval subject to conditions.* OIG may impose special conditions or restrictions and may require corrective action, as provided in 45 CFR 75.207, before approving a reapplication for recertification.

(2) *Written explanation for denials.* If the reapplication is denied, OIG will provide a written explanation of the findings on which the denial was based.

(e) *Reconsideration of denial of recertification.* (1) A Unit may request that OIG reconsider a decision to deny recertification by providing written information contesting the findings on which the denial was based.

(2) Within 30 days of receipt of the request for reconsideration, OIG will provide a final decision in writing, explaining its basis for approving or denying the reconsideration of recertification.

Subpart C—Federal Financial Participation (FFP)

§ 1007.19 FFP rate and eligible FFP costs.

(a) *Rate of FFP.* (1) Subject to the limitation of this section, the Secretary of Health and Human Services must reimburse each State by an amount equal to 90 percent of the allowable costs incurred by a certified Unit during the first 12 quarters of operation that are attributable to carrying out its functions and responsibilities under this part. Each quarter of operation must be counted in determining when the Unit has accumulated 12 quarters of operation and is, therefore, no longer eligible for a 90-percent matching rate. Quarters of operation do not have to be consecutive to accumulate.

(2) Beginning with the 13th quarter of operation, the Secretary must reimburse 75 percent of allowable costs incurred by a certified Unit.

(b) *Retroactive certification.* OIG may grant certification retroactive to the date on which the Unit first met all the requirements of section 1903(q) of the Act and of this part. For any quarter with respect to which the Unit is certified, the Secretary will provide reimbursement for the entire quarter.

(c) *Total amount of FFP.* FFP for any quarter must not exceed the higher of $125,000 or one-quarter of 1 percent of the sums expended by the Federal, State, and local governments during the previous quarter in carrying out the State Medicaid program.

(d) *Costs eligible for FFP.* (1) FFP is allowable under this part for the expenditures attributable to the establishment and operation of the Unit, including the cost of training personnel employed by the Unit and efforts to increase referrals to the Unit through program outreach. Reimbursement is allowable only for costs attributable to the specific responsibilities and functions set forth in this part and if the Unit has been certified and recertified by OIG.

(2) Establishment costs are limited to clearly identifiable costs of personnel that meet the requirements of § 1007.13 of this part.

(e) *Costs not eligible for FFP.* FFP is not allowable under this part for expenditures attributable to:

(1) The investigation of cases involving program abuse or other failures to comply with applicable laws and regulations, if these cases do not involve substantial allegations or other indications of fraud, as described in § 1007.11(a) of this part;

(2) Routine verification with beneficiaries of whether services billed by providers were actually received, or, except as provided in § 1007.20, efforts to identify situations in which a question of fraud may exist by the screening of claims and analysis of patterns and practice that involve data mining as defined in § 1007.1.

(3) The routine notification of providers that fraudulent claims may be punished under Federal or State law;

(4) The performance of any audit or investigation, any professional legal function, or any criminal, civil or administrative prosecution of suspected providers by a person who does not meet the professional employee requirements in § 1007.13(d);

(5) The investigation or prosecution of fraud cases involving a beneficiary's eligibility for benefits, unless the suspected fraud cases also involve conspiracy with a provider;

(6) Any payment, direct or indirect, from the Unit to the Medicaid agency, other than payments for the salaries of employees on detail to the Unit; or

(7) Temporary duties performed by professional employees that are not required functions and responsibilities of the Unit, as described at § 1007.13(d)(3).

§ 1007.20 Circumstances of permissible data mining.

(a) Notwithstanding § 1007.19(e)(2), a Unit may engage in data mining as defined in this part and receive FFP only under the following conditions:

(1) The Unit identifies the methods of coordination between the Unit and the Medicaid agency, the individuals serving as primary points of contact for data mining, as well as the contact information, title, and office of such individuals;

(2) Unit employees engaged in data mining receive specialized training in data mining techniques;

(3) The Unit describes how it will comply with paragraphs (a)(1) and (2) of this section as part of the agreement required by § 1007.9(d); and

(4) OIG, in consultation with CMS, approves in advance the provisions of the agreement as defined in paragraph (a)(3) of this section.

(i) OIG will act on a request from a Unit for review and approval of the agreement within 90 days after receipt of a written request, or the request shall be considered approved if OIG fails to respond within 90 days after receipt of the written request.

(ii) If OIG requests additional information in writing, the 90-day

period for OIG action on the request begins on the day OIG receives the information from the Unit.

(iii) The approval is for 3 years.

(iv) A Unit may request renewal of its data-mining approval for additional 3-year periods by submitting a written request for renewal to OIG, along with an updated agreement with the Medicaid agency.

§ 1007.21 Disallowance of claims for FFP.

(a) *Notice of disallowance and of right to reconsideration.* When OIG determines that a Unit's claim or portion of a claim for FFP is not allowable, OIG shall promptly send to the Unit notification that meets the requirements listed at 42 CFR 430.42(a).

(b) *Reconsideration of disallowance.* (1) The Principal Deputy Inspector General will reconsider Unit disallowance determinations made by OIG.

(2) To request a reconsideration from the Principal Deputy Inspector General, the Unit must follow the requirements in 42 CFR 430.42(b)(2) and submit all required information to the Principal Deputy Inspector General. Copies should be sent via registered or certified mail to the Principal Deputy Inspector General.

(3) The Unit may request to retain FFP during the reconsideration of the disallowance under section 1116(e) of the Act, in accordance with 42 CFR 433.38.

(4) The Unit is not required to request reconsideration before seeking review from the Departmental Appeals Board.

(5) The Unit may also seek reconsideration, and following the reconsideration decision, request a review from the Departmental Appeals Board.

(6) If the Unit elects reconsideration, the reconsideration process must be completed or withdrawn before requesting review by the Departmental Appeals Board.

(c) *Procedures for reconsideration of a disallowance.* (1) Within 60 days after receipt of the disallowance letter, the Unit shall, in accordance with paragraph (b)(2) of this section, submit in writing to the Principal Deputy Inspector General any relevant evidence, documentation, or explanation.

(2) After consideration of the policies and factual matters pertinent to the issues in question, the Principal Deputy Inspector General shall, within 60 days from the date of receipt of the request for reconsideration, issue a written decision or a request for additional information as described in paragraph (c)(3) of this section.

(3) At the Principal Deputy Inspector General's option, OIG may request from the Unit any additional information or documents necessary to make a decision. The request for additional information must be sent via registered or certified mail to establish the date the request was sent by OIG and received by the Unit.

(4) Within 30 days after receipt of the request for additional information, the Unit must submit to the Principal Deputy Inspector General all requested documents and materials.

(i) If the Principal Deputy Inspector General finds that the materials are not in readily reviewable form or that additional information is needed, he or she shall notify the Unit via registered or certified mail that it has 15 business days from the date of receipt of the notice to submit the readily reviewable or additional materials.

(ii) If the Unit does not provide the necessary materials within 15 business days from the date of receipt of such notice, the Principal Deputy Inspector General shall affirm the disallowance in a final reconsideration decision issued within 15 days from the due date of additional information from the Unit.

(5) If additional documentation is provided in readily reviewable form under paragraph (c)(4) of this section, the Principal Deputy Inspector General shall issue a written decision within 60 days from the due date of such information.

(6) The final written decision shall constitute final OIG administrative action on the reconsideration and shall be (within 15 business days of the decision) mailed to the Unit via registered or certified mail to establish the date the reconsideration decision was received by the Unit.

(7) If the Principal Deputy Inspector General does not issue a decision within 60 days from the date of receipt of the request for reconsideration or the date of receipt of the requested additional information, the disallowance shall be deemed to be affirmed.

(8) No section of this regulation shall be interpreted as waiving OIG's right to assert any provision or exemption under the Freedom of Information Act.

(d) *Withdrawal of a request for reconsideration of a disallowance.* (1) A Unit may withdraw the request for reconsideration at any time before the notice of the reconsideration decision is received by the Unit without affecting its right to submit a notice of appeal to the Departmental Appeals Board. The request for withdrawal must be in writing and sent to the Principal Deputy Inspector General via registered or certified mail.

(2) Within 60 days after OIG's receipt of a Unit's withdrawal request, a Unit may, in accordance with (f)(2) of this section, submit a notice of appeal to the Departmental Appeals Board.

(e) *Implementation of decisions for reconsideration of a disallowance.* (1) After undertaking a reconsideration, the Principal Deputy Inspector General may affirm, reverse, or revise the disallowance and shall issue a final written reconsideration decision to the Unit in accordance with paragraphs (c)(4) and (5) of this section.

(2) If the reconsideration decision requires an adjustment of FFP, either upward or downward, a subsequent grant action will be made in the amount of such increase or decrease.

(3) Within 60 days after receipt of a reconsideration decision from OIG, a Unit may, in accordance with paragraph (f) of this section, submit a notice of appeal to the Departmental Appeals Board.

(f) *Appeal of disallowance.* (1) The Departmental Appeals Board reviews disallowances of FFP under Title XIX of the Act, including disallowances issued by OIG to the Units.

(2) A Unit that wishes to appeal a disallowance to the Departmental Appeals Board must follow the requirements in 42 CFR 430.42(f)(2).

(3) The appeals procedures are those set forth in 45 CFR part 16 for Medicaid and for many other programs, including the Units, administered by the Department.

(4) The Departmental Appeals Board may affirm the disallowance, reverse the disallowance, modify the disallowance, or remand the disallowance to OIG for further consideration.

(5) The Departmental Appeals Board will issue a final written decision to the Unit consistent with 45 CFR part 16.

(6) If the appeal decision requires an adjustment of FFP, either upward or downward, a subsequent grant action will be made in the amount of such increase or decrease.

Subpart D—Other Provisions

§ 1007.23 Other applicable HHS regulations.

The following regulations from 45 CFR, subtitle A, apply to grants under this part:

(a) Part 16—Procedures of the Departmental Grant Appeals Board.

(b) Part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.

(c) Part 80—Nondiscrimination under Programs Receiving Federal Assistance through HHS, Effectuation of Title VI of the Civil Rights Act of 1964.

(d) Part 81—Practice and Procedure for Hearings under 45 CFR part 80.

(e) Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance.

(f) Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

Daniel R. Levinson,

Inspector General.

Approved: February 1, 2019.

Alex M. Azar II,

Secretary.

[FR Doc. 2019–05362 Filed 3–21–19; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 190220138–9138–01]

RIN 0648–XG833

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Adjustment of Georges Bank and Southern New England/Mid-Atlantic Yellowtail Flounder Annual Catch Limits

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

ACTION: Temporary final rule; adjustment of annual catch limits.

SUMMARY: This action transfers unused quota of Georges Bank and Southern New England/Mid-Atlantic yellowtail flounder from the Atlantic scallop fishery to the Northeast multispecies fishery for the remainder of the 2018 fishing year. This quota transfer is authorized when the scallop fishery is not expected to catch its entire allocations of yellowtail flounder. The quota transfer is intended to provide additional fishing opportunities for groundfish vessels to help achieve the optimum yield for these stocks while ensuring sufficient amounts of yellowtail flounder remain available for the scallop fishery.

DATES: Effective March 21, 2019, through April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Management Specialist, (978) 281–9116.

SUPPLEMENTARY INFORMATION: NMFS is required to estimate the total amount of yellowtail flounder catch from the scallop fishery by January 15 each year. If the scallop fishery is expected to catch less than 90 percent of its Georges Bank (GB) or Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder sub-annual catch limit (ACL), the Regional Administrator (RA) has the authority to reduce the scallop fishery sub-ACL for these stocks to the amount projected to be caught, and increase the groundfish fishery sub-ACL by the same amount. This adjustment is intended to help achieve optimum yield for these stocks, while not threatening an overage of the ACLs for the stocks by the groundfish and scallop fisheries.

Based on the most current available catch data, we project that the scallop fishery will have unused quota in the 2018 fishing year. Using the highest expected catch, the scallop fishery is projected to catch approximately 14 mt of GB yellowtail flounder, or 44 percent of its 2018 fishing year sub-ACL, and approximately 3 mt of SNE/MA yellowtail flounder, or 80 percent of its 2018 fishing year sub-ACL. The analysis of the highest expected catch is based on the proportion of estimated yellowtail flounder catch occurring in February and March compared to catch in the remainder of the scallop fishing year. The highest proportion observed (in this case fishing year 2016) over the past six years is used to estimate the highest expected catch in fishing year 2018.

Because the scallop fishery is expected to catch less than 90 percent of its allocation of GB and SNE/MA yellowtail flounder, this rule reduces the scallop sub-ACL for both stocks to the upper limit projected to be caught, and increases the groundfish sub-ACLs for these stocks by the same amount, effective March 21, 2019, through April 30, 2019. Using the upper limit of expected yellowtail flounder catch by the scallop fishery is expected to minimize the risk of constraining scallop fishing or an ACL overage by the scallop fishery while still providing additional fishing opportunities for groundfish vessels.

Table 1 summarizes the revisions to the 2018 fishing year sub-ACLs, and Table 2 shows the revised allocations for the groundfish fishery as allocated between the sectors and common pool based on final sector membership for fishing year 2018.

TABLE 1—GEORGES BANK AND SOUTHERN NEW ENGLAND/MID-ATLANTIC YELLOWTAIL FLOUNDER SUB-ACLS

Stock	Fishery	Initial sub-ACL (mt)	Change (mt)	Revised sub-ACL (mt)	Percent change
GB Yellowtail Flounder	Groundfish	169.4	+18.53	187.93	+11
	Scallop	33.1	−18.53	14.57	−56
SNE/MA Yellowtail Flounder	Groundfish	42.5	+0.78	43.28	+2
	Scallop	4.0	−0.78	3.22	−19

TABLE 2—ALLOCATIONS FOR SECTORS AND THE COMMON POOL

[In pounds]

Sector name	GB yellowtail flounder		SNE/MA yellowtail flounder	
	Revised	Initial	Revised	Initial
GB Cod Fixed Gear Sector	3,536	3,187	858	843
Maine Coast Community Sector	6,958	6,272	1,263	1,240
Maine Permit Bank	57	51	30	30
Northeast Coastal Communities Sector	23	21	205	201
Northeast Fishery Sector I	0	0	0	0
Northeast Fishery Sector II	7,902	7,124	1,798	1,766
Northeast Fishery Sector III	9	9	1	1

TABLE 2—ALLOCATIONS FOR SECTORS AND THE COMMON POOL—Continued

[In pounds]

Sector name	GB yellowtail flounder		SNE/MA yellowtail flounder	
	Revised	Initial	Revised	Initial
Northeast Fishery Sector IV	8,956	8,074	2,158	2,118
Northeast Fishery Sector V	5,287	4,767	20,109	19,740
Northeast Fishery Sector VI	11,197	10,095	5,118	5,024
Northeast Fishery Sector VII	105,711	95,299	8,142	7,993
Northeast Fishery Sector VIII	56,731	51,144	7,513	7,376
Northeast Fishery Sector IX	114	103	0	0
Northeast Fishery Sector X	5	4	523	513
Northeast Fishery Sector XI	6	6	19	18
Northeast Fishery Sector XII	2	2	10	10
Northeast Fishery Sector XIII	142,936	128,858	20,064	19,696
New Hampshire Permit Bank	0	0	0	0
Sustainable Harvest Sector 1	3,980	3,588	86	84
Sustainable Harvest Sector 2	9,258	8,346	2,100	2,061
Sustainable Harvest Sector 3	45,357	40,889	7,002	6,874
Common Pool	6,290	5,671	18,418	18,081
Sector Total	408,024	367,839	76,998	75,588
Groundfish Total	414,315	373,510	95,416	93,669

Classification

The NMFS Assistant Administrator has determined that the management measures implemented in this final rule are necessary for the conservation and management of the Northeast multispecies fishery and consistent with the Magnuson-Stevens Act, and other applicable law.

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

The Assistant Administrator for Fisheries finds good cause pursuant to 5 U.S.C. 553(b)(B) and 553(d)(3) to waive prior notice and opportunity for public comment and the thirty day cooling off period, respectively. This rule relieves groundfish fishermen from more restrictive ACLs for yellowtail stocks and is intended to help the fishery achieve optimum yield. The earlier this rule is in place, the more time the groundfish fishermen will have to plan and fish for, and potentially catch, extra available quota. Delaying the effective date reduces the expected benefit and undermines the purpose of the rule to help the fishery achieve optimum yield.

The authority to transfer available yellowtail catch from the scallop fishery to the groundfish fishery was designed to allow timely implementation before the end of the northeast multispecies fishing year on April 30, 2019 (see 50 CFR 648.90(a)(4)(iii)(C)). NMFS is required to project GB and SNE/MA yellowtail flounder catch in the scallop fishery by January 15 of each year so that projected unused quota may be transferred to the groundfish fishery. Data available for analysis this year were delayed, and we could not make our projection until well after January 15. As a result, providing additional time for prior public notice and comment or a 30-day cooling off period before transferring quota for these yellowtail flounder would likely prevent the rule from being in place before the end of the fishing year, or would mean that the rule would be in place too close to the end of the fishing year to be effective, and to confer a benefit to Groundfish fishermen. Such a delay would reduce or eliminate any potential benefit to the groundfish fishermen from receiving the additional allocation that is intended to offset the current negative economic effects of severe decreases in ACLs of several important groundfish stocks.

Scallop fishermen are not expected to be adversely affected by this rule. Projected scallop catch for the balance of the year is designed to avoid constraining scallop catch by using the high-end estimate of yellowtail bycatch based on previous year's catch. Further, scallop fishermen are aware of this potential transfer at the beginning of the fishing year and have sufficient time to plan accordingly. It also does not require time for adjusting to any new compliance measures or other action on the part of the scallop or groundfish fishermen.

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

Dated: March 18, 2019.

Samuel D. Rauch III,

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

[FR Doc. 2019–05429 Filed 3–21–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 56
Friday, March 22, 2019

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. APHIS–2017–0062]

RIN 0579–AE35

Animal Welfare; Amendments to Licensing Provisions and to Requirements for Dogs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the licensing requirements under the Animal Welfare Act regulations to promote compliance, reduce licensing fees, and strengthen existing safeguards that prevent individuals and businesses who have a history of noncompliance from obtaining a license or working with regulated animals. This action will reduce regulatory burden with respect to licensing and will more efficiently ensure licensees' sustained compliance with the Act. We are further proposing to strengthen the veterinary care and watering standards for regulated dogs to better align the regulations with the humane care and treatment standards set by the Animal Welfare Act. Additionally, we are proposing to make several miscellaneous changes for clarity and to correct typographical errors.

DATES: We will consider all comments that we receive on or before May 21, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0062.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0062, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0062* or in our reading Room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Jones, Chief of Staff, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 851–3730.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA or the Act, 7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, exhibitors, operators of auction sales, research facilities, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care. Definitions, regulations, and standards established under the AWA are contained in 9 CFR parts 1, 2, and 3 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3. Part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties, including licensing requirements for dealers, exhibitors, and operators of auction sales. Dealers, exhibitors, and operators of auction sales are required to comply in all respects with the regulations and standards (9 CFR 2.100(a)) and to allow APHIS officials access to their place of business, facilities, animals, and records to inspect for compliance (9 CFR 2.126). Part 3 provides standards for the humane handling, care, treatment, and transportation of covered animals. Part 3 consists of subparts A through E, which contain specific standards for dogs and cats, guinea pigs and hamsters, rabbits, nonhuman primates, and marine mammals, respectively, and subpart F, which sets forth general standards for warmblooded animals not otherwise specified in that part.

Under the current regulations, an applicant for an initial license is required to submit an application form, an application fee, and an annual license fee to Animal Care (9 CFR 2.1(c)), acknowledge receipt of a copy of the regulations and agree to comply with them by signing the application form (9 CFR 2.2(a)), and demonstrate compliance with the AWA regulations and standards, before APHIS can issue a license (9 CFR 2.3(a)). Once a person receives a license, the licensee may renew his or her license annually by submitting an annual renewal form and license fee (9 CFR 2.1(d)(1)).

Although an applicant for a license renewal must also certify, to the best of his or her knowledge and belief, that he or she is in compliance with all regulations and standards (9 CFR 2.2(b)), the current regulations do not require the applicant to demonstrate compliance before APHIS renews his or her license. The current regulations also do not require a licensee to demonstrate compliance when the licensee makes any subsequent changes to his or her animals or facilities, including noteworthy changes in the number or type of animals used in regulated activity. For example, a licensee who obtained a license after demonstrating compliance with the standards for his or her rabbit breeding facility (subpart C of part 3), may subsequently acquire and deal or exhibit any number of dangerous animals (such as tigers, bears, and elephants), without first demonstrating compliance with the applicable standards for those animals (subpart F of part 3). Based on our knowledge and experience with administering and enforcing the AWA and regulations, we are concerned that licensees may struggle to achieve and maintain compliance after making such noteworthy changes to their animals used in regulated activity. In addition, we have observed licensees who have been licensed for many years struggle with compliance because they did not have adequate programs for maintaining compliance at aging facilities. Therefore, we believe that revisions to the

regulations are necessary to ensure that dealers, exhibitors, and operators of auction sales demonstrate compliance with the applicable standards in part 3, providing for the humane handling, care, treatment, and transportation of animals under the AWA, as described below.

In this proposed rule, we are proposing revisions to the licensing requirements to promote compliance, reduce licensing fees and burdens, and strengthen existing safeguards that prevent individuals and businesses who are unfit to hold a license (such as any individual whose license has been suspended or revoked or who has a history of noncompliance) from obtaining a license or working with regulated animals. We are also proposing revisions to the animal health and husbandry standards of part 3, subpart A, to increase safeguards for the adequate care and treatment of regulated dogs. The regulatory changes we are proposing include:

- Issuing fixed-term (non-renewable) licenses for dealers and exhibitors that expire after 3 years, at which time they would be required to demonstrate compliance before obtaining another fixed-term license;
- Specifying procedures for the issuance of temporary licenses to licensees with histories of compliance should they be in jeopardy of an inadvertent lapse in licensure during the license application process;
- Requiring licensees to affirmatively demonstrate compliance and obtain a new license when making noteworthy changes subsequent to the issuance of a license; noteworthy changes are those with regard to the number, type, or location of animals used in regulated activities;
- Adjusting license fees consistent with other proposed changes;
- Requiring license applicants to disclose any pleas of *nolo contendere* (no contest) or any other findings of violation of Federal, State, or local laws or regulations pertaining to animal cruelty or the transportation, ownership, neglect, or welfare of animals, to assess their fitness for licensure (9 CFR 2.11);
- Preventing individuals and businesses not operating as bona fide exhibitors from becoming licensed in order to circumvent State laws restricting ownership of exotic and wild animals to AWA-licensed exhibitors;
- Strengthening existing prohibitions to expressly restrict individuals and businesses whose licenses have been suspended or revoked from working for regulated entities, and prevent individuals and businesses with histories of noncompliance from applying for new licenses through different individuals or business names; and
- Specifying provisions to ensure adequate access to water and veterinary care for dogs.

Additionally, we are proposing several miscellaneous changes to the AWA regulations, including updating the titles of APHIS officials referenced in the regulations to reflect the current organizational structure (such as replacing the references to the ''Regional Director'' with the ''Deputy Administrator''), clarifying the definition of ''business hours,'' and correcting typographical errors.

Advance Notice of Proposed Rulemaking

On August 24, 2017, we published in the **Federal Register** (82 FR 40077–40078, Docket No. APHIS–2017–0062) an advance notice of proposed rulemaking (ANPR) in which we solicited comments from the public regarding potential revisions to the regulations. We solicited comments for 60 days ending October 23, 2017, and extended the comment period for an additional 10 days ending November 2, 2017. We received more than 47,000 comments by that date, of which approximately 8,500 were unique (not duplicate or form letter) comments. They were from private citizens, breeders, exhibitors, animal welfare activists, and professional organizations. We have reviewed and considered all of the comments and any information submitted with the comments. The issues raised by commenters are discussed below by topic.

License Renewal

Among other things, the ANPR requested comments on issuing fixed-term (non-renewable) licenses that expire after 3–5 years. A large number of commenters agreed with the example given in the ANPR to have licenses expire with the expectation that the issuance of a new license would be contingent upon affirmative demonstrations of compliance with AWA regulations. Many commenters indicated a specific number of years for license expiration within a 1–5 year range. Numerous commenters were also critical of the current renewal process wherein licensees self-certify AWA compliance; these commenters asked that USDA stop ''rubber-stamping'' license renewals and generally supported the proposal for licensees to affirmatively demonstrate compliance prior to any period of licensure.

Some commenters expressed concerns regarding the impact of rule changes on licensees who are compliant under current standards, and questioned the degree of flexibility that would be afforded to compliant licensees under revised rules. In response to this concern, we note that we have included flexibilities in this proposed rule for the issuance of temporary licenses to licensees with histories of compliance should they be in jeopardy of an inadvertent lapse in licensure during the license application process.

Other commenters expressed concerns as to the impact rule changes would have on continued compliance, indicating that a longer period of time between license renewals could result in complacency among licensees with respect to animal welfare. In addition, many commenters indicated that inspections should continue along with annual license renewals. In response to these comments, we note that no demonstration of compliance is currently required at the time of renewal. In addition, we will continue to conduct animal welfare compliance inspections through the period of licensure in accordance with our risk-based inspection system.

Several commenters requested a clarification of the term ''affirmative demonstration of compliance,'' with some requesting that such clarification include a set of objective standards. A number of commenters requested that license renewals only be issued for licensees with no non-compliances for a lengthy period (up to 5 years). One commenter suggested a change to inspection procedures in which a first inspection would take place soon after a license is issued, *e.g.,* 6 months. Another commenter suggested that renewals should include inspection and/or certification by a veterinarian that animals are in good health and receive regular care. The same commenter also suggested that a process be instituted to allow for complaints from the public against licensees suspected of noncompliance.

We appreciate these comments and wish to clarify that, by an ''affirmative demonstration of compliance,'' we meant that the applicant must demonstrate that his or her premises and animals, facilities, vehicles, equipment, and premises used or intended for use in the business comply with the requirements set forth in parts 2 and 3 of the regulations, as is currently required in § 2.3 of the regulations. In addition to the inspections conducted by Animal Care prior to the issuance of a license, we also have the authority to conduct inspections throughout the period of licensure. With regard to veterinarian

inspections, we note that § 2.40 of the regulations already requires dealers and exhibitors to employ an attending veterinarian under formal arrangements and to have programs of adequate veterinary care. Finally, Animal Care has a process for members of the public to report concerns about AWA-covered animals. For more information or to file such a complaint, please visit our website at: *https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/complaint-form.* (Scroll to the bottom of the web page to access the form.)

Among the commenters who opposed the issuance of fixed-term licenses, many viewed such a proposal as placing undue burden on licensees who would have to reapply every few years, instead of annually renew. One commenter expressed concern that such a revision would increase the potential for biased inspectors to take advantage of licensees. Another commenter recommended against the issuance of fixed-term licenses unless license numbers could be preserved, and stated that a uniform expiration of licenses at the same time of year could create a backlog for inspections and result in lapsed licenses for compliant breeders. A few commenters indicated that APHIS does not have authority under the AWA to set expiration dates on licenses.

As discussed in the economic analyses supporting this rulemaking, this proposed rule would reduce licensing fees and paperwork burdens on individuals and businesses seeking an AWA license. While the current regulations require an annual license application and fees ranging from $40 to $760 annually, this proposed rule would only require an application and a flat $120 fee every 3 years, which would be equivalent to the current lowest fee of $40 (if prorated annually over 3 years). Accordingly, we do not believe that the licensing component of this proposal places additional or undue burdens on license holders or applicants and will in fact reduce paperwork burdens on them, as well as reduce licensing fees for many of them.

This proposal also retains, with modifications discussed below, the current process for demonstrating compliance prior to the issuance of a license, which allows an applicant three opportunities (inspections) to make such a demonstration (9 CFR 2.3(b)). We also note that Animal Care has a process in place to appeal disputed inspection findings.[1] This proposed rule establishes a process for license applicants to appeal inspection findings from the third pre-license inspection, and codifies the existing opportunity for licensees and registrants to appeal all other compliance inspection findings during the period of licensure. With regard to the timing of license expirations, we do not intend to set a uniform expiration date for all licensees but would rather continue our current practice of accepting applications and issuing licenses on a rolling basis throughout the year. Finally, we wish to clarify that all licenses currently have expiration dates—they expire 1 year after issuance, and may be renewed annually. This proposed rule would extend this period of licensure to 3 years, but require an application for license and demonstration of compliance prior to the issuance of a new license. This proposal is consistent with section 2133 of the Act, which prohibits the issuance of a license until the dealer or exhibitor has demonstrated that his facilities comply with the standards promulgated by the Secretary pursuant to section 2143. Furthermore, section 2133 of the Act gives the Secretary the authority to issue licenses to dealers and exhibitors upon application therefor in such form and manner as he may prescribe, which includes the authority to set expiration dates for those licenses.

Licensing Fees

In response to the ANPR's request for comments on licensing fees, many commenters opposed the overall elimination of application and license renewal fees, and called for an increase in fees to more accurately reflect the cost of administering the regulations and reducing the burden on taxpayers. Many commenters also suggested that fees should be implemented in accordance with a sliding scale based on income, or based on the number of animals being bred and sold. Some commenters indicated that increasing licensing fees would positively impact animal welfare by weeding out unscrupulous breeders who may not wish to pay the fee amounts. One commenter stated that it makes sense to charge license fees only when issuing a license, but that the application fee should not be eliminated in order to pay for the processing of an application and the performance of the inspection. Another commenter suggested that fees be discounted based on the number of species for which an applicant is licensed.

Some commenters supported the implementation of reasonable fees that would be assessed with the issuance of a license. One such commenter stated that the structure of fees that would be assessed every 3 to 5 years should be based on a formal economic analysis and be broadly comparable to the existing annual fees. Adjustments to reduce burdens on small or non-profit entities also should be considered. A few commenters indicated that license fees should be eliminated so as to loosen requirements for small volume breeders.

Section 2153 of the AWA authorizes USDA to collect reasonable fees for licenses issued and to adjust fees on an equitable basis, taking into consideration the type and nature of the operations to be licensed. These fees are deposited into the Treasury as miscellaneous receipts, and are not a user fee to cover the cost of administering the regulations. In developing this fee, we took into account the type and nature of operations to be licensed and conducted a formal economic analysis. One alternative to a flat fee that we considered was to establish scaled fees, similar to those in the current regulations. However, we found it difficult to do so in an equitable way. For example, some dealers and exhibitors with small numbers of animals may derive significant income from their regulated activities, while other dealers and exhibitors with large numbers of animals may derive more modest incomes from their activities, based on the types of animals, location of their business, business model, and a variety of other factors. As discussed, we are proposing a flat fee of $120 for licensure, which represents a fee that is comparable to, or in many cases reduced from, existing fees for licensure. In addition to being an equitable fee for licenses, the proposed fee structure would allow for more efficient and streamlined business processes for Animal Care, and would simplify the calculation of licensing fees for applicants.

License Compliance; Temporary Licenses

Compliance with the regulations was a subject of concern for many commenters. A large number of commenters expressed support for the proposed provision to require licensees to demonstrate compliance with the AWA and regulations when making noteworthy changes to the number, type, or location of animals used in regulated activities. Some commenters requested additional clarification on the meaning of the terms ''noteworthy changes'' and ''affirmatively demonstrate compliance.'' A few commenters did not agree with this proposed change, noting that

[1] *https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_publications.*

inspections are sufficient to determine noteworthy changes and that additional reporting would be unnecessary. As discussed below, this proposal sets forth specifics on what changes would trigger the need for a new license.

Pre-licensing inspections was one topic discussed in the ANPR, with a proposed provision to reduce, from three to two, the number of opportunities an applicant has to correct deficiencies and take corrective measures before forfeiting his or her license application and fee. Although many commenters supported this provision, others raised concerns regarding the input of potentially ''bad'' inspectors, the imposition of financial burden upon licensees in the event of repeated findings of deficiency, and the appearance of pre-license inspections becoming too much of a problem-finding mission as opposed to an opportunity to educate and foster a learning process for license applicants. A few commenters suggested that such a reduction in the number of opportunities for applicants to correct deficiencies should be determined on a case-by-case basis depending on the type of deficiency identified.

In this proposed rule, we have elected not to propose any changes to the number of opportunities an applicant has to correct deficiencies and take corrective measures before forfeiting his or her license application and fee.

In the ANPR, another potential regulatory change under consideration was for APHIS to specify procedures to ensure licensees have ample time to apply for licenses and demonstrate compliance prior to the expiration of an existing license. Issuance of conditional or temporary licenses to those who submitted an application before the expiration of his or her current license and have a history of compliance, but nevertheless experience an inadvertent lapse in licensure, would be one way to ensure continuity of licensure under any new requirements.

Some commenters questioned the issuance of a temporary license and how such an issuance would work. One such commenter stated that the timelines outlined in the ANPR did not provide a comprehensive view of the process for licensing that would prevent inadvertent lapses in licensure. The same commenter also noted that requiring compliant businesses to have additional inspections would obligate businesses to make a substantial investment to ensure their site is in full compliance at the moment of inspection, leading to potential breaks in business continuity. Another commenter asked what would qualify as ''ample time'' to demonstrate compliance prior to the expiration of an existing license. Another commenter stated that the term ''conditional'' carries a negative connotation and suggested the term ''provisional'' license instead.

This proposed rule refers to conditional licenses as temporary licenses in response to these comments and sets forth specific information on the proposed temporary licensure process. With regard to the commenter's concern that businesses would have to invest resources to be in full compliance, we wish to make clear that licensees are required to be in full compliance at all times under the Act and regulations.

Disclosure of Violations and Convictions Involving Animal Laws; Strengthening Prohibitions

A large number of commenters expressed strong support for the suggested regulatory provision for license applicants to disclose incidences of violations and convictions involving animal-related laws. Suggestions from commenters related to this provision included: Denying licenses to individuals with a history of noncompliance, open investigations, or interference with APHIS officials; detailing timeframes, scope, and costs for any such regulations; suspending licenses for noncompliant breeders with repeat violations in a 5-year time period; offering case-by-case considerations for applicants who disclose convictions involving animal-related laws; and requesting that APHIS issue fines for initial disclosures of animal abuse, with prohibition of a license occurring upon a second AWA violation.

Some commenters stated that there is no positive value to a provision requiring applicants to disclose animal cruelty convictions or other violations of Federal, State, or local laws pertaining to animals. One commenter stated that such a disclosure for a single violation could cause unjust harm to an applicant's reputation, and suggested that only multiple violations should be disclosed.

The current regulations already set forth provisions for the denial of a license for persons with animal cruelty convictions and certain other violations of Federal, State, or local laws pertaining to animals (9 CFR 2.11). This proposed rule would support Animal Care's administration of this existing licensing restriction by requiring affirmative disclosure of such violations at the time of application.

On the proposed topic of strengthening existing prohibitions for persons with suspended or revoked licenses, including restricting individuals whose licenses have been suspended or revoked from working for other regulated entities, the majority of commenters expressed broad support for this proposal. Specific comments related to this topic included requiring business owners to provide proof of identity and employee lists to APHIS on an annual basis, creating a grading system for violations and their consequences, and increasing publicly available data related to those with violations related to animal mistreatment or neglect. We appreciate these comments and have set forth specific provisions for public comment in this proposed rule.

Other Concerns

Many commenters expressed a general criticism of current USDA enforcement of the AWA and regulations. Such criticism often also extended to the lack of transparency of documentation that is available to the public regarding alleged AWA violators. Other concerns mentioned by commenters—some of which fell outside the scope of the ANPR—included the use of unannounced inspections for licensees (which some commenters cited as overly burdensome and time-constraining); support for streamlining procedures for denying, terminating, and summarily suspending a license; support for preventing individuals with a history of noncompliance from using alternate names to apply for new licenses or otherwise circumventing ownership laws; specific concerns related to the care of an elephant named ''Nosey''; and requests for animal shelters and rescues to be subject to the same regulations as USDA-licensed breeders.

Based on our review of the ANPR comments, information submitted by stakeholders, and our own experience with administering AWA regulations, we are now proposing to amend the regulations concerning licensing. Each of the proposed changes is discussed in detail below.

Definitions

We propose to amend § 1.1 of the regulations, ''Definitions,'' by removing the term and definition for *AC Regional Director,* because Animal Care is no longer divided up into regions and this title and position have changed. References to the AC Regional Director, or to a regional office, would be replaced with references to the Animal Care Deputy Administrator or the appropriate Animal Care office, respectively.

We further propose to amend the definition for *business hours,* which are the hours during which licensees must allow APHIS officials access to their places of business and their facilities, animals, and records to inspect for compliance with the AWA and regulations. Currently, the regulations define *business hours* to mean a reasonable number of hours between 7 a.m. and 7 p.m., Monday through Friday, except for legal Federal holidays, each week of the year, during which such inspections may be made. However, we have observed a number of licensees who are not available a reasonable number of hours during these times because they have full-time employment elsewhere during the weekdays or because they operate at reduced hours on weekdays to allow customers to visit their place of business on the weekends. To reflect these business practices, and to ensure that such licensees are able to make their place of business and facilities, animals, and records available for inspection at all reasonable times, as required by the Act, we are proposing to remove the words ''Monday through Friday, except for legal Federal holidays'' from the definition of *business hours.* APHIS will continue to coordinate with licensees and registrants who do not maintain regular public business hours to establish optimal times for inspection, as necessary.

Licensing Requirements

We propose to amend § 2.1 of the regulations, ''Requirements and application.'' We would revise some of the phrasing in paragraph (a)(1) for clarity and would remove the phrases ''intending to'' or ''intends to'' operate where they appear in this paragraph. These revisions would aim to prevent the issuance of licenses to those who do not operate as bona fide exhibitors (*i.e.,* they never exhibit their animals to the public for compensation), but become licensed to circumvent State laws restricting animal ownership.

We also would update the information required for license applications, which would include:

- The name of the person applying for the license;
- A valid mailing address for the applicant;
- A valid address for all premises, facilities, or locations where animals, facilities, equipment, and records are held, kept or maintained;
- The anticipated maximum number of animals on hand at any one single point in time during that period of licensure;
- The anticipated type of animals to be owned, held, maintained, sold, or exhibited, including those animals leased, during the 3-year period of licensure; and, if the anticipated type of animals includes exotic or wild animals, information and records demonstrating that the applicant has adequate knowledge of and experience with of those animals (such as experience carefully handling the animals in a manner that does not cause behavior stress, physical harm or unnecessary discomfort, using methods to train, work, and handle the animals that do not involve physical abuse, providing humane husbandry, care, and housing for the animals, and, if used for public exhibition, experience handling the animal so there is minimal risk of harm to the animal and the public, and consideration of the needs for performing animals, young or immature animals, and animals that are fed by the public);
- If the person is seeking a license as an exhibitor, whether the person intends to exhibit any animal at any location other than the person's approved site(s); and
- The disclosure of any plea of *nolo contendere* (no contest) or finding of violation of Federal, State, or local laws or regulations pertaining to animal cruelty or the transportation, ownership, neglect, or welfare of animals.

We would amend paragraph (a)(2) to remove outdated language pertaining to applicants who operate businesses in more than one State. We also would revise language regarding license fees to remove references to fee tables; instead, completed applications would include a flat $120 license fee to be submitted to the appropriate Animal Care office.

Paragraph (b) currently states the requirement that no person shall have more than one license. We would expand this paragraph to combine it with existing restrictions on the issuance of licenses from existing § 2.5(d), which provide that licenses are issued to specific persons for specific premises and do not transfer upon change of ownership, nor are they valid at a different location. We would expand these restrictions to make clear that licenses are issued to specific persons, and for specific activities, animals, and approved sites, and that licenses are not valid upon changes of ownership, locations, activities, or animals. New licenses would have to be obtained in the event of such changes. Any changes to a licensee's name, address, management, substantial control or ownership of his/her business or operation, locations, activities, and number or type of animals described in proposed paragraph (b)(2) would have to be reported to APHIS Animal Care no fewer than 90 days before such changes take effect. Any person who is subject to the regulations and who intends to exhibit any animal at any location other than the person's approved site (such as circuses and traveling educational exhibits or animal acts) would have to provide that information on his/her application form in accordance with paragraph (a) of § 2.1 (as discussed above) and submit written itineraries in accordance with § 2.126. If the application did not provide such information, then a new application would have to be submitted and a new license obtained before exhibiting at locations other than the person's approved site.

Proposed paragraph (b)(2) would state that licenses authorize increments of 50 animals on hand at any single point in time during the period of licensure, and that licensees must obtain a new license before any change resulting in more than the authorized number of animals on hand at any single point in time. For example, a dog breeder with 30–40 breeding female dogs should apply for a license to hold 100 dogs and demonstrate compliance to house 100 dogs (adults and puppies) to accommodate anticipated births from the dogs. Since the breeder business model is predicated on selling puppies at or shortly after 8-weeks of age, the applicant would have to demonstrate the ability to safely handle, house, and care for up to 100 dogs (adult and puppies) at the time of pre-license inspection. The pre-license demonstration of compliance would take into account the species of dog, the number of breeding female dogs, the projected litter size, and the facility's business model for selling and placing puppies and adult dogs who are no longer used for breeding purposes. Paragraph (b)(2) would also state that licenses authorize the use of animals by subpart A through F in part 3, except that, for subparts D and F, licenses separately authorize the use of each of the following groups of animals: (1) Group 5 and 6 nonhuman primates, (2) big cats or large felids (lions, tigers, leopards, cheetahs, jaguars, cougars, and any hybrid cross thereof), (3) wolves, (4) bears, and (5) mega-herbivores (elephants, rhinoceroses, hippopotamuses, and giraffes). These groups of animals would have to be separately authorized because these animals are dangerous and have unique regulatory and care needs. Licensees would also be required to obtain a new license before using any animals beyond

those animals authorized for use under the existing license for activities for which a license is required. For example, if an applicant obtained a 3-year license after demonstrating compliance with the regulations in part 2 and the standards pertaining to dogs and cats (subpart A of part 3), but later decides that he or she wishes to also acquire and use rabbits for activities that require a license, that person would need to apply for a new license and demonstrate compliance with all applicable regulations and standards, including the standards pertaining to dogs, cats, and rabbits (subparts A and C of part 3), and obtain a new license, before using the rabbits for such activities.

Paragraph (c)(2) would be amended, with existing language related to application, initial, and renewal license fees removed and replaced with the proposed flat license fee of $120 and corresponding payment information. Similarly, in paragraph (d) we propose to remove language regarding license renewals and fees, since these would no longer be in effect under this proposal. Finally, we propose to redesignate paragraph (e) as paragraph (d).

We propose to amend § 2.2 of the regulations, ''Acknowledgement of regulations and standards,'' by removing language related to initial and renewal license applications, since these would no longer be in effect under the current proposal. We also would clarify that, upon request, a license applicant would receive a copy of the Act and the regulations and standards from Animal Care, which are also available for public review on the internet.[2] We are proposing to make this change because we have found that the vast majority of applicants and licensees have access to the internet, and it is costly to the Agency to send paper copies of the regulations and standards to them by postal mail. If an applicant or licensee would like to receive a paper copy, however, we stand ready to send one to them upon request. All license applicants would continue to be required to review the regulations and standards and agree to comply with them by signing the application form before a license would be issued.

We propose to amend § 2.3 of the regulations, ''Demonstration of compliance with standards and regulations,'' by adding that the applicant must agree to comply with the Act and the regulations and standards before APHIS will issue a license. In addition, we propose to refine some of the existing language in this section. In paragraph (b), we would clarify that no license will be issued until the license applicant demonstrates that he or she is in full compliance with the Act and the regulations and standards upon inspection. We also would add provisions to explain that all applicants would be granted up to three inspections within a 60-day period to demonstrate compliance with the Act and regulations, and, should applicants fail to demonstrate compliance during the third pre-license inspection, providing applicants with the opportunity to appeal the findings of such inspection to the Deputy Administrator within 7 days of receiving the report. Should APHIS reject any appeal, APHIS would notify the applicant of the Agency's denial of the license application. Within 30 days of receiving such notice, an applicant may request a hearing to contest the Agency's denial of the license application.

Additionally, an applicant who holds a valid license at the time he or she submitted the application that has been denied, and who submitted a timely appeal of the inspection findings from the third pre-license inspection, would be able to request an expedited hearing before an administrative law judge (ALJ), and the valid license would remain in effect until the ALJ issues his or her initial decision. Specifics of the process for requesting a hearing would be further described in § 2.11(b). The provisions described in the new § 2.11(b) are intended to afford adequate constitutionally mandated due process protections to current license holders, while maintaining proper regard for the policy of Congress to insure the humane care and treatment of covered animals. We invite public comment on the proposed licensing provisions and any suggested alternatives.

We propose to amend § 2.5 of the regulations, ''Duration of license and termination of license.'' In paragraph (a), we would state that licenses issued under part 2 will be valid and effective for a period of 3 years unless certain circumstances arise. Consistent with the current regulations, a license would not be valid if it has been revoked or suspended pursuant to section 19 of the Act or the license is voluntarily terminated upon request of the licensee, in writing, to the Deputy Administrator. Also in paragraph (a), we would retain the current restriction that a license is valid unless it has expired, while proposing to allow for the issuance of temporary licenses under certain conditions. Specifically, the conditions for the issuance of a temporary license under proposed paragraph (a)(3)(i) would be for applicants who submit the appropriate application form before the expiration date of a preceding license, and for the applicant to have had no noncompliances with the Act or regulations documented on an inspection report during the preceding period of licensure. To ensure that applicants can take full advantage of the three pre-licensing inspections provided for in § 2.3(b) to demonstrate compliance with the regulations and standards, current licensees will be encouraged to apply 4 months prior to the expiration of their license. In proposed paragraph (a)(3)(ii), we would provide that a license would remain valid and in effect if an applicant meets the criteria in § 2.11(b)(2), until the ALJ issues his or her initial decision involving the denial of a license application. Finally, we would make clear in paragraph (a)(4) that there will not be a refund of the licensing fee if a license is denied, terminated, suspended, or revoked prior to its expiration date.

We would remove existing paragraph (b) as it relates to license renewals and annual fees that would no longer be in effect under the current proposal. We would then redesignate paragraph (c) as paragraph (b). We would remove existing paragraph (d), since its language would be included in requirements under proposed § 2.1, paragraph (b)(1). We would then redesignate paragraph (e) as paragraph (c).

We propose to remove and reserve §§ 2.6, 2.7, and 2.8. The information and fee tables related to initial and annual license fees and annual license reports contained under existing §§ 2.6 and 2.7 would no longer be applicable under the current proposal. As noted above, the information contained in existing § 2.8 related to notification of change of name, address, control, or ownership of business would be included under provisions in proposed § 2.1(b).

We propose to amend § 2.9, ''Officers, agents, and employees of licensees whose licenses have been suspended or revoked.'' In the description of a person who has been or is an officer, agent, or employee of a licensee and who was responsible for or participated in a violation upon which an order of suspension or revocation was based, we would replace ''a violation'' with ''activities.'' This change would make clear that this prohibition applies to licensees whose licenses have been suspended or revoked through consent decisions and orders that do not include findings of violations and other similar

[2] *https://www.aphis.usda.gov/animal_welfare/downloads/AC_BlueBook_AWA_FINAL_2017_508comp.pdf.*

settlement agreements. We also would add that such a person would not only be prohibited from obtaining a license as a dealer or exhibitor, but would also be prohibited from being registered as a carrier, intermediate handler, exhibitor, or research facility within the period during which the order of suspension or revocation is in effect.

We propose to amend § 2.10, ''Licensees whose licenses have been suspended or revoked.'' We would add language in paragraphs (a), (b), and (c) to require that persons with suspended or revoked licenses shall not be registered as an exhibitor, research facility, carrier, or intermediate handler, in addition to not being licensed, within the period during which the order of suspension or revocation is in effect. In paragraph (c), we would add that any person whose license has been suspended or revoked shall not shall not buy, sell, transport, exhibit, or deliver for transportation, any animal during the period of suspension or revocation under any circumstances, whether on behalf of themselves or another. In paragraph (a), we would replace ''AC Regional Director'' with ''Deputy Administrator,'' consistent with our proposal to update these terms.

We propose to amend § 2.11, ''Denial of initial license application.'' We would remove the word ''initial'' from the section heading in light of the proposed application process for fixed-term licenses. We also would adjust the section reference in paragraph (a)(1) to reflect the change in location of fee information (from existing § 2.6 to proposed § 2.1), and would add a new paragraph (a)(4) to include the denial of a license application to any applicant who was an officer, agent, or employee of a licensee whose license has been suspended or revoked, as set forth in § 2.9. We would then redesignate existing paragraphs (a)(4) through (6) as (a)(5) through (7). In proposed paragraph (a)(5), we also would conform the length of time during which an application can be denied due to a *nolo contendere* (no contest) plea or finding of a violation of any Federal, State, or local laws or regulations pertaining to animal cruelty with the proposed 3-year period of licensure. We would clarify in paragraph (a)(2) that a license will not be issued to any applicant who is not in compliance with the Act (in addition to the regulations and standards) and in paragraph (d) that no license will be issued under circumstances that the Administrator determines would circumvent any order, stipulation, or settlement agreement suspending, revoking, terminating, or denying a license or disqualifying a person from engaging in activities under the Act.

In proposed paragraph (b), we would add provisions to outline the process through which an applicant whose license application has been denied may request an expedited hearing before an administrative law judge. This process would be available to applicants who hold a valid license at the time they submitted a new license application, submitted the new license application no fewer than 90 days prior to the expiration of the valid license, and who submitted a timely appeal contesting the finding(s) from the third pre-license inspection. Applicants meeting these criteria would receive an expedited hearing no later than 30 days after receipt of the hearing request. Furthermore, the ALJ must issue his or her initial decision within 30 days of the hearing. The license the applicant held at the time he or she submitted the new license application would remain valid and in effect until the ALJ issued his or her initial decision. In the event the ALJ issued a decision affirming the Agency's denial of the license application, the license would terminate immediately and the applicant would not be eligible for any temporary license if he or she elected to appeal the ALJ's initial decision.

We propose to add a new § 2.13, ''Appeal of Inspection Report,'' to explain the process by which a licensee or registrant may appeal the findings of an inspection report. To receive consideration, the appeal must be received by the Deputy Administrator within 21 days of the date the licensee or registration received the inspection report and must contain a written statement contesting the inspection findings and include any documentation or other information in support of the appeal.

We propose to amend § 2.38, ''Miscellaneous,'' by eliminating the statement that APHIS will publish lists of research facilities in the **Federal Register**. APHIS is undertaking this change to reflect both current business practices of publishing information using public websites for ease of access, and the Agency's practice of maintaining and regularly updating a list of registered research facilities on the APHIS website. Consistent with the existing provision, interested parties may continue to request the list from the Deputy Administrator.

We propose to amend § 2.127, ''Publication of names of persons subject to the provisions of this part,'' by replacing the word ''names'' in the title with the word ''lists,'' and by removing the statement that the list will be published in the **Federal Register**. As noted above, APHIS is undertaking this change to reflect current business practices of publishing information on its website, including a list of persons who are licensed and registered with APHIS under the AWA. Consistent with the existing provision, interested parties may continue to request the list from the Deputy Administrator.

Importation of Live Dogs

We are proposing several clarifying edits to the importation of live dog regulations for consistency and conformance with the Act. We propose to amend § 2.150, ''Import permit,'' by removing the words ''research, or veterinary treatment'' in paragraph (a) and adding the words ''resale for'' before the words ''research purposes'' in paragraph (c)(8). We would also clarify § 2.151, ''Certifications,'' by removing the words ''research, or veterinary treatment'' in paragraph (a), adding the words ''resale for'' before the words ''use in research'' in the first sentence of paragraph (b)(1), and adding the words ''and subsequent resale'' in the discussion of veterinary treatment by a licensed veterinarian in paragraph (b)(2). These changes would harmonize the regulations with the Act and make clear that dogs intended for resale for research purposes, or dogs intended for resale following veterinary treatment, must be imported with an import permit and accompanying certifications, except as provided in § 2.151(b).

We would also amend § 2.153 by adding the words ''or the Act'' immediately after the words ''this subpart.'' We are proposing this change to make clear that the removal and seizure procedures in this section apply to noncompliance with the Act as well as the regulations.

Finally, for consistency with the AWA and regulations, we would remove the words ''continental United States or Hawaii'' everywhere they appear in the import of live dogs regulations and replace them with the word ''States,'' which is defined in part 1 to mean ''a State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.'' This change would make clear that no import permit is required when transporting dogs within the United States.

Animal Health and Husbandry Standards

In addition to the licensing revisions, we considered making changes to requirements in the animal health and

husbandry standards in subpart A of part 3 that would better align the regulations with standards of humane animal treatment established under the AWA. One option under consideration was to revise various provisions pertaining to the care of dogs, particularly in relation to housing and access to water, among other things. For example, current regulations require that dogs that do not have continual access to water must be offered water not less than twice daily for at least 1 hour each time. Although lack of continual access to water is generally not a risk to healthy dogs, when other stress factors are present (*e.g.* ill, infirm, pregnant, or young dogs, and/or exposure to temperature extremes), lack of access to water may escalate health consequences. We contemplated adding a provision that would account for the unique watering needs for certain dogs, short of requiring that the animals have 24-hour access to clean, drinkable water to promote their health and well-being. However, in examining the issues and accounting for the animal health and well-being factors involved, we determined that the most prudent approach would be to include such a provision requiring all dogs to have 24-hour access to water. In addition, we are proposing specific veterinary care requirements for dogs. It is our expectation that adding this would strengthen arrangements between licensees and registrants and their attending veterinarians and enhance preventative and ongoing care for dogs, and, coupled with continual access to water—by which we mean constant, uninterrupted access at all times—would result in the greatest benefit to health and well-being of dogs. Accordingly, we propose to revise § 3.10 to add a provision that requires dogs to have continual access to potable water, unless restricted by the attending veterinarian.

We also propose to amend the veterinary care requirements for dogs in a new § 3.13. We would expand existing regulations in subpart D requiring dealers and exhibitors to establish and maintain an adequate program of veterinary care (PVC) for regulated animals. Proposed § 3.13 would require that each dealer, exhibitor, and research facility must follow an appropriate PVC for dogs that is developed, documented in writing, and signed by an attending veterinarian, that includes annual, hands-on veterinary exams for adult dogs by the attending veterinarian and addresses husbandry issues for hair coat, toenails, teeth, skin, and ears. These annual veterinary exams would be required in addition to existing veterinary care requirements that provide for regularly scheduled visits by the attending veterinarian to premises where animals are kept to ensure the adequacy of animal care and use. Dealers, exhibitors, and research facilities would be required to keep and maintain the written program and to make it available for inspection by APHIS. Other proposed provisions would require vaccinations—unless contraindicated for health reasons or unless otherwise required by a research protocol approved by the Institutional Animal Care and Use Committee at research facilities—for contagious and deadly diseases of dogs (including rabies, parvovirus, and distemper), appropriate preventative care and treatment, and recordkeeping requirements for veterinary and preventive care that the dogs receive.

The expanded PVC would guide facilities with dogs in practicing a minimum level of acceptable husbandry and in maintaining records of preventative care and the treatment of ill or injured dogs. Annual hands-on physical exams by the attending veterinarian would allow for evaluation of factors that could affect the dogs' health, well-being, and ability to reproduce. Health problems that are detected early could receive timely and appropriate veterinary care. A required husbandry program would help ensure the overall health of adult dogs and puppies, thereby preventing avoidable disease, illness, and injury. Required medical records would help facilities keep track of incidents, treatments and progress of care, and would also allow facilities to track individual health trends and the frequency of illnesses and injuries for the kennel as a whole.

Miscellaneous

Throughout parts 1, 2, and 3, we propose to update any and all references to ''AC Regional Director'' with ''Deputy Administrator'' to more accurately reflect the current position title in use. Similarly, we propose to update any and all references to ''regional offices'' with the appropriate Animal Care office. Animal Care maintains information regarding its offices and services on the APHIS website, and directs callers to the appropriate Animal Care office or person who is best able to assist them. In addition, APHIS maintains a website to assist the public with reaching the appropriate point of contact for each program area.[3] These interactive services will continue to ensure individuals have information about Animal Care's offices and services.

We also propose to correct minor typographical errors in §§ 2.38, 3.61, 3.78, and 3.110. We would replace an erroneous period with a comma in § 2.38(g)(1), correct the spelling of ''species'' in § 3.61(b), correct the spelling of ''words'' in § 3.61(f), replace an unintended zero with the letter ''O'' in § 3.78, and remove an inadvertently repetitive phrase in § 3.110(a). Finally, we propose to correct erroneous citations to the health certificate requirements that appear in three places in the regulations. Instead of listing § 2.78 as the section containing the health certificate requirements, §§ 2.75 and 2.77 erroneously list the section as § 2.79. Executive Orders 12866, 13563, and 13771 and Regulatory Flexibility Act.

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. This proposed rule is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides an initial regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

Based on the information we have thus far, the Agency does not believe that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary

[3] See *https://www.aphis.usda.gov/aphis/banner/contactus/sa_animal_welfare* and *https://www.usda.gov/ask-expert.*

for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

APHIS is proposing revisions to the licensing requirements to promote compliance with the Animal Welfare Act (AWA), as well as strengthen existing safeguards that prevent individuals and businesses that are unfit to hold a license from obtaining a license or from working with regulated animals. Licensees would be required to affirmatively demonstrate compliance and pay the associated license fee once every 3 years rather than renew their certification of regulatory compliance every year. In addition, the fee would be changed to a flat rate rather than a set of tiered rates. This action would promote AWA compliance by requiring that regulated businesses affirmatively demonstrate regulatory compliance when applying for or renewing a license. It would reduce the license fee for most regulated entities and would reduce the compliance paperwork burden for all licensees.

In addition, there would be cost savings in terms of the reduced time (clerical work) needed to complete and submit initial and renewal license applications. As shown in table 3 of the full analysis, the combined fee and clerical work cost savings would range between about $633,000 and $2.1 million.

APHIS considered several alternatives in developing various aspects of the proposed rule. Regarding the types of animals that would trigger the need for a new license, APHIS considered requiring a new license for all exotic or wild animal changes, but rejected this alternative because it would result in unnecessary renewals (*e.g.,* gerbils can be exotic/wild). Instead, APHIS proposes to require a new license for types of animals that are dangerous and have unique regulatory and care needs.

Regarding the number of animals that would trigger the need for a new license, APHIS considered a range of from 20 to 100, but settled on 50 animals after reviewing animal inventory counts at regulated facilities, considering the potential burden to licensees who add new animals and to the agency in its administration of the licensing program, and animal welfare benefits. If APHIS were to set the threshold number too low, businesses would need to apply for licenses frequently with little animal welfare benefit, and animal welfare risks may not be acceptable if the number were too high.

For the proposed licensing fees, APHIS found continuing to use a tiered approach for setting fees would not allow us to realize the efficiencies to be gained through the use of a flat fee. This is because some facilities have small numbers of animals and derive significant income from their regulated activities, while other facilities can have large numbers of animals and derive modest income from their regulated activities. Also, APHIS noted the fact that the fees are not intended to be user fees for inspections.

With respect to automatic license termination following two or more attempted inspections during the period of licensure, APHIS considered requiring immediate termination but decided in favor of allowing the licensee the opportunity to first present evidence in defense. Finally, APHIS also considered different time frames for the fixed-term license (*e.g.,* 4 or 5 years) and settled on 3 years based on our experience administering the AWA.

APHIS is also proposing to amend the veterinary care requirements for dogs that are under the care of entities covered by the AWA. Facilities with dogs would be required to have an expanded program of veterinary care (PVC) that includes annual, hands-on veterinary exams for adult dogs by the attending veterinarian and addresses husbandry issues for hair coat, toenails, teeth, skin, and ears. Facilities would also be required to create and maintain medical records of preventative health care measures and the treatment of ill and injured dogs.

The expanded PVC would guide the facilities in practicing a minimum level of acceptable husbandry and in maintaining records of preventative care and the treatment of ill or injured dogs. Annual hands-on physical exams by the attending veterinarian would allow for evaluation of factors that could affect the dogs' health, well-being, and ability to reproduce. Health problems that are detected early could receive timely and appropriate veterinary care. A required husbandry program would help ensure the overall health of adult dogs and puppies, thereby preventing avoidable disease, illness, and injury. Required medical records would help facilities keep track of incidents, treatments and progress of care. They also allow facilities to track individual health trends and the frequency of illnesses and injuries for the kennel as a whole.

The total industry cost of complying with this requirement is estimated to be between $284,000 and $948,000. Additionally, expanding a PVC form would require time for the attending veterinarian to complete. However, the PVC only has to be written once unless changes are made later. Most PVCs used by an attending veterinarian would be very similar, facility-to-facility. We estimate the cost of developing a new, fully compliant PVC would be about $150 per facility. Once a fully compliant PVC has been developed, we estimate the cost of having the attending veterinarian update and make adjustments to it as needed, and of discussing any PVC changes with the licensee during the annual premises visit would be about $50 per facility.

It would take operators time to create and maintain medical records for any dogs that become ill or injured, and to keep preventative health records. The incremental industry cost of keeping medical records for ill or injured dogs would be about $112,000 per year. The incremental industry cost of keeping preventive records would be about $247,300.

This proposed rule would also amend the AWA standard for dogs with respect to access to clean, drinkable water. The current regulations state that if potable water is not continually available to a facility's dogs, it must be offered as often as necessary to ensure the animal's health and well-being, and not less than twice daily for at least 1 hour each time, unless restricted by the attending veterinarian. The proposed standard would require that facilities make potable water continually available. We estimate that between 50 and 70 percent of regulated facilities provide 24-hour access to water. Thirty to 50 percent of those licensees and registrants not providing 24-hour access to water would likely bear plumbing and labor costs to ensure such access. We estimate that the proposed water access requirements for facilities having dogs would result in one-time costs expected to range from $1,021,000 to $2,460,000. It is possible that some such facilities could provide 24-hour access to clean, drinkable water using receptacles such as pans and bowls. Some of the factors that may influence whether water bowls are a feasible option for compliance at a given facility may include the size of the facility, number and type of dogs, the type, size, and configuration of water bowls used, and the availability of staff to refill and monitor the bowls, among other things. We welcome public comment that would enable us to better estimate these costs.

With regard to the proposed veterinary care requirements, APHIS considered not including the provision to require that the dogs have 24-hour

access to clean, drinkable water. However, the Agency determined that this requirement is important for animal welfare and should be a part of this proposed rule.

All businesses covered under the AWA would be affected by the proposed licensing requirements, including animal dealers, exhibitors, retail pet stores, brokers, and breeders. The number of these entities varies from year to year, but has tended to be around 6,000 in recent years. Based on reported revenue data and Small Business Administration small-entity standards, the majority of the entities affected by this rule can be considered small. About one-half of these businesses are licensees and registrants with dogs, including about 2,240 dog breeder facilities.

The proposed licensing requirements would result in annual cost savings expected to range from about $633,000 to $2,115,000. The proposed veterinary care requirements for facilities having dogs would result in annual costs ranging from about $841,200 to about $1,505,200, and the proposed water access requirement for these facilities would result in annual costs ranging from about $1,020,800 to $2,460,000. Net costs are therefore expected to range from annual cost savings of $253,000 (the higher licensing cost savings estimate plus the lower veterinary care and water access cost estimates) to annual costs of $3,331,950 (the lower licensing cost savings estimate plus the higher veterinary care and water access cost estimates). Based on the costs and in accordance with guidance on complying with Executive Order 13771, the single primary estimate of the costs of this proposed rule is $1,539,000, the mid-point estimate of net costs annualized in perpetuity using a 7 percent discount rate. We seek comments on our regulatory analysis, including on the assumptions underlying our estimates. If you have an alternative estimate, please provide any supporting documents or data.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act provides administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Executive Order 13175

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), some of the information collection requirements included in this proposed rule have been approved under Office of Management and Budget (OMB) control number 0579–0036. The new information collection requirements included in this proposed rule have been submitted as a new information collection for approval to OMB.

Please send comments on the Information Collection Request (ICR) to OMB's Office of Information and Regulatory Affairs via email to *oira_submissions@omb.eop.gov,* Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2017–0062. Please send a copy of your comments to USDA, using one of the methods described under **ADDRESSES** at the beginning of this document.

We are proposing to amend the licensing requirements under the AWA regulations and strengthen the veterinary care standards for regulated dogs. The amendments include, but are not limited to, the following new information collection requirements: Use of a new fixed-term license application for dealers and exhibitors that expires after 3 years, at which time they would be required to demonstrate compliance before obtaining another fixed-term license; requiring license applicants to disclose any animal cruelty convictions or others violations of Federal, State, or local laws or regulations pertaining to animals, to assess their fitness for licensure; and enhancing adequate veterinary care for dogs, including the maintenance of medical records. The proposed license application would replace an existing initial license application and an annual license renewal application. We anticipate that the proposed license application would take the same amount of time to complete as the existing applications, but would only be required every 3 years, instead of an annual renewal. The proposed rule would also require licensees and registrants who hold dogs to maintain medical records on the preventative care provided to dogs, and to track medical conditions and treatment for ill and injured dogs. The use of these activities will help ensure that dealers, exhibitors, and operators of auction sales demonstrate compliance with the applicable standards in 9 CFR part 3, providing for the humane handling, care, treatment, and transportation of animals under the AWA.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

Estimate of burden: Public burden for this collection of information is estimated to average 0.08 hours per response.

Respondents: Businesses or other for-profit entities; not-for-profit institutions; farms; and State, local, and Tribal governments.

Estimated annual number of respondents: 5,112.

Estimated annual number of responses per respondent: 75.

Estimated annual number of responses: 382,148.

Estimated total annual burden on respondents: 29,720 hours.

(Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the estimate of burden.)

Copies of this information collection may be viewed on the *Regulations.gov* website or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) Copies can also be obtained from Ms. Kimberly Hardy, APHIS' Information Collection

Coordinator, at (301) 851–2483. APHIS will respond to any ICR-related comments in the final rule. All comments will also become a matter of public record.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects

9 CFR Parts 1 and 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, we propose to amend 9 CFR parts 1, 2, and 3 as follows:

PART 1—DEFINITION OF TERMS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 2. Section 1.1 is amended by removing the definition for *AC Regional Director* and revising the definition for *Business hours* to read as follows:

§ 1.1 Definitions.

* * * * *

Business hours means a reasonable number of hours between 7 a.m. and 7 p.m. each week of the year, during which inspections by APHIS may be made.

* * * * *

PART 2—REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 4. Section 2.1 is amended as follows:

■ a. By revising paragraphs (a)(1) and (2), (b), and (c);

■ b. By removing paragraph (d) and redesignating paragraph (e) as paragraph (d); and

■ c. By revising newly redesignated paragraph (d).

The revisions read as follows:

§ 2.1 Requirements and application.

(a)(1) No person shall operate as a dealer, exhibitor, or operator of an auction sale, without a valid license, except persons who are exempt from the licensing requirements under paragraph (a)(3) of this section. A person must be 18 years of age or older to obtain a license. A person seeking a license shall apply on a form which will be furnished by the Deputy Administrator. The applicant shall provide the information requested on the application form, including, but not limited to:

(i) The name of the person applying for the license;

(ii) A valid mailing address through which the applicant can be reached at all times;

(iii) A valid address for all premises, facilities, or locations where animals, animal facilities, equipment, and records are held, kept, or maintained;

(iv) The anticipated maximum number of animals on hand at any one time during the period of licensure;

(v) The anticipated type of animals to be owned, held, maintained, sold, or exhibited, including those animals leased, during the period of licensure, and if the anticipated type of animals includes exotic or wild animals, information and records demonstrating that the applicant has adequate knowledge of and experience with those animals;

(vi) If the person is seeking a license as an exhibitor, whether the person intends to exhibit any animal at any location other than the person's location(s) listed pursuant to paragraph (a)(1)(iii) of this section; and

(vii) Disclosure of any plea of *nolo contendere* (no contest) or finding of violation of Federal, State, or local laws or regulations pertaining to animal cruelty or the transportation, ownership, neglect, or welfare of animals.

(2) The completed application form, along with a $120 license fee, shall be submitted to the appropriate Animal Care office.

* * * * *

(b)(1) No person shall have more than one license. Licenses are issued to specific persons, and are issued for specific activities, animals, and approved sites. Licenses are not valid upon change of ownership, location, activities, or animals, and a new license must be obtained. A licensee shall notify Animal Care no fewer than 90 days, and obtain a new license, before any change in the name, address, management, substantial control or ownership of his business or operation, locations, activities, and number or type of animals described in paragraph (b)(2) of this section. Any person who is subject to the regulations in this subchapter and who intends to exhibit any animal at any location other than the person's approved site must provide that information on their application form in accordance with paragraph (a) of this section and submit written itineraries in accordance with § 2.126.

(2) Licenses authorize a specific number and specific type(s) of animals, as follows:

(i) Licenses authorize increments of 50 animals on hand at any single point in time during the period of licensure. A licensee must obtain a new license before any change resulting in more than the authorized number of animals on hand at any single point in time during the period of licensure.

(ii) Licenses authorize the use of animals subject to subparts A through F in part 3 of this subchapter, except that, for animals subject to subparts D and F, licenses must specifically authorize the use of each of the following groups of animals: Group 5 and 6 nonhuman primates, big cats or large felids (lions, tigers, leopards, cheetahs, jaguars, cougars, and any hybrid cross thereof), wolves, bears, and mega-herbivores (elephants, rhinoceroses, hippopotamuses, and giraffes). A licensee must obtain a new license before using any animal beyond those animals authorized under the existing license.

(c) A license will be issued to any applicant, except as provided in §§ 2.9 through 2.11, when:

(1) The applicant has met the requirements of this section and §§ 2.2 and 2.3; and

(2) The applicant has paid a $120 license fee to the appropriate Animal Care office. The applicant may pay the fee by certified check, cashier's check, personal check, money order, or credit card. An applicant whose check is returned by a bank will be charged a fee of $20 for each returned check. If an applicant's check is returned, subsequent fees must be paid by certified check, cashier's check, or money order.

(d) The failure of any person to comply with any provision of the Act, or any of the provisions of the regulations or standards in this subchapter, shall constitute grounds for denial of a license or for its suspension or revocation by the Secretary, as provided in the Act.

* * * * *

■ 5. Section 2.2 is revised to read as follows:

§ 2.2 Acknowledgement of regulations and standards.

Animal Care will supply a copy of the Act and the regulations and standards to an applicant upon request. Signing the application form is an acknowledgement that the applicant has reviewed the Act and the regulations and standards and agrees to comply with them.

■ 6. Section 2.3 is revised to read as follows:

§ 2.3 Demonstration of compliance with standards and regulations.

(a) Each applicant for a license must demonstrate that his or her location(s) and any animals, facilities, vehicles, equipment, or other locations used or intended for use in the business comply with the Act and the regulations and standards set forth in parts 2 and 3 of this subchapter. Each applicant must make his or her animals, locations, facilities, vehicles, equipment, and records available for inspection during business hours and at other times mutually agreeable to the applicant and APHIS, to ascertain the applicant's compliance with the Act and the regulations and standards.

(b) Each applicant for a license must be inspected by APHIS and demonstrate compliance with the Act and the regulations and standards, as required in paragraph (a) of this section, before APHIS will issue a license. If the first inspection reveals that the applicant's animals, premises, facilities, vehicles, equipment, locations, or records do not meet the applicable requirements of this subchapter, APHIS will advise the applicant of existing deficiencies and the corrective measures that must be completed to come into compliance with the regulations and standards. An applicant who fails the first inspection may request up to two more inspections by APHIS to demonstrate his or her compliance with the Act and the regulations and standards. The applicant must request the second inspection, and if applicable, the third inspection, within 60 days following the first inspection.

(c) Any applicant who fails the third and final pre-license inspection may appeal all or part of the inspection findings to the Deputy Administrator. To appeal, the applicant must send a written statement contesting the inspection finding(s) and include any documentation or other information in support of the appeal. To receive consideration, the appeal must be received by the Deputy Administrator within 7 days of the date the applicant received the third pre-license inspection report. Within 7 days of receiving a timely appeal, the Deputy Administrator will issue a written response to notify the applicant whether APHIS will issue a license or deny the application.

(d) If an applicant fails inspection or fails to request reinspections within the 60-day period, or fails to submit a timely appeal of the third pre-license inspection report as described in paragraph (c) of this section, the applicant will forfeit the application fee and cannot reapply for a license for a period of 6 months from the date of the failed third inspection or the expiration of the time to request a third inspection. No license will be issued until the applicant demonstrates upon inspection that the animals, premises, facilities, vehicles, equipment, locations, and records are in compliance with all applicable requirements in the Act and the regulations and standards in this subchapter.

■ 7. Section 2.5 is revised to read as follows:

§ 2.5 Duration of license and termination of license.

(a) A license issued under this part shall be valid and effective for 3 years unless:

(1) The license has been revoked or suspended pursuant to section 19 of the Act.

(2) The license is voluntarily terminated upon request of the licensee, in writing, to the Deputy Administrator.

(3) The license has expired, except that:

(i) The Deputy Administrator may issue a temporary license that automatically expires after 120 days to an applicant whose immediately preceding 3-year license has expired if:

(A) The applicant submits the appropriate application form before the expiration date of a preceding license; and

(B) The applicant had no noncompliances with the Act and the regulations and standards in parts 2 and 3 of this subchapter documented in an inspection report during the preceding period of licensure.

(ii) For expedited hearings occurring under § 2.11(b)(2), a license will remain valid and effective until the administrative law judge issues his or her initial decision. Should the administrative law judge's initial decision affirm the denial of the license application, the applicant's license shall terminate immediately.

(4) There will not be a refund of the license fee if a license is denied, terminated, suspended, or revoked prior to its expiration date.

(b) Any person who seeks the reinstatement of a license that has expired or been terminated must follow the procedure applicable to new applicants for a license set forth in § 2.1.

(c) A license which is invalid under this part shall be surrendered to the Deputy Administrator. If the license cannot be found, the licensee shall provide a written statement so stating to the Deputy Administrator.

§ 2.6—2.8 [Removed and Reserved]

■ 8. Sections 2.6—2.8 are removed and reserved.

■ 9. Section 2.9 is revised to read as follows:

§ 2.9 Officers, agents, and employees of licensees whose licenses have been suspended or revoked.

Any person who has been or is an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the activity upon which the order of suspension or revocation was based will not be licensed, or registered as a carrier, intermediate handler, exhibitor, or research facility within the period during which the order of suspension or revocation is in effect.

■ 10. Section 2.10 is revised to read as follows:

§ 2.10 Licensees whose licenses have been suspended or revoked.

(a) Any person whose license has been suspended for any reason shall not be licensed, or registered, in his or her own name or in any other manner, within the period during which the order of suspension is in effect. No partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed or registered during that period. Any person whose license has been suspended for any reason may apply to the Deputy Administrator, in writing, for reinstatement of his or her license.

(b) Any person whose license has been revoked shall not be licensed or registered, in his or her own name or in any other manner, and no partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed or registered.

(c) Any person whose license has been suspended or revoked shall not buy, sell, transport, exhibit, or deliver for transportation, any animal during the period of suspension or revocation, under any circumstances, whether on his or her behalf or on the behalf another licensee or registrant.

■ 11. Section 2.11 is revised to read as follows:

§ 2.11 Denial of license application.

(a) A license will not be issued to any applicant who:

(1) Has not complied with the requirements of §§ 2.1 through 2.4 and has not paid the fees indicated in § 2.1;

(2) Is not in compliance with the Act or any of the regulations or standards in this subchapter;

(3) Has had a license revoked or whose license is suspended, as set forth in § 2.10;

(4) Was an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the activity upon which the order of suspension or revocation was based, as set forth in § 2.9;

(5) Has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 3 years of application, or after 3 years if the Administrator determines that the circumstances render the applicant unfit to be licensed;

(6) Is or would be operating in violation or circumvention of any Federal, State, or local laws; or

(7) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

(b) Applicants may request a hearing under the following circumstances:

(1) An applicant whose initial license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. The denial of an initial license application shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise.

(2) An applicant who submitted a timely appeal of a third pre-license inspection as described in § 2.3(c), and whose appeal results in the denial of the license application, may request an expedited hearing if the applicant held a valid license when he or she submitted the license application that has been denied and the Deputy Administrator received such license application no fewer than 90 days prior to the expiration of the valid license. If the applicant meets the criteria in this paragraph, and notwithstanding the timeframes of the proceedings set forth in the applicable rules of practice (7 CFR 1.130 through 1.151):

(i) The applicant must submit the request for an expedited hearing within 30 days of receiving notice from the Deputy Administrator that the license application has been denied;

(ii) The administrative law judge shall set the expedited hearing so that it occurs within 30 days of receiving a timely request for expedited hearing as described in paragraph (b)(2)(i) of this section; and

(iii) The administrative law judge must issue an initial decision no later than 30 days after the expedited hearing.

(iv) The applicant's license will remain valid until the administrative law judge issues his or her initial decision. Should the administrative law judge's initial decision affirm the denial of the license application, the applicant's license shall terminate immediately.

(c) No partnership, firm, corporation, or other legal entity in which a person whose license application has been denied has a substantial interest, financial or otherwise, will be licensed within 1 year of the license denial.

(d) No license will be issued under circumstances that the Administrator determines would circumvent any order, stipulation, or settlement agreement suspending, revoking, terminating, or denying a license or disqualifying a person from engaging in activities under the Act.

■ 12. Section 2.12 is revised to read as follows:

§ 2.12 Termination of a license.

A license may be terminated at any time for any reason that a license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice.

■ 13. Section 2.13 is added to read as follows:

§ 2.13 Appeal of inspection report.

Except as otherwise provided in § 2.3(c), any licensee or registrant may appeal all or part of the inspection findings in an inspection report to the Deputy Administrator. To appeal, the licensee or registrant must send a written statement contesting the inspection finding(s) and include any documentation or other information in support of the appeal. To receive consideration, the appeal must be received by the Deputy Administrator within 21 days of the date the licensee or registrant received the inspection report that is the subject of the appeal.

§ 2.25 [Amended]

■ 14. In § 2.25, paragraph (a) is amended by removing the words ''AC Regional Director'' each time they appear and adding the words ''Deputy Administrator'' in their place.

§ 2.26 [Amended]

■ 15. Section 2.26 is amended by removing the words ''AC Regional Director'' and adding the words ''Deputy Administrator'' in their place.

§ 2.27 [Amended]

■ 16. Section 2.27 is amended by removing the words ''AC Regional Director'' each time they appear and adding the words ''Deputy Administrator'' in their place.

§ 2.30 [Amended]

■ 17. Section 2.30 is amended by removing the words ''AC Regional Director'' each time they appear and adding the words ''Deputy Administrator'' in their place.

§ 2.36 [Amended]

■ 18. In § 2.36, paragraph (a) is amended by removing the words ''AC Regional Director'' and adding the words ''Deputy Administrator'' in their place.

■ 19. Section 2.38 is amended as follows:

■ a. By revising paragraph (c);

■ b. In paragraph (g)(1) introductory text, by removing the period between the words ''acquired'' and ''sold'' and adding a comma in its place;

■ c. In paragraph (g)(7) footnote 1, by removing the words ''AC Regional Director'' and adding the words ''Deputy Administrator'' in their place; and

■ d. In paragraph (i) introductory text, by removing the words ''AC Regional Director'' and adding the words ''Deputy Administrator'' in their place.

The revision reads as follows:

§ 2.38 Miscellaneous.

* * * * *

(c) *Publication of lists of research facilities subject to the provisions of this part.* APHIS will publish on its website lists of research facilities registered in accordance with the provisions of this subpart. The lists may be obtained upon request from the Deputy Administrator.

* * * * *

§ 2.52 [Amended]

■ 20. In § 2.52, footnote 4 is amended by removing the words ''AC Regional

Director'' and adding the words ''Deputy Administrator'' in their place.

§ 2.75 [Amended]

■ 21. In § 2.75, paragraphs (a)(3) and (b)(2) are amended by removing the citation ''§ 2.79'' and adding the citation ''§ 2.78'' in its place.

§ 2.77 [Amended]

■ 22. In § 2.77, paragraph (b) is amended by removing the citation ''§ 2.79'' and adding the citation ''§ 2.78'' in its place.

§ 2.102 [Amended]

■ 23. In § 2.102, paragraphs (a) and (b) introductory text are amended by removing the words ''AC Regional Director'' and adding the words ''Deputy Administrator'' in their place.

§ 2.126 [Amended]

■ 24. In § 2.126, paragraph (c) is amended by removing the words ''AC Regional Director'' each time they appear and adding the words ''Deputy Administrator'' in their place.
■ 25. Section 2.127 is revised to read as follows:

§ 2.127 Publication of lists of persons subject to the provisions of this part.

APHIS will publish on its website lists of persons licensed or registered in accordance with the provisions of this part. The lists may also be obtained upon request from the Deputy Administrator.

§ 2.150 [Amended]

■ 26. Section 2.150 is amended as follows:
■ a. By removing the words ''continental United States or Hawaii'' each time they appear and adding the word ''States'' in their place;
■ b. In paragraph (a), by removing the words '', research, or veterinary treatment''; and
■ c. In paragraph (c)(8), by adding the words ''resale for'' immediately before the words ''research purposes''.

§ 2.151 [Amended]

■ 27. Section 2.151 is amended as follows:
■ a. By removing the words ''continental United States or Hawaii'' each time they appear and adding the word ''States'' in their place;
■ b. In paragraph (a) introductory text, by removing the words '', research, or veterinary treatment'';
■ c. In paragraph (b)(1), by adding the words ''resale for'' immediately before the words ''use in research, tests, or experiments at a research facility''; and
■ d. In paragraph (b)(2) introductory text, by adding the words ''and subsequent resale'' immediately after the words ''for veterinary treatment by a licensed veterinarian''.

§ 2.152 [Amended]

■ 28. Section 2.152 is amended by removing the words ''continental United States or Hawaii'' and adding the word ''States'' in their place.

§ 2.153 [Amended]

■ 29. Section 2.153 is amended as follows:
■ a. By removing the words ''continental United States or Hawaii'' both times they appear and adding the word ''States'' in their place; and
■ b. By adding the words ''or the Act'' immediately after the words ''this subpart''.

PART 3—STANDARDS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

§ 3.6 [Amended]

■ 31. In § 3.6, paragraphs (b)(5) and (c)(3) are amended by removing the citation ''§ 3.14 of this subpart'' and adding the citation ''§ 3.15'' in their place, and by removing the citation ''§ 3.14(a)(6) of this subpart'' and adding the citation ''§ 3.15(a)(6)'' in its place.
■ 32. Section 3.10 is revised to read as follows:

§ 3.10 Watering.

(a) Potable water must be continually available to the dogs, unless restricted by the attending veterinarian.

(b) If potable water is not continually available to the cats, it must be offered to the cats as often as necessary to ensure their health and well-being, but not less than twice daily for at least 1 hour each time, unless restricted by the attending veterinarian.

(c) Water receptacles must be kept clean and sanitized in accordance with § 3.11(b) and before being used to water a different dog or cat or social grouping of dogs or cats.

§§ 3.13 through 3.19 [Redesignated as §§ 3.14 through 3.20]

■ 33. Sections 3.13 through 3.19 are redesignated as §§ 3.14 through 3.20, respectively.
■ 34. New § 3.13 is added to read as follows:

§ 3.13 Veterinary care for dogs.

(a) Each dealer, exhibitor, and research facility must follow an appropriate program of veterinary care for dogs that is developed, documented in writing, and signed by the attending veterinarian. Dealers, exhibitors, and research facilities must keep and maintain the written program and make it available for APHIS inspection. The written program of veterinary care must address and meet the requirements for attending veterinarians and adequate veterinary care for every dealer and exhibitor in § 2.40 of this subchapter and every research facility in § 2.33 of this subchapter, and must also include:

(1) Regularly scheduled visits, not less than once every 12 months, by the attending veterinarian to all premises where animals are kept, to assess and ensure the adequacy of veterinary care and other aspects of animal care and use;

(2) A complete physical examination from head to tail of each dog by the attending veterinarian not less than once every 12 months;

(3) Vaccinations for contagious and deadly diseases of dogs (including rabies, parvovirus and distemper) and sampling and treatment of parasites and other pests (including fleas, worms, coccidia, giardia, and heartworm) in accordance with a schedule approved by the attending veterinarian, unless otherwise required by a research protocol approved by the Committee at research facilities; and

(4) Preventative care and treatment to ensure healthy and unmatted hair coats, properly trimmed nails, and clean and healthy eyes, ears, skin, and teeth, unless otherwise required by a research protocol approved by the Committee at research facilities.

(b) Dealers, exhibitors, and research facilities must keep copies of medical records for dogs and make the records available for APHIS inspection. These records must include:

(1) The identity of the animal, including identifying marks, tattoos, or tags on the animal and the animal's breed, sex, and age; *Provided,* however, that routine husbandry, such as vaccinations, preventive medical procedures, or treatments, performed on all animals in a group (or herd), may be kept on a single record;

(2) If a problem is identified (such as a disease, injury, or illness), the date and a description of the problem, examination findings, test results, plan for treatment and care, and treatment procedures performed, when appropriate;

(3) The names of all vaccines and treatments administered and the dates of administration; and

(4) The dates and findings/results of all screening, routine, or other required or recommended test or examination.

§ 3.14 [Amended]

■ 35. Newly redesignated § 3.14 is amended as follows:

■ a. In paragraph (c) introductory text, by removing the citation ''§ 3.16 of this subpart'' and adding the citation ''§ 3.17'' in its place;

■ b. In paragraph (d), by removing the citation ''§ 3.14 of this subpart'' and adding the citation ''§ 3.15'' in its place; and

■ c. In paragraph (e) introductory text:

■ i. In the first sentence, by removing the citation ''§§ 3.18 and 3.19 of this subpart'' both times it appears and adding the citation ''§§ 3.19 and 3.20'' in its place; and

■ ii. In the second sentence, by removing the citations ''§ 3.18'' and ''§ 3.19'' and adding the citations ''§ 3.19''and ''§ 3.20'' in their place, respectively.

§ 3.15 [Amended]

■ 36. In newly redesignated § 3.15, paragraph (h) is amended by removing the citation ''§ 3.13(c)'' and adding the citation ''§ 3.14(c)'' in its place.

§ 3.17 [Amended]

■ 37. In newly redesignated § 3.17, paragraph (a) is amended by removing the citation ''§ 3.13(c) of this subpart'' both times they appear and adding the citation ''§ 3.14(c)'' in its place.

§ 3.18 [Amended]

■ 38. Newly redesignated § 3.18 is amended as follows:

■ a. In paragraph (a), by removing the citation ''§ 3.15(e)'' and adding the citation ''§ 3.16(e)'' in its place;

■ b. In paragraph (b), by removing the citation ''§ 3.15(d)'' and adding the citation ''§ 3.16(d)'' in its place; and

■ c. In paragraph (d), by removing the citation ''§ 3.14(b) of this subpart'' and adding the citation ''§ 3.15(b)'' in its place, and by removing the citation ''§ 3.6 or § 3.14 of this subpart'' and adding the citation ''§§ 3.6 or 3.15'' in its place.

§ 3.19 [Amended]

■ 39. In newly redesignated § 3.19, paragraph (f) is amended by removing the citation ''§ 3.13(f) of this subpart'' and adding the citation ''§ 3.14(f)'' in its place.

§ 3.20 [Amended]

■ 40. Newly redesignated § 3.20 is amended as follows:

■ a. In paragraph (a)(1), by removing the citation ''§ 3.18(d) of this subpart'' and adding the citation ''§ 3.19(d)'' in its place; and

■ b. In paragraph (a)(3), by removing the citation ''§ 3.13(e)'' and adding the citation ''§ 3.14(e)'' in its place, and by removing the citation ''§ 3.18(d) of this subpart'' and adding the citation ''§ 3.19(d)'' in its place.

§ 3.61 [Amended]

■ 41. Section 3.61 is amended as follows:

■ a. In paragraph (b), by removing the word ''specie'' and adding the word ''species'' in its place; and

■ b. In paragraph (f), by removing the word ''works'' and adding the word ''words'' in its place.

■ 42. Section 3.78 is amended by revising the section heading to read as follows:

§ 3.78 Outdoor housing facilities.

* * * * *

§ 3.110 [Amended]

■ 43. In § 3.110, paragraph (a) is amended by removing the words ''it is determined that'' immediately after the words ''Animals without a known medical history must be isolated until''.

§ 3.111 [Amended]

■ 44. Section 3.111 is amended by removing the word ''regional'' in footnote 14.

Done in Washington, DC, this 15th day of March 2019.

Greg Ibach,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2019–05422 Filed 3–21–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–1081; Product Identifier 2018–NE–39–AD]

RIN 2120–AA64

Airworthiness Directives; Trig Avionics Limited Transponders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Trig Avionics Limited TT31, Avidyne Corporation AXP340, and BendixKing/Honeywell International KT74 Mode S transponders. This proposed AD was prompted by the discovery that the retaining cam that engages in the mounting tray may not withstand g-forces experienced during an emergency landing. This proposed AD would require a one-time inspection of the transponder installation to determine if this is a conventional aft-facing installation, and depending on the findings, removal of the affected transponder for modification. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 6, 2019.

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

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

For service information identified in this NPRM, contact Trig Avionics Limited, Heriot Watt Research Park, Riccarton, Edinburgh EH14 4AP, United Kingdom; phone: +44 131 449 8810; fax: +44 131 449 8811; email: *support@trig-avionics.com;* internet: *https://trig-avionics.com.* You may view this service information at the FAA, Engine and Propeller Standards 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 *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1081; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Min Zhang, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7161; fax: 781–238–7199; email: *min.zhang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–1081; Product Identifier 2018–NE–39–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018–0247, dated November 13, 2018 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> While testing a new model of transponder, it was detected that the retaining cam was not meeting the approved design criteria for crash safety shock in the aft direction (20g sustained). This was due to an uncontrolled deviation in the manufacturing process of the retaining cam by the part manufacturer. The retaining cam is a small nylon part that engages in the mounting tray when the transponder is installed into the aircraft. Additional tests using affected retaining cam showed that the transponders meet RTCA/DO–106G Section 7.0 operational shocks and crash safety impulse tests, as well as RTCA/DO–160G Section 7.0 crash safety sustained tests for all directions, except the aft direction. As a consequence, units which have been installed with a control panel orientation that is not opposite to the direction of flight may not withstand g-forces experienced during an emergency landing.
>
> This condition, if not detected and corrected, could lead to detachment of the transponder, possibly resulting in damage to fuel systems or emergency evacuation equipment, and/or injury to aircraft occupants.
>
> To address this potential unsafe condition, Trig Avionics published the applicable SB to provide instructions to inspect the installation and the transponder, and how to arrange for modification.
>
> For the reason described above, this [EASA] AD requires a one-time inspection of the transponder installation to determine whether this is a conventional installation, as defined in this [EASA] AD, and, depending on findings, removal from service of the affected transponder for modification.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1081.

Related Service Information Under 1 CFR Part 51

We reviewed Trig Avionics Ltd. Service Bulletin (SB) SUP/TT31/027, Issue 1.0, dated October 1, 2018; Trig Avionics Ltd. SB SUP/AXP340/002, Issue 1.0, dated October 1, 2018; and Trig Avionics Ltd. SB SUP/KT74/005, Issue 1.0, dated October 1, 2018. Trig Avionics Ltd. SB SUP/TT31/027, Issue 1.0, dated October 1, 2018, describes procedures for determining the direction of the Trig Avionics Limited TT31 Mode S transponder installation and removal of these affected transponders for replacement or repair. Trig Avionics Ltd. SB SUP/AXP340/002, Issue 1.0, dated October 1, 2018, describes procedures for determining the direction of the Avidyne Corporation AXP340 Mode S transponder installation and removal of these affected transponders for replacement or repair. Trig Avionics Ltd. SB SUP/KT74/005, Issue 1.0, dated October 1, 2018, describes procedures for determining the direction of the BendixKing/Honeywell International KT74 Mode S transponder installation and removal of these affected transponders for replacement or repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by EASA, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require a one-time inspection of the transponder installation to determine if this is a conventional aft-facing installation, and depending on the findings, removal of the affected transponder for modification.

Costs of Compliance

We estimate that this proposed AD affects 2,390 transponders installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the transponder installation	0.5 work-hours × $85 per hour = $42.50	$0	$42.50	$101,575

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the transponder	1 work-hour × $85 per hour = $85	$2,872	$2,957

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a

result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Trig Avionics Limited: Docket No. FAA–2018–1081; Product Identifier 2018–NE–39–AD.

(a) Comments Due Date

We must receive comments by May 6, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to:

(1) Trig Avionics Limited TT31 Mode S transponders, part number (P/N) 00220–00–01 and P/N 00225–00–01, with a serial number (S/N) from 05767 to S/N 09715 inclusive, and Modification (Mod) Level 6 or below, installed.

(2) Avidyne Corporation AXP340 Mode S transponders, P/N 200–00247–0000, also marked with Trig Avionics P/N 01155–00–01, with a S/N from 00801 to S/N 01377 inclusive, and Mod Level 0, installed.

(3) BendixKing/Honeywell International KT74 Mode S transponders, P/N 89000007–002001, also marked with Trig Avionics P/N 01157–00–01, with a S/N from 01143 to S/N 02955 inclusive, and Mod Level 0, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 3452, ATC transponder system.

(e) Unsafe Condition

This AD was prompted by the discovery that the retaining cam that engages in the mounting tray may not withstand g-forces experienced during an emergency landing. We are issuing this AD to prevent the transponder from detaching from the avionics rack. The unsafe condition, if not addressed, could result in damage to the fuel system or emergency evacuation equipment, or injury to aircraft occupants.

(f) Compliance

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

(g) Required Actions

(1) Within 90 days after the effective date of this AD, inspect the transponder installation to determine if the transponder is installed in a conventional aft-facing avionics rack.

(2) If the transponder is not installed in a conventional aft-facing avionics rack, remove the transponder before further flight.

(3) Use the Accomplishment Instructions, paragraphs 4–8, to determine if the part is eligible for repair and re-installation, for the appropriate transponder, per Trig Avionics Limited Service Bulletin (SB) SUP/TT31/027, Issue 1.0, dated October 1, 2018; Trig Avionics Limited SB SUP/AXP340/002, Issue 1.0, dated October 1, 2018; or Trig Avionics Limited SB SUP/KT74/005, Issue 1.0, dated October 1, 2018.

(h) Installation Prohibition

After the effective date of this AD, do not install an affected transponder on any aircraft, unless the transponder is installed in a conventional aft-facing avionics rack as defined in this AD.

(i) No Reporting Requirement

No reporting requirement contained within the SB referenced in paragraph (g)(2) of this AD is required by this AD.

(j) Definition

For the purposes of this AD, a conventional aft-facing avionics rack is defined as an installation with the control panel oriented in opposition to the direction of flight (aft facing).

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston 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 ACO Branch, send it to the attention of the person identified in paragraph (l)(1) of this AD.

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

(l) Related Information

(1) For more information about this AD, contact Min Zhang, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7161; fax: 781–238–7199; email: *min.zhang@faa.gov.*

(2) Refer to European Union Aviation Safety Agency AD 2018–0247, dated November 13, 2018, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2018–1081.

(3) For service information identified in this AD, contact Trig Avionics Limited, Heriot Watt Research Park, Riccarton, Edinburgh EH14 4AP, United Kingdom;

phone: +44 131 449 8810; fax: +44 131 449 8811; email: *support@trig-avionics.com;* internet: *https://trig-avionics.com.* You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on March 18, 2019.

Karen M. Grant,

Acting Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–05458 Filed 3–21–19; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280 and 3282

[Docket No. FR 6018–P–01]

RIN 2502–AJ42

Streamlining and Aligning Formaldehyde Emission Control Standards for Certain Wood Products in Manufactured Home Construction With Title VI of the Toxic Substance Control Act

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Through this rulemaking, HUD proposes to implement the Formaldehyde Standards for Composite Wood Products Act of 2010, which added Title VI to the Toxic Substances Control Act (TSCA). In addition, HUD proposes to remove certain aspects of HUD's current manufactured housing formaldehyde standards requirements that are not addressed by TSCA, including provisions for a health notice to be posted in every manufactured home, testing of post-treatment panels after certification, and testing of certain plywood materials.

DATES: Comment Due Date: April 22, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this Proposed Rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development via mail or electronic submission as indicated below. All submissions and communications must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit comments, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must only be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled 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 through TTY by calling the Federal Relay Service at 800–877–8339 (toll-free number). Copies of all comments received by HUD by the comment due date will be available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Acting Administrator, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone 202–402–5365 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8389 (toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (Pub. L. 93–383; enacted August 22, 1974), as amended by the Manufactured Housing Improvement Act of 2000,[1] (42 U.S.C. 5401–5426) (the ''Act'') provides authority to HUD to establish Federal manufactured home construction and safety standards. HUD issued regulations for manufactured home construction and safety standards in 1975, which are codified at 24 CFR part 3280, and manufactured home procedural and enforcement regulations in 1976, codified at 24 CFR part 3282. See 40 FR 58752, 41 FR 19852. On August 9, 1984, HUD amended its home construction and safety standards regulations to include formaldehyde emission levels for composite wood products used in manufactured homes, product certification and qualifications for composite wood products, panel identification requirements, testing requirements for formaldehyde emissions, and a required formaldehyde emissions health notice for manufactured homes. See 49 FR 32011, 24 CFR 3280.308, 24 CFR 3280.309, and 24 CFR 3280.406.

Formaldehyde Standards for Composite Wood Products Act of 2010

In 2007, the California Air Resources Board (CARB) issued an Airborne Toxic Control Measure (ATCM) to reduce formaldehyde emissions from hardwood plywood, medium-density fiberboard, and particleboard, products referred to collectively as composite wood products. The CARB ATCM requires manufacturers to meet formaldehyde emission standards for the covered composite wood products that are sold, offered for sale, supplied, or manufactured for use or sale in California. While suppliers of composite wood products in California must meet CARB standards, the CARB ATCM does not directly apply to plywood and particleboard materials when installed in manufactured homes subject to regulations promulgated by HUD.

The Formaldehyde Standards for Composite Wood Products Act of 2010, which added TSCA Title VI (Pub. L. 111–199, enacted on July 7, 2010) (''Formaldehyde Act of 2010''), established new formaldehyde emissions standards for all hardwood plywood, medium-density fiberboard, and particleboard, including when incorporated into finished goods, that are sold, supplied, offered for sale, or manufactured (including imported) in the United States. The Act created Federal emissions standards to align with the CARB ATCM Phase 2

[1] The Manufactured Housing Improvement Act of 2000 (Title VI of Pub. L. 106–569) created the Manufactured Housing Consensus Committee (MHCC) to develop proposed revisions to the Federal manufactured home construction and safety standards.

standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States, thus alleviating increased burden on the regulated community. TSCA Title VI also requires EPA to issue regulations implementing those emissions standards and provides that EPA regulations cover the following subjects: (a) Labeling, (b) chain of custody requirements, (c) sell-through provisions, (d) ultra low-emitting formaldehyde resins, (e) no-added formaldehyde-based resins, (f) finished goods, (g) third-party testing and certification, (h) auditing and reporting of Third-Party Certification Program, TPCs,[2] (i) recordkeeping, (j) enforcement, (k) laminated products, and (l) exceptions from the requirements of regulations promulgated for products and components containing *de minimis* amounts of composite wood products (but not exceptions to the emission standards). TSCA Title VI also directs HUD to update its regulation addressing formaldehyde emission standards to ensure consistency with the standards in TSCA not later than 180 days after EPA promulgates regulations.

EPA Regulations on ''Formaldehyde Emission Standards for Composite Wood Products''

After undergoing notice and comment, on December 12, 2016, EPA promulgated its final rule, ''Formaldehyde Emission Standards for Composite Wood Products.'' 81 FR 89674. The final rule implements TSCA Title VI to reduce formaldehyde emissions from composite wood products, which will reduce exposure to formaldehyde and decrease potential adverse health effects. The final rule became effective May 22, 2017 and had multiple compliance dates for different provisions.[3] On September 25, 2017, EPA extended all the compliance dates: The manufactured-by compliance date for composite wood products from December 12, 2017 to December 12, 2018; the compliance date for import certification provisions from December 12, 2018 to March 22, 2019; the manufactured-by compliance date for laminated products from December 12, 2023 to March 22, 2024; and the transitional period for needing an EPA accreditation from December 12, 2018 to March 22, 2019.[4]

On April 4, 2018, EPA published a **Federal Register** notice that announced a March 13, 2018, court order. The court order addressed litigation over the December 12, 2018, compliance date, that resulted in the compliance date for emission standards, recordkeeping, and labeling (*i.e.,* the manufactured by date or import date) being reduced from December 12, 2018 to June 1, 2018. EPA also described the status of compliance dates and stated that composite wood products manufactured or imported until March 22, 2019 must be labeled as compliant with either the TSCA Title VI or CARB ATCM Phase II emission standards, and regulated products manufactured or imported after March 22, 2019 may not rely on the CARB reciprocity of 40 CFR 770.15(e) and must be certified and labeled as TSCA Title VI compliant by an EPA TSCA Title VI TPC with all of the required accreditations.[5]

Specifically, EPA created a new 40 CFR part 770 entitled ''Formaldehyde Standards for Composite Wood Products'' with four subparts: Subpart A—General Provisions, Subpart B—EPA TSCA Title VI Third-Party Certification Program, Subpart C—Composite Wood Products, and Subpart D—Incorporation by Reference.

Subpart A provides the scope of EPA regulations, which includes whether provisions apply to panels, component parts, or finished goods, or all three; effective dates for the standards for different products; a definition section; exemptions from the hardwood plywood definition for certain laminated products; and references the penalties for failing to comply with EPA requirements at 15 U.S.C. 2697.

Subpart B provides the necessary requirements for manufacturers that plan to participate in the EPA TSCA Title VI Third-Party Certification Program as an EPA TSCA Title VI product accreditation body, laboratory accreditation body, or a third-party certifier; and directions to entities on providing applications, notifications, and reports to EPA.

Subpart C establishes, among other things, formaldehyde emission standards for composite wood products offered for sale or manufacture in the United States. These standards apply regardless of whether the product is in the form of a panel, a component part, or incorporated into a finished good. 40 CFR 770.12 prohibits the sale of stockpiled inventory of composite wood products and establishes standards to determine whether stockpiling has occurred. 40 CFR 770.15 establishes certification requirements for composite wood products, providing that unless exempt, only certified composite wood products, whether in the form of panels or incorporated into component parts or finished goods are permitted to be sold, supplied, offered for sale, or manufactured in the United States. 40 CFR 770.17 and 770.18 establish, respectively, certification and application requirements for no-added formaldehyde-based resins and ultra low-emitting formaldehyde resins. Testing requirements for products with formaldehyde are established in 40 CFR 770.20. 40 CFR 770.21 establishes requirements for panel producers to have a quality control manual, a designated quality control facility for conducting quality control formaldehyde testing, and a quality control manager responsible for emissions quality control. The balance of subpart C addressees testing and isolating of non-complying lots, handling composite wood products shipped into the United States for sample testing, and a requirement for importers, fabricators, distributors, and retailers to take reasonable precautions to ensure that the wood product that they sell comply with the emission requirements under the regulations. Finally, 40 CFR 770.40 and 770.45 establish reporting and recordkeeping requirements for panel producers; and labeling of panels or bundles of panels sold, supplied, or offered for sale in the United States, respectively.

Subpart D sets forth the standards that were approved by the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51 for incorporation by reference standards, which are necessary for testing in EPA regulations.

HUD's Manufactured Housing Consensus Committee Consultation

On October 25–27, 2016, HUD held a meeting with its Manufactured Housing Consensus Committee (MHCC). See 81 FR 66288. During the meeting, HUD shared a preliminary working draft of a rule to amend and reduce its current requirements for formaldehyde emissions from certain composite wood

[2] 40 CFR 770.7 describes EPA's Third-Party Certification Program and establishes qualifications to be recognized by EPA as an EPA TSCA Title VI Product AB.

[3] The EPA final rule, published on December 12, 2016, had an effective date of February 10, 2017 (81 FR 89674). EPA published a delay of the effective date from February 10, 2017 until March 21, 2017, in the **Federal Register** notice on January 26, 2017 (82 FR 8499). The effective date was further delayed until May 22, 2017, in the **Federal Register** notice on March 20, 2017 (82 FR 14324). On May 24, 2017, EPA issued a notice of proposed rulemaking seeking public comment on extending the compliance dates in the EPA final rule (82 FR 23769).

[4] On September 25, 2017, EPA proceeded with a final rule extending the compliance dates in the EPA final rule (82 FR 44533).

[5] On April 4, 2018, EPA issued an Announcement of Court Order and Compliance Date rule amending the compliance dates extended in the September 25, 2017 rule (83 FR 14375).

products, consistent with TSCA and EPA requirements. See Minutes MHCC Meeting October 25–27, 2016, *https://portal.hud.gov/hudportal/documents/huddoc?id=mhcc-oct2016-meetminsfinal.pdf.* After discussions, the MHCC voted to accept the working draft as presented, which cross-referenced EPA's requirements in HUD's regulations and removed the health hazard warning requirement in 24 CFR 3280.309, but recommended that HUD add the EPA required provision for labeling each manufactured home as being ''TSCA Title VI compliant'' to the data plate of each manufactured home in 24 CFR 3280.5.

II. Proposed Rule

HUD proposes to revise HUD's current formaldehyde emission standards for composite wood products used in manufactured housing at 24 CFR part 3280 and 3282 to ensure consistency with the requirements established by section 601 of TSCA. HUD also proposes to update its existing formaldehyde emission levels for composite wood products used in manufactured homes; the certification, qualifications, panel identification, and testing requirements for formaldehyde emissions; and third-party certification requirements. HUD, through this proposed rulemaking, also seeks to revise its recordkeeping requirements, which reduce the time a producer needs to maintain records; requires inclusion of a statement indicating compliance with TSCA Title VI on the data plate; and adds requirements on non-complying lots and stockpiling, consistent with TSCA Title VI and EPA regulations. Lastly, HUD proposes to remove the requirement for a formaldehyde emissions health notice for manufactured homes and remove HUD's existing requirements in 24 CFR 3280.308(d) for treatment after certification of plywood and particleboard with substances containing formaldehyde.

HUD believes that the intent of TSCA Title VI was for HUD to align its requirements in 24 CFR 3280.308 with EPA requirements, including the scope of products tested and process for testing. The Senate Report on TSCA noted that in place of defining ''manufactured housing'' as a ''finished product'' under EPA regulations, HUD would be required to ''ensure that the regulation [24 CFR 3280.308] reflects the standards established by section 601 of TSCA'' and specifically referenced HUD's plywood and particleboard standards needing to be consistent with EPA's formaldehyde emissions standard.[6] The statute itself notes that following EPA's regulations, HUD shall update its regulations for consistency with section 601 of TSCA. Both the statute and congressional intent support HUD's alignment of its regulations with EPA's regarding the scope of testing and products covered. Therefore, HUD proposes to no longer use its current scope of regulations that covered ''plywood and particleboard materials bonded with a resin system or coated with a surface finish containing formaldehyde'' and instead adopt EPA regulations coverage of ''composite wood products in the form of a panel, or composite wood products incorporated into a component part or finished good,'' as defined by EPA. Composite wood product means hardwood plywood made with a veneer or composite core, medium-density fiberboard, and particleboard.

In addition to changing the scope of HUD's regulations, HUD proposes the following specific changes consistent with EPA regulations and the recommendations on the working draft provided by the MHCC:

Section 3280.5 Data Plate

HUD proposes to include on the manufactured home data plate a notification that as a finished good that incorporates composite wood product(s), the finished good is TSCA Title VI compliant. This certification is construed to cover all products that are incorporated into the manufactured home, including laminated products not exempted under 40 CFR 770.4. This change would ensure consistency with the current product certification scheme that already requires several other certifications on the manufactured home data plate. It would also ensure that manufacturers are certifying that all materials, components, and products used in manufactured homes are TSCA Title VI compliant and provide public awareness of compliance in place of the health notice on formaldehyde emissions currently required by 24 CFR 3280.309.

Section 3280.308 Formaldehyde Emission Controls for Composite Wood Products

In paragraph (a), HUD seeks to adopt, in addition to the definitions already applicable to this section, EPA definitions at 40 CFR 770.3. HUD's definitions at 24 CFR 3280.2 and 3280.302 covering manufactured home regulations, including formaldehyde emission controls, do not conflict with EPA regulations, and incorporation of EPA's definitions ensures consistency between EPA regulations and HUD regulations. The relevant terms for which EPA definitions are used include: Composite core, Component part, Composite wood product, EPA TSCA Title VI Laboratory Accreditation Body or EPA TSCA Title VI Laboratory AB, EPA TSCA Title VI Product Accreditation Body or EPA TSCA Title VI Product AB, EPA TSCA Title VI Third-Party Certifier or EPA TSCA Title VI TPC, Finished good, Hardwood plywood, Laboratory Accreditation Body or Laboratory AB, Lot, Medium-density fiberboard, Non-complying lot, Panel, Panel producer, Particleboard, Product Accreditation Body or Product AB, Stockpiling, Thin medium-density fiberboard, Third-party certifier or TPC, Veneer, and Veneer core.

In paragraph (b), HUD proposes to adopt maximum formaldehyde emission standards that are in TSCA Title VI and EPA regulations at 40 CFR 770.10. This proposed rule, if adopted, would replace HUD's codified standards that currently apply to all plywood and particleboard materials bonded with a resin system or coated with a surface finish containing formaldehyde. The currently codified regulations set the level for formaldehyde emissions as follows: Plywood materials shall not emit formaldehyde in excess of 0.2 parts per million (ppm); and particleboard materials shall not emit formaldehyde in excess of 0.3 ppm.

This proposed rule covers hardwood plywood made with a veneer core or composite core, medium density fiberboard, thin medium density fiberboard, and particleboard. The proposed new maximum levels for formaldehyde emissions of these composite wood products and component parts or finished goods incorporating these composite wood products would be, if adopted, as follows: Hardwood plywood made with a veneer core or composite core is 0.05 ppm; medium density fiberboard is 0.11 ppm; thin medium density fiberboard is 0.13 ppm; and particleboard is 0.09 ppm. These maximum emission levels would be applicable whether the composite wood product is in the form of a panel or if composite wood products are incorporated into component parts or finished goods.

In paragraph (c), HUD proposes to require that as of the effective date of the final rule, only TSCA Title VI certified composite wood products, whether in the form of panels or finished goods, must be used in manufactured homes, consistent with EPA regulations at 40 CFR 770.15. HUD currently requires that manufactured

[6] S. Rep. No. 111–169 (2010) at 6 and 8.

homes with installed plywood and particleboard comply with and certify that formaldehyde emissions meet standards. Exclusively using phenol-formaldehyde resins or finishes are excluded from this requirement. EPA's regulations at 40 CFR 770.15 require a certification that the composite wood products meet the new formaldehyde emission standards by June 1, 2018. EPA's regulations at 40 CFR part 770 also provides a narrow list of exceptions and alternative product certification procedures for producers of composite wood product panels made with no-added formaldehyde-based resins and for producers of composite wood product panels made with ultra low-emitting formaldehyde resins. HUD proposes to adopt 40 CFR 770.15 certification requirements and the same limited exemptions and alternative certification procedures for consistency with EPA's requirements.

In paragraph (d), HUD proposes that composite wood panels used by entities covered under HUD's regulations must be labeled by a panel producer consistent with EPA labeling requirements at 40 CFR 770.45. HUD currently requires that each plywood and particleboard panel that is installed in manufactured homes is stamped or labeled to identify the product manufacturer, date of production and/or lot number, and the testing laboratory certifying compliance with this section. In place of HUD's current requirements, 40 CFR 770.45 of the EPA final rule requires that panels or bundles of panels that are used in the United States are labeled with the panel producer's name, the lot number, the EPA TSCA Title VI TPC number, and a statement that the products are TSCA Title VI certified. EPA also sets forth at 40 CFR 770.45 the process for labeling composite wood panels that are bundled and not individually labeled.

In paragraph (e), HUD proposes to require that each manufactured home include certification labeling indicating that the home, as a finished good, has been produced with panels or products that comply with formaldehyde emission requirements set by HUD and 40 CFR part 770. EPA regulations require that each composite wood product, whether in the form of panels or incorporated into component parts or finished goods that are sold in the United States, must include a product certification, with a few minor exemptions. Exemptions are included for producers of composite wood product panels made with no-added formaldehyde-based resins (40 CFR 770.17) and for producers of composite wood product panels made with ultra low-emitting formaldehyde resins (40 CFR 770.18). This certification requirement would be consistent with EPA requirements. HUD is also proposing to remove the health notice on formaldehyde emissions, recognizing the reduced formaldehyde emissions levels of composite wood products incorporated as panels or component parts of manufactured homes as a finished good that is required to be TSCA Title VI compliant evidenced by the certification label.

In paragraphs (f) and (g), HUD proposes to incorporate EPA's limitation on the sale, supply or offering of composite wood products from non-complying lots in the United States; and the prohibition of the sale of inventory determined to be stockpiled inventory (*see* 40 CFR 770.12) of composite wood products.[7] HUD currently addresses the handling, use, and certification of non-complying plywood and particleboard materials at 24 CFR 3280.308(b)(6) but does not address stockpiling requirements for manufacturers. Incorporating EPA provisions would make clear that restrictions and certification requirements authorized by TSCA Title VI, and included in EPA regulations, are applicable to manufactured housing.

Section 3280.309 Health Notice on Formaldehyde Emissions

HUD is proposing to remove the requirement for providing a Health Notice on formaldehyde emissions in each manufactured home, 24 CFR 3283.309, given the increase in ventilation standards and decrease in formaldehyde levels. The ventilation standards have changed significantly since the health warning was required in 1984. In 1984, HUD required ventilation only by openable glazed areas equal to 4 percent of each habitable room's floor area (40 FR 40270). As part of a set of changes that affected energy conservation and indoor air quality, Federal standards were changed, effective in October 1994, to require whole house ventilation (58 FR 55003). This change increased ventilation requirements beyond the ventilation provided by openable glazed areas in each habitable room. The change required mechanical and/or natural ventilation capable of providing 0.35 air changes per hour continuously, or at an equivalent hourly rate. This standard allowed 0.25 air changes per hour to be provided by natural infiltration/exfiltration. The remaining 0.10 air changes per hour are to be provided by mechanical ventilation. In 2005, the standards were changed again to include the whole house ventilation requirement from an air changes per hour requirement to a cubic feet per minute requirement sized based upon interior floor area. The change in standards removed consideration of natural infiltration/exfiltration as a factor in ventilation systems while retaining provisions for openable glazed areas in each habitable room in addition to the whole house ventilation requirements (70 FR 72042).

HUD believes the change to ventilation standards, coupled with the new lower compliance levels required in this proposed rule, supports the removal of the health notice from manufactured homes. This is because the decreased maximum formaldehyde emission levels will reduce exposure to formaldehyde that will result in avoided adverse health effects, such as eye irritation and nasopharyngeal cancer, and reduce the risk of asthma and allergic conditions in young children (see discussion at 81 FR 89677–78, December 12, 2016 and Economic Analysis of the Formaldehyde Standards for Composite Wood Products Act Final Rule, July 2016, EPA–HQ–OPPT–2016–0461–0029, *www.regulations.gov*). Further, conventional homes have no similar requirement for a health notice and HUD has not received consumer complaints in recent years that identify or otherwise indicate formaldehyde emissions are an appreciable concern based on complaint data, a basis for HUD's initial rulemaking (46 FR 43466). Additionally, the inclusion of the compliance requirement on the home data plate that the home is TSCA Title VI compliant is a more permanent notification that identifies that the materials used in the manufactured home meets the national standards.

Section 3280.406 Air Chamber Test Method for Certification and Qualification of Formaldehyde Emission Levels

HUD currently requires that all plywood and particleboard materials, if bonded with a resin system or coated with a surface finish containing formaldehyde—except for phenol-formaldehyde resin systems or finish—be tested in a large air chamber, ASTM E 1333–96. The test is required for initial certification and thereafter, at least quarterly. The testing must be certified by a nationally recognized testing laboratory (24 CFR 3280.406).

In paragraph (a), HUD proposes to adopt all EPA definitions at 40 CFR 770.3 for the HUD revised 24 CFR 3280.406. Incorporation of EPA's

[7] See, 83 FR 14375 (April 4, 2018).

definitions ensures consistency between EPA's regulations and HUD's regulations for purposes of test methods for certifying and qualifying formaldehyde emission levels.

In paragraph (b), HUD seeks to adopt EPA's testing standards at 40 CFR 770.20(a). EPA's 40 CFR 770.20(a) requires testing of unfinished panels within 30 days of the panel's production. HUD also seeks to adopt EPA's timing requirements at 40 CFR 770.20(b) for testing panels. Particleboard and medium-density fiberboard would be tested at least once per shift (8 or 12 hours, plus or minus 1 hour of production) for each production line for each product type. Particleboard and medium-density fiberboard panel producers are eligible for reduced quality control testing if they demonstrate consistent operations and low variability of test values. Hardwood plywood would be tested at a frequency determined by the weekly production levels of the product. The EPA regulations also include quarterly testing requirements at 40 CFR 770.20(c). The EPA testing requirements also provide an additional option for small air chamber testing, ASTM D6007–14, consistent with EPA regulations, and updates the requirements for testing to the ASTM E 1333–14 edition. The proposed rule, if adopted, would continue to require quarterly testing and that such testing be supervised by EPA TSCA Title VI TPCs and performed by TPC laboratories. In paragraph (c), HUD proposes to require that samples for testing that are not produced in the United States but are shipped into and transported across the United States for quality control or quarterly testing, must comply with 40 CFR 770.24, requires that such panels must not be sold, offered for sale or supplied to any entity other than a TPC laboratory before testing and if test results for such products demonstrate compliance with the emission standards in this subpart, the panels may be relabeled in accordance and sold, offered for sale, or supplied.

HUD's current testing qualification requirements cover but do not specifically address imported products. HUD is proposing to update HUD's requirements to reflect the testing of products that are shipped into and transported across the United States, to make clear that such products if used must be tested in accordance with the new testing procedures proposed by HUD.

Section 3280.407 Quality Control Testing, Manuals, and Facilities

In paragraph (a), HUD proposes to adopt the EPA definitions at 40 CFR 770.3. Incorporation of EPA's definitions ensures consistency between EPA's regulations and HUD's regulations with respect to quality control testing and qualifying formaldehyde emission levels.

In paragraph (b), HUD proposes to require EPA's quality control testing and frequency of testing for hardwood plywood made with a veneer core or composite core, medium density fiberboard, and particleboard at 40 CFR 770.20(a) and (b). Consistent with EPA's regulations, HUD would also adopt EPA's additional quality control testing procedures. EPA's 40 CFR 770.20(a) requires testing of unfinished panels within 30 days of the panel's production. In accordance with 40 CFR 770.20(b), particleboard and medium-density fiberboard must be tested at least once per shift (8 or 12 hours, plus or minus 1 hour of production) for each production line for each product type. Particleboard and medium-density fiberboard panel producers are eligible for reduced quality control testing if they demonstrate consistent operations and low variability of test values. Hardwood plywood must be tested at a frequency determined by the weekly production levels of the product.

In paragraph (c), HUD proposes to adopt the requirement that a panel producer have a written quality control manual, designate a quality control facility for conducting quality control formaldehyde testing under 24 CFR 3280.406, and designate a person as quality control manager with adequate experience or training to be responsible for formaldehyde emissions quality control consistent with 40 CFR 770.21.

24 CFR Part 3282 Manufactured Home Procedural and Enforcement Regulations

HUD seeks to adopt the definition for ''finished good'' at 40 CFR 770.3 for purposes of clarifying the scope of what is subject to the recordkeeping requirements consistent with EPA requirements. The adoption of the term ''finished good'' in HUD's definition section, 24 CFR 3282.7, will identify goods that must comply with recordkeeping requirements in 24 CFR 3282.212 and 3282.257. Recordkeeping requirements in 24 CFR 3282.212 and 3282.257 use the terms ''Component'', ''Distributor'', ''Purchaser'', and ''Retailer'' that are already in HUD's current definition section. While EPA has different definitions for those terms, HUD believes that its existing definitions are broad enough to capture the scope of EPA's recordkeeping requirements. Therefore, HUD is not proposing to adopt those EPA definitions in 24 CFR part 3282 but maintains its own definitions for those terms.

24 CFR Part 3282.212 TSCA Title VI Requirements

HUD proposes that consistent with EPA, manufacturers maintain bills of lading, invoices or comparable documents that include a written statement from the supplier that the components or finished goods are TSCA Title VI compliant consistent with 40 CFR 770.30(c) and that manufacturers must maintain such records for a minimum of 3 years from the date of purchase, consistent with 40 CFR 770.40.

24 CFR Part 3282.257 TSCA Title VI Requirements

HUD proposes that consistent with EPA, retailers and distributors maintain bills of lading, invoices or comparable documents that include a written statement from the supplier that the component or finished goods are TSCA Title VI compliant consistent with 40 CFR 770.30(c) and retailers and distributors must maintain such records for a minimum of 3 years from the import date or the date of purchase or shipment, consistent with 40 CFR 770.40.

III. 30-Day Public Comment Period

In accordance with HUD's regulations on rulemaking at 24 CFR part 10, it is HUD's policy that the public comment period for proposed rules should be 60 days. In the case of this proposed rule, however, HUD has determined there is good cause to reduce the public comment period to 30 days for the following reasons:

First, HUD is proposing to implement the standards in Title VI of TSCA as required by the Formaldehyde Standards for Composite Wood Products Act of 2010 consistent with EPA's rule. Title VI requires that ''after the date of promulgation of regulations pursuant to section 601(d) of the Toxic Substances Control Act (as amended by section 2), the Secretary of Housing and Urban Development shall update the regulation contained in section 3280.308 of title 24, Code of Federal Regulations (as in effect on the date of enactment of this Act), to ensure that the regulations reflects the standards established by Section 301 of the Toxic Substances Control Act.'' HUD believes that the intent of the statute is for HUD's

regulations to mirror EPA's regulation. If the statute intended HUD to implement its regulations in a different way, HUD would have been required to implement Title VI of TSCA upon its passage and not after EPA issued regulations. Given the lack of discretion HUD is provided in implementing Title VI of TSCA, HUD believes that a longer comment period is unnecessary.

Second, EPA in its rulemaking took comment on how to harmonize EPA's regulatory program under TSCA Title VI with HUD's manufactured home program, and what steps should be taken so that the programs are complementary. 78 FR 34820 at 34841. The majority of commenters agreed that HUD and EPA should ensure that the regulations are consistent and clear, while one commenter stated that the Formaldehyde Standards for Composite Wood Products Act of 2010 was unnecessary given HUD's existing regulations.[8] EPA received minimal comments on this question, all of which recommended streamlining the rule. EPA also addressed many other comments in its rule in order to come up with the current standards. Given HUD is adopting EPA's standards that have already been subject to notice-and-comment rulemaking and the feedback from commenters on how HUD and EPA should ensure consistency across agencies, HUD believes that a shortened time frame for public comment is appropriate.

Lastly, maintaining a separate set of standards for compliance, reporting, recordkeeping and labeling for the manufactured housing industry is unnecessary. EPA has set a national standard for all products, and maintaining separate, different HUD standards is inconsistent with the intent of the Formaldehyde Standards for Composite Wood Products Act of 2010. EPA's regulations, which are compliant with Title VI of TSCA, has stricter standards than HUD's current regulations and, thus, all available products will need to comply with those stricter standards. Maintaining HUD's current formaldehyde emissions standards would also be inconsistent with the statutory requirement that HUD's regulations reflect the standards required to be developed by EPA under Title VI of TSCA. The longer HUD delays issuance of its final rule, the longer the manufactured housing industry will be subject to two conflicting Federal regulations which is burdensome and confusing.

Given the statutory requirement and above justifications, HUD believes that good cause exists to reduce the public comment period to 30 days. All comments received during the 30-day public comment period will be considered in the development of the final rule.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

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 proposed rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of the Executive order, but not an economically significant regulatory action, as provided under section 3(f)(1) of Executive Order 12866. Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500.

Executive Order 13771

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017. Section 2(a) of Executive Order 13771 requires an Agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the Agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. For the reasons discussed in the Regulatory Impact Analysis (RIA), this proposed rule has been determined to be an Executive Order 13771 deregulatory action.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The Office of Management and Budget (OMB) has issued HUD control number 2502–0253 for the information collection requirements under the Manufactured Home Construction and Safety Standards Act Reporting Requirements. HUD will update the existing OMB control number to include the minimum time required for entities to maintain bills of lading, invoices or comparable documents that include a written statement from the supplier that the component or finished goods are TSCA Title VI compliant for a minimum of 3 years from the date of purchase, consistent with 40 CFR 770.30(c).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (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 proposed rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500.

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

[8] See U.S. EPA Formaldehyde Emission Standards to Composite Wood Products—Response to Comments. 2016. Docket #EPA–HQ–OPPT–2016–0461–0034, at *http://www.regulations.gov.*

requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would regulate establishments primarily engaged in making manufactured homes (NAICS 32991). The Small Business Administration defines a small manufactured homes manufacturing business as one that does not exceed 1,250 employees. Of the 222 firms included under this NAICS definition, approximately 35 produce manufactured homes subject to HUD's Manufactured Housing Construction and Safety Standards. Other entities covered by this NAICS code build non HUD-code prefabricated buildings. Of the 35 manufacturers subject to HUD's Manufactured Housing Construction and Safety Standards, 31 are considered to be small businesses based on the threshold of 1,250 employees or less.

HUD believes the *de minimis* cost of adopting this proposed rule, specifically the change to the data plate, will be offset by the savings that result from the changes in materials subject to testing and the removal of the health notice. Therefore, HUD has determined the impact of this proposed rule, if adopted, on all entities, to include small entities, will not be significant.

As required by statute, EPA published a final rule that established new formaldehyde emission standards for composite wood products. As also required by statute, HUD's proposed rule would update HUD's existing formaldehyde requirements to align with and reflect those issued by EPA. Despite the new requirements, as discussed in HUD's regulatory impact analysis, HUD anticipates there will not be any new or additional cost impacts resulting from implementation of this proposed rule—other than *de minimis* costs to change the template used to create the data plate. Initially, composite wood products at EPA reduced formaldehyde levels are currently the majority of products available in the marketplace. This circumstance exists because of similar requirements currently in effect in California under CARB ATCM. CARB ATCM requires composite wood products used in manufactured housing shipped to California to already comply with CARB requirements. As with many industries, rather than procuring special products for different final destinations, manufactured housing producers are likely to procure products that can be used in homes that it can ship anywhere.

This impact analysis includes all segments—manufacturers, retailers, and consumers, including small entities. In EPA's final rule, which affected a much broader number and type of small entities, for example, EPA determined in Table 2 of its final rule, that 99 percent of small business firms with cost impacts of more than 1 percent of revenues will have annualized costs of less than $250 per year.

In addition, this proposed rule, if adopted, would provide cost savings for HUD's manufactured housing manufacturers covered by this rule by eliminating the burden of placing the health notice (approximately $270,270 a year), testing structural plywood and retesting panels after a finishing is added. Therefore, while the proposed rule, if adopted, would affect a substantial number of small entities, 31 out of the 35 affected entities (86 percent), it would likely result in a reduction of costs or a *de minimis* cost. For the reasons stated above, HUD knows of no instance of a manufacturer with fewer than 1,250 employees that would be significantly affected economically by this rule. Therefore, although this proposed rule, if adopted, would affect a substantial number of small entities, HUD has determined that it would not have a significant economic impact on them.

Notwithstanding HUD's determination that this rule would not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments on its RIA, this certification, and any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial direct compliance costs on state and local governments or is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have Federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number for Manufactured Housing Construction and Safety Standards is 14.171.

List of Subjects

24 CFR Part 3280

Housing standards, Manufactured homes.

24 CFR Part 3282

Consumer protection, Manufactured homes.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR parts 3280 and 3282 as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

■ 1. The authority citation for part 3280 is revised to read as follows:

Authority: 15 U.S.C. 2697, 42 U.S.C. 3535(d), 5403, and 5424.

■ 2. In § 3280.5, add paragraph (i) to read as follows:

§ 3280.5 Data plate.

* * * * *

(i) The statement: The manufacturer certifies this home is TSCA Title VI Compliant.

■ 3. Revise § 3280.308 to read as follows:

§ 3280.308 Formaldehyde emission controls for composite wood products.

(a) *Definitions.* For purposes of this section, the definitions found in 40 CFR 770.3 apply.

(b) *Formaldehyde emission levels.* The following maximum formaldehyde emission standards apply whether the composite wood product is in the form of a panel, or is incorporated into a component part or finished good:

(1) For hardwood plywood made with a veneer core or composite core, the maximum level is 0.05 parts per million (ppm) of formaldehyde;

(2) For medium density fiberboard, the maximum level is 0.11 ppm of formaldehyde;

(3) For thin medium density fiberboard, the maximum level is 0.13 ppm of formaldehyde; and

(4) For particleboard, the maximum level is 0.09 ppm of formaldehyde.

(c) *Product certification and continuing qualification.* Only certified composite wood products whether in the form of panels or incorporated into component parts or finished goods, are permitted to be used in manufactured homes sold, supplied, offered for sale, or manufactured in or imported into the United States, consistent with Environmental Protection Agency (EPA) product testing requirements at 40 CFR 770.15. See § 3280.406 for testing requirements for product certification and testing requirements for continuing

qualification of formaldehyde emission levels.

(d) *Panel label.* Manufactured homes must use panels or bundles of panels that are labeled by a panel producer consistent with the labeling requirements at 40 CFR 770.45.

(e) *Finished good certification label.* Each manufactured home must be provided with a finished good certification label indicating that the home has been produced with composite wood products, or finished goods that contain composite wood products, that comply with the formaldehyde emission requirements of this Part 3280 and 40 CFR part 770 consistent with § 3280.5(i).

(f) *Non-complying lots.* Composite wood products from non-complying lots (*i.e.,* lots that exceed the applicable formaldehyde ppm) are not certified composite wood products and may not be used in manufactured homes except in accordance with section 40 CFR 770.22.

(g) *Stockpiling.* The use of stockpiled inventory of composite wood products, whether in the form of panels or incorporated into component parts or finished goods, in manufactured homes, is prohibited in accordance with EPA regulations at 40 CFR 770.12(b) through (d).

(h) *Third Party Certification.* All composite wood products in paragraph (b) of this section must be certified by an agency or organization that has been recognized to participate in the EPA TSCA Title VI Third Party Certification Program.

§ 3280.309 [Removed]

■ 4. Remove § 3280.309.

■ 5. Revise § 3280.406 to read as follows:

§ 3280.406 Air chamber test methods for certification and continuing qualification of formaldehyde emission levels.

(a) *Definitions.* For purposes of § 3280.406, the definitions found in 40 CFR 770.3 apply.

(b) *Testing requirements.* Testing of panels made of hardwood plywood made with a veneer core or composite core, medium density fiberboard, thin medium density fiberboard, and particleboard for compliance with § 3280.308(b) must be performed pursuant to the general requirements of 40 CFR 770.20(a) and (b), for certification testing, pursuant to one of the air chamber test methods specified in 40 CFR 770.15, and, for quarterly testing, pursuant to one of the air chamber test methods specified in 40 CFR 770.20(c).

(c) *Samples for testing.* Samples for testing not produced in the United States, but shipped into and transported across the United States for quality control or quarterly testing, must comply with 40 CFR 770.24.

■ 6. Add § 3280.407 to read as follows:

§ 3280.407 Quality control testing, manuals, facilities, and personnel.

(a) *Definitions.* For purposes of this section, the definitions found in 40 CFR 770.3 apply.

(b) *Quality control testing.* Quality control testing is required for hardwood plywood made with a veneer core or composite core, medium density fiberboard, thin medium density fiberboard, and particleboard must be performed in accordance with the general requirements in 40 CFR 770.20(a) and by one of the test methods and at the frequency specified in 40 CFR 770.20(b). Panels being tested with an equivalence, correlation or alternative method must ensure compliance with the requirements of 40 CFR 770.20(d).

(c) *Quality control manuals, facilities, and personnel.* A panel producer must have a written quality control manual, must designate a quality control facility for conducting quality control formaldehyde testing under this section, and must designate a person as quality control manager with adequate experience and/or training to be responsible for formaldehyde emissions quality control consistent with 40 CFR 770.21. A panel producer means a manufacturing plant or other facility that manufactures (excluding facilities that solely import products) composite wood products (hardwood plywood made with a veneer or composite core, medium-density fiberboard and particleboard) on the premises.

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

■ 7. The authority citation for part 3282 is revised to read as follows:

Authority: 15 U.S.C. 2697, 42 U.S.C. 3535(d), 5403, and 5424.

■ 8. In § 3282.7, add the definition ''finished good'', in alphabetical order, to read as follows:

§ 3282.7 Definitions.

* * * * *

Finished good has the meaning provided in 40 CFR 770.3.

* * * * *

■ 9. Add § 3282.212 to read as follows:

§ 3282.212 TSCA Title VI Requirements.

Manufacturers must maintain bills of lading, invoices or comparable documents that include a written statement from the supplier that the component or finished goods are TSCA Title VI compliant for a minimum of 3 years from the date of import, purchase, or shipment, consistent with 40 CFR 770.30(c) and 40 CFR 770.40.

■ 10. Add § 3282.257 to read as follows:

§ 3282.257 TSCA Title VI Requirements.

Retailers and distributors must maintain bills of lading, invoices or comparable documents that include a written statement from the supplier that the component or finished goods are TSCA Title VI compliant for a minimum of 3 years from the date of import, purchase or shipment, consistent with 40 CFR 770.30(c) and 40 CFR 770.40.

Dated: March 13, 2019.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2019–05174 Filed 3–21–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0091]

RIN 1625–AA09

Drawbridge Operation Regulation; Petaluma River, Haystack Landing (Petaluma), CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the Northwestern Pacific (SMART) railroad bridge across the Petaluma River, mile 12.4, at Haystack Landing (Petaluma), CA. This action is necessary to coordinate vessel passage with the commencement of commuter rail traffic on a previously rarely used rail line and to reduce wear and tear of the drawspan. The proposed rulemaking would require vessels to provide a 30-minute advance notification for a bridge opening.

DATES: Comments and related material must reach the Coast Guard on or before June 20, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0091 using Federal eRulemaking Portal at *http://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516; email *Carl.T.Hausner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR **Federal Register**
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
SMART Sonoma-Marin Area Rail Transit
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

In 2015, the 1903 Northwestern Pacific (SMART) Swing Bridge across the Petaluma River, mile 12.4, at Haystack (Petaluma), CA was replaced with a single leaf bascule bridge in anticipation of the commencement of commuter rail traffic. The replacement bridge provides 87 feet of horizontal clearance fender-to-fender normal to the axis (centerline) of the channel and a vertical clearance of 3.6 feet at Mean High Water when closed and unlimited vertical clearance in the fully opened position.

Presently, in accordance with 33 CFR 117.187(a), the Northwestern Pacific (SMART) bridge shall be maintained in the fully opened position, except for the crossing of trains or for maintenance. Currently 32 commuter trains cross the bridge each day. Due to an increase in said rail traffic, SMART has requested the drawspan remain in the closed-to-navigation position during commute hours to avoid unnecessary bridge openings. The Petaluma River supports commercial and recreational vessel traffic.

On October 22, 2015, SMART requested the Coast Guard consider changing the operating schedule of the drawspan to allow coordination of vessel passage with the commencement of commuter rail traffic on a previously rarely used rail line and to reduce wear and tear of the drawspan. The request would require vessels to provide an advance notice to the bridge tender for a bridge opening. Two test deviations were conducted to determine if a proposed operation regulation change would meet the reasonable needs of navigation while benefiting land traffic. The first test deviation was conducted March 19, 2018 through June 17, 2018 (83 FR 8936) and required vessels to provide a 2-hour advance notice to the drawtender for a bridge opening. The Coast Guard received five public comments during the first test deviation. After reviewing four comments and the drawtender logs, the Coast Guard determined the 2-hour advance notification would be an undue burden on waterway users and that a 30-minute advance notification may meet the reasonable needs of navigation while benefiting land traffic. The fifth comment was directed at the structural deficiency of a number of dams in the United States and was not pertinent to the test deviation. A second test deviation was conducted August 20, 2018 through October 18, 2018 (83 FR 39879) and required vessels to provide a 30-minute advance notice to the drawtender for a bridge opening. The Coast Guard received two comments during the second test deviation. The first comment was directed at future navigation on the Petaluma River and did not address the efficiency of the 30-minute notice and the second comment was unrelated to the test deviation. After reviewing the two comments and the drawtender logs, the Coast Guard determined a 30-minute advance notice to the drawtender for a bridge opening would meet the reasonable needs of navigation while benefiting land traffic.

III. Discussion of Proposed Rule

The Coast Guard proposes to change the operating schedule that governs the Northwestern Pacific (SMART) Bridge across the Petaluma River, mile 12.4, at Haystack (Petaluma), CA.

This proposed rule would implement regulations for the bridge to open on signal from 3 a.m. to 11 p.m. when a 30-minute notification is given to the drawtender. At all other times the bridge will be maintained in the fully open-to-navigation position except for the crossing of trains or for maintenance.

This proposed rule change would meet the reasonable needs of navigation while benefiting commuter rail transportation and would reduce wear and tear of the drawspan.

In a related matter, SMART also owns the Blackpoint railroad bridge, mile 0.8, over the Petaluma River. This proposed rule would change the names of both the Northwestern Pacific railroad bridge, mile 0.8, at Blackpoint and the Northwestern Pacific railroad bridge, mile 12.4, at Haystack Landing (Petaluma) in the regulations to reflect that ownership.

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 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 ability that vessels can still transit the bridge given advanced notice.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 bridge 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 contact the person

listed in the **FOR FURTHER INFORMATION CONTACT**, above. 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 call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Government

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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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 will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this proposed rule. 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 contact 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 *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact 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 *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacynotice.*

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *http://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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.187 to read as follows:

§ 117.187 Petaluma River

(a) The draw of the SMART Blackpoint railroad bridge, mile 0.8, at Blackpoint, shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed and visibility from the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two long blasts every minute. When the draw is reopened, the drawtender shall sound three short blasts.

(b) The draw of the SMART Haystack Landing railroad bridge, mile 12.4 at Petaluma, shall open on signal from 3 a.m. to 11 p.m. if at least 30 minutes notice is given to the drawtender. At all other times, the draw shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed and visibility from the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two long blasts every minute. When the draw is reopened, the drawtender shall sound three short blasts.

(c) The draw of the Petaluma highway bridge at ''D'' Street, mile 13.7, at Petaluma, shall open on signal if at least four hours notice is given for openings from 6 a.m. to 6 p.m., and if at least 24 hours notice is given for openings from 6 p.m. to 6 a.m.

Dated: March 7, 2019.

James B. Pruett,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 2019–05481 Filed 3–21–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED–2018–OPE–0076]

RIN 1840–AD36, 1840–AD37, 1840–AD38, 1840–AD40, and 1840–AD44

Negotiated Rulemaking Committee; Location of Negotiations and Subcommittee Meetings—Accreditation and Innovation

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notification of revised schedule of negotiated rulemaking committee meetings.

SUMMARY: On October 15, 2018, we announced our intention to establish a negotiated rulemaking committee to prepare proposed regulations for the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). We also announced the schedule for the committee and the three topic-based subcommittee meetings. In this notification, we announce changes to the meeting times for the third session of the Accreditation and Innovation Committee's negotiated rulemaking and the addition of a fourth session of negotiations.

DATES: The dates, times, and location of the third and fourth sessions are set out in the Revised Schedule for Negotiation Sessions section under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For information about the content of this document, including information about the negotiated rulemaking process or the revised schedule, contact: George Alan Smith, U.S. Department of Education, 400 Maryland Ave. SW, Room 294–34, Washington, DC 20202. Telephone: (202) 453–7757. Email: *george.alan.smith@ed.gov.*

For more information about negotiated rulemaking in general, see The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions at *https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html,* or contact George Alan Smith, U.S. Department of Education, 400 Maryland Ave. SW, Room 294–34, Washington, DC 20202. Telephone: (202) 453–7757. Email: *george.alan.smith@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On October 15, 2018, we published in the **Federal Register** (83 FR 51906) an announcement of our intent to establish an Accreditation and Innovation negotiated rulemaking committee and three topic-based subcommittees. In that document, we set a schedule for three sessions of committee meetings; three sessions for each of the topic-based subcommittee meetings; and requested nominations for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on the committee and subcommittees.

Inclement weather during the first two negotiation sessions of the Accreditation and Innovation Committee caused meeting delays and cancellations. As a result, committee members requested more time for deliberations during their February 15, 2019 meeting. To accommodate this request, the Department has extended the meeting times of the third session dates and added a fourth session of negotiations.

Revised Schedule for Negotiation Sessions: The Accreditation and Innovation Committee's third session will still occur March 25–28, 2019, but with extended meeting times; and the additional fourth session will occur April 1–3, 2019.

Session 3: The March 25–27, 2019 meetings will run from 8:00 a.m. to 6:00 p.m., and the March 28, 2019 meeting will run from 8:00 a.m.to 5:00 p.m.

Session 4: The April 1 and 2, 2019 meetings will run from 8:00 a.m. to 6:00 p.m., and the April 3, 2019 meeting will run from 8:00 a.m. to 3:00 p.m.

All meetings of both sessions will be held in Barnard Auditorium, U.S. Department of Education, 400 Maryland Ave. SW, Washington, DC 20202. The meetings are open to the public.

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.

Dated: March 19, 2019.

Diane Auer Jones,

Principal Deputy Under Secretary Delegated to Perform the Duties of Under Secretary and Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2019–05625 Filed 3–20–19; 4:15 pm]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0802; FRL–9991–28–OAR]

Air Plan Approval; California; Antelope Valley Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Antelope Valley Air Quality Management District (AVAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from solvent cleaning operations. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by April 22, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0802 at *http://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment

contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Robert Schwartz, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3286, *schwartz.robert@epa.gov.*

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

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
AVAQMD	1171	Solvent Cleaning Operations	8/21/2018	10/30/2018

On November 28, 2018, the EPA determined that the submittal for AVAQMD Rule 1171 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 1171 into the SIP on May 24, 2001 (66 FR 28666). The AVAQMD adopted revisions to the SIP-approved version on August 21, 2018, and CARB submitted them to us on October 30, 2018.

C. What is the purpose of the rule revision?

Volatile organic compounds (VOCs) contribute to ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. The current SIP-approved Rule 1171 establishes VOC content limits and workplace standards for all persons who use, store, and dispose of VOC-containing materials in solvent cleaning operations. Revisions to the SIP-approved rule include lower VOC content limits for most categories of solvent cleaning activities and the addition of alternative VOC composite partial pressure limits for all solvent cleaning activities covered by this rule; updates to definitions; the addition of more comprehensive recordkeeping requirements; revised test methods; and the removal of several exemptions.

Additionally, on October 10, 2017 (82 FR 46923), the EPA partially conditionally approved AVAQMD's reasonably available control technology (RACT) demonstrations for the 1997 8-hr ozone National Ambient Air Quality Standards (NAAQS) and the 2008 8-hr ozone NAAQS (also referred to as the 2006 and 2015 RACT SIPs) with respect to Rule 1171, based on commitments from AVAQMD to revise and submit amendments to Rule 1171 that remedy specific deficiencies. These deficiencies were identified in our December 15, 2016 proposed partial approval and partial disapproval (81 FR 90754) and referenced in our July 28, 2017 proposal (82 FR 35149). For Rule 1171, the deficiency identified was the need to incorporate work practices from the Control Techniques Guidelines, ''Industrial Cleaning Solvents,'' September 2006. Revisions to Rule 1171 on October 30, 2018, were submitted in part to correct this deficiency. The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The AVAQMD regulates an ozone nonattainment area classified as Severe for the 1997 and 2008 8-hour ozone NAAQS (40 CFR 81.305). Therefore, this rule must implement RACT. In addition, the rule was evaluated to ensure it met the commitment made by the AVAQMD that served as the basis for the partial conditional approval of the AVAQMD 2006 and 2015 RACT SIPs with respect to Rule 1171 (82 FR 46923).

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. ''Control Techniques Guidelines: Industrial Cleaning Solvents,'' EPA–453/R–06–001, September 2006.

B. Does the rule meet the evaluation criteria?

This rule is consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions, and meets the District's commitment to remedy the Rule 1171 deficiency identified in the RACT SIP conditional approval (82 FR 46923). The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until April 22, 2019. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the AVAQMD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: March 11, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–05415 Filed 3–21–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0834: FRL9990–73–Region 10]

Air Plan Approval; AK; Updates to Curtailment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Alaska State Implementation Plan (SIP) that were submitted by the Alaska Department of Environmental Conservation (ADEC). These proposed revisions update and strengthen ADEC's regulation of residential wood smoke emissions, especially the curtailment program applying to the Fairbanks fine particulate matter nonattainment area.

DATES: Written comments must be received on or before April 22, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2018–0834 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Justin Spenillo, EPA Region 10, 1200 6th Ave, Seattle WA 98101, at (206) 553–6125, or *spenillo.justin@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA. This supplementary information section is arranged as follows:

Table of Contents

I. Background

On November 28, 2018, ADEC submitted revisions to specific air quality regulations for approval into the federally-enforceable Alaska SIP. The submission includes changes to Alaska Administrative Code Title 18, Environmental Conservation, Chapter 50, Air Quality Control (18 AAC 50), adopted December 8, 2017, and state-effective January 11, 2018. This action addresses a portion of the submitted revisions, specifically those that update and strengthen wood smoke curtailment regulations that apply in the Fairbanks fine particulate matter ($PM_{2.5}$) nonattainment area and that were previously approved into the Alaska SIP by the EPA on September 8, 2017 (82 FR 42457).[1] We are proposing to take action on submitted updates to solid fuel-fired heating device visible emission standards at 18 AAC 50.075(e), and revisions to the Fairbanks Emergency Episode Plan and associated appendix, state-effective January 11, 2018.[2] We intend to take action on the remainder of the submission in a separate, future action.[3]

II. ADEC Revisions

A. Solid Fuel-Fired Heating Device Visible Emission Standards

Submission

The solid fuel-fired heating device visible emissions standards are found in 18 AAC 50.075 and were last approved by the EPA on September 8, 2017 (82 FR 42457). The regulation at 18 AAC 50.075(e) allows ADEC to prohibit the operation of solid fuel-fired heating devices in an area for which ADEC has declared a $PM_{2.5}$ air quality episode under emergency episode provisions included in a local air quality plan that has been incorporated into the State Air Quality Control Plan and adopted by reference in 18 AAC 50.030. In this submission, ADEC revised 18 AAC 50.075(e) to remove a provision that restricted ADEC's authority to prohibit the operation of a solid fuel-fired heating device to periods when the ambient temperature is warmer than any threshold identified in a local air quality plan.

EPA Analysis

Removal of the temperature exemption for operation of a solid fuel-fired heating device during an air quality episode makes this control measure more stringent than the current federally-approved rules and is therefore approvable.

B. Fairbanks Emergency Episode Plan

Submission

The ADEC submitted multiple edits to the Fairbanks Emergency Episode Plan, adopted by reference at 18 AAC 50.030. Specifically, in Section 5.11.1, the ADEC revised the Air Quality Alert Model to change its model outputs from 8-hour averages to 12-hour averages. In addition, the ADEC added references in Section 5.11.2 to Fairbanks North Star Borough Ordinances No. 2017–18 (March 9, 2017) and No. 2017–44 (June 19, 2017).

The ADEC also revised the Air Quality Episode Thresholds and Exceptions to remove the Stage 3 alert and the associated temperature exemption (see Table 5.11–1) and to identify the rules under a two-stage curtailment program (see Table 5.11–2). Table 5.11–1 and Table 5.11–2 in the Fairbanks Emergency Episode Plan are replicated as Table 1 and Table 2, respectively, of this proposal. The revised Air Quality Episode Thresholds and Exceptions include specific types of heating appliances allowed under the two stages of the curtailment program and identifies waiver and No Other Adequate Source of Heat (''NOASH'') designations and the corresponding allowable uses of solid-fuel fired devices under those designations.

In particular, during a Stage 1 Alert where $PM_{2.5}$ concentrations rise above 25 micrograms per cubic meter ($\mu g/m^3$), Borough Listed Solid Fuel Burning Appliances with either an approved Stage 1 Waiver and/or NOASH designation may be operated, while use of wood stoves, coal stoves, wood-fired hydronic heaters, wood-fired furnaces, coal-fired hydronic heaters, coal-fired furnaces, fireplace inserts, pellet fuel burning appliances, masonry heaters, cook stoves, fireplaces, waste oil burning appliances, non-permitted outdoor incinerators/burn barrels are prohibited. In addition, campfires, bonfires, ceremonial fires, fire pits are under voluntary curtailment.

During a Stage 2 Alert, where $PM_{2.5}$ concentrations rise above 35 $\mu g/m^3$, Borough Listed Solid Fuel Burning Appliances with an NOASH designation may be operated, while use of devices with an approved Stage 1 Waiver, wood stoves, coal stoves, wood-fired hydronic heaters, wood-fired furnaces, coal-fired hydronic heaters, coal-fired furnaces, fireplace inserts, pellet fuel burning appliances, masonry heaters, cook stoves, fireplaces, waste oil burning appliances, non-permitted outdoor incinerators/burn barrels are prohibited; and campfires, bonfires, ceremonial fires, fire pits are prohibited. Please refer to Table 1 and Table 2 below.

TABLE 1—ADEC'S TABLE 5.11–1 AIR QUALITY EPISODE THRESHOLDS AND EXCEPTIONS

Episode feature	Stage 1 air alert	Stage 2 air alert
$PM_{2.5}$ Threshold, micrograms per cubic meter, ($\mu g/m^3$).	25	35.
Exceptions During a Power Outage.	Yes	Yes.

TABLE 2—ADEC'S TABLE 5.11–2 $PM_{2.5}$ AIR QUALITY EPISODE APPLIANCE-SPECIFIC OR WAIVER-SPECIFIC ACTIONS

Appliance type or waiver type	Stage 1 air alert	Stage 2 air alert
No other adequate source of heat (NOASH) designation, meets other requirements in 21.28.060.	Operation Prohibited except Borough Listed Solid Fuel Burning Appliances (SFBA).	Operation Prohibited except Borough Listed Solid Fuel Burning Appliances (SFBA).
Approved Stage 1 Waiver, meets other requirements in 21.28.060.	Operation Prohibited except Borough Listed Solid Fuel Burning Appliances (SFBA).	Operation Prohibited.

[1] See 40 CFR part 52, subpart C. See also 40 CFR 81.302.

[2] The Fairbanks Emergency Episode Plan is in Volume II: Section III.D.5.11 and is codified as a matter of State law at 18 AAC 50.030(a). The associated appendix to the plan is in Volume III: Appendix III.D.5.12 and includes the Fairbanks North Star Borough Ordinance No. 2017–18 and No. 2017–44, codified as a matter of State law at 18 AAC 50.030(a).

[3] The remainder of the submission addresses revisions to 18 AAC 50.030(b), 18 AAC 50.075(f), 18 AAC 50.077, 18 AAC 50.079, and 18 AAC 50.990.

TABLE 2—ADEC'S TABLE 5.11–2 $PM_{2.5}$ AIR QUALITY EPISODE APPLIANCE-SPECIFIC OR WAIVER-SPECIFIC ACTIONS—Continued

Appliance type or waiver type	Stage 1 air alert	Stage 2 air alert
Wood Stoves	Operation Prohibited	Operation Prohibited.
Coal Stoves	Operation Prohibited	Operation Prohibited.
Wood-fired hydronic heaters	Operation Prohibited	Operation Prohibited.
Wood-fired Furnaces	Operation Prohibited	Operation Prohibited.
Coal-fired Hydronic Heaters	Operation Prohibited	Operation Prohibited.
Coal-fired Furnaces	Operation Prohibited	Operation Prohibited.
Fireplace Inserts	Operation Prohibited	Operation Prohibited.
Pellet Fuel Burning Appliances	Operation Prohibited	Operation Prohibited.
Masonry Heaters	Operation Prohibited	Operation Prohibited.
Cook Stoves	Operation Prohibited	Operation Prohibited.
Fireplaces	Operation Prohibited	Operation Prohibited.
Waste Oil Burning Appliances	Operation Prohibited	Operation Prohibited.
Non-Permitted Outdoor Incinerators, Burn Barrels.	Operation Prohibited	Operation Prohibited.
Campfires, Bonfires, Ceremonial Fires, Fire pits	Voluntary Curtailment	Operation Prohibited.
Cook Stoves	Operation Prohibited	Operation Prohibited.

This section also was amended to reference Fairbanks North Star Borough Code 21.28.030 D that regulates particulate matter pollution that crosses the property line provided that the particulate pollution is visible using EPA Method 22 and is 25 μg/m^3 greater than ambient air in the immediate vicinity. ADEC adopted the corresponding Fairbanks North Star Borough ordinance by reference at 18 AAC 50.030. In addition, the section on the voluntary burning curtailment program was updated to reflect the history in the area and conversion from a voluntary to a mandatory curtailment program in 2017.

In Section 5.11.3, the ADEC revised the State Episode Program section to allow for the local air quality plan to issue local air alerts at lower $PM_{2.5}$ concentration thresholds, and to state that Alaska has aligned its rules with the local thresholds as described in Section 5.11.2.

The ADEC also made minor wording changes to the Emergency Episode Plan. The draft and final versions of the Emergency Episode Plan changes can be found in the docket for this action.

EPA Analysis

ADEC's revisions to the Fairbanks Emergency Episode Plan at Volume II: Section III.D.5.11 of the State Air Quality Control Plan improve the State's ability to implement the solid fuel burning device curtailment program via 18 AAC 50.075(e) and make the control measure more stringent. Specifically, the revised two-stage program will regulate more solid fuel burning devices and at lower $PM_{2.5}$ concentrations than the prior three-stage program. Under the three-stage program, there was a Stage 1 voluntary curtailment at 25 μg/m^3. In contrast, under Stage 1 of the revised program, all devices are prohibited from burning except those that are Borough Listed Solid Fuel Burning Appliances with either a Stage 1 Waiver and/or a NOASH. Moreover, Stage 1 has changed from voluntary to mandatory curtailment and applies to a larger subset of devices.

Stage 2 has also become more stringent under the revised curtailment program in that it prohibits all burning except for Borough Listed Solid Fuel Burning Appliances with a NOASH. With the removal of Stage 3, the State may now prohibit the use of solid fuel burning devices at lower $PM_{2.5}$ concentrations and may prohibit burning regardless of the ambient temperature. The two-stage curtailment program reduces solid fuel burning at lower concentrations, is mandatory at all stages, and applies to more heating appliances. These changes are intended to reduce emissions in the airshed and are designed to attain the $PM_{2.5}$ National Ambient Air Quality Standard and further protect health in the community. If our proposed approval is finalized, violations of any air quality episode called pursuant to 18 AAC 50.075(e) at the levels and conditions specified in Table 1 and Table 2, above, will be federally enforceable.

Additionally, the provisions addressing the flow of pollution across property lines provides for additional protection against plume concentrations over 25 μg/m^3 from ambient concentrations. Similarly, the submitted revisions to Section 5.11.3 strengthen ADEC's ability to implement the curtailment program by allowing for it to rely on stricter local air quality programs, if present.

C. Fairbanks North Star Borough Ordinance

Submission

As part of the Alaska's November 28, 2018 submittal letter for prioritized revisions, ADEC identified that it was submitting pages 68–84 of ''Volume III: Appendix III.D.5.12: Appendix to Volume II. Analysis of Problems, Control Actions; Section III. Area-wide Pollutant Control Program; D. Particulate Matter; 5. Fairbanks North Star Borough $PM_{2.5}$ Control Plan.'' This refers to the June 19, 2017 Fairbanks North Star Borough Ordinance No. 2017–44, incorporated into the Emergency Episode Plan adopted by reference into 18 AAC 50.030(a) as part of the State Air Quality Control Plan and discussed in Section II.B. It includes the change in the curtailment program from a three-stage curtailment program to a two-stage curtailment program which has been reflected identically in the Fairbanks Emergency Episode Plan and will not be re-reviewed here.

As adopted into state law, pages 68 through 84 of ''Volume III: Appendix III.D.5.12: Appendix to Volume II. Analysis of Problems, Control Actions; Section III. Area-wide Pollutant Control Program; D. Particulate Matter; 5. Fairbanks North Star Borough $PM_{2.5}$ Control Plan'' includes the June 19, 2017 FNSB Ordinance No. 2017–44.

EPA Analysis

Generally, the State's adoption by reference of the revised ordinance enhance and strengthen Alaska's State Air Quality Control Plan, as discussed in Section II.B.

III. EPA's Proposed Action

The EPA is proposing to approve and incorporate by reference the following provision into the Alaska SIP at 40 CFR 52.70(c), EPA Approved Regulations and Statutes:

• 18 AAC 50.075(e) Solid Fuel-fired Heating Device Visible Emission Standards, State effective January 12, 2018.

The EPA is proposing to approve, but not incorporate by reference, the following revised sections of the Alaska State Air Quality Control Plan:

• Volume II, Section III.D.5.11 Fairbanks Emergency Episode Plan, State effective January 12, 2018; and

• Pages 68 through 84 of Volume III, Appendix III.D.5.12: Appendix to Volume II. Analysis of Problems, Control Actions; Section III. Area-wide Pollutant Control Program; D. Particulate Matter; 5. Fairbanks North Star Borough $PM_{2.5}$ Control Plan, State effective January 12, 2018.

These proposed revisions to the SIP primarily apply to the Fairbanks $PM_{2.5}$ nonattainment area. As described above, the EPA is proposing to approve the rules, Emergency Episode Plan, reflecting the State-adopted Fairbanks North Star Borough Ordinances as part of state rule in 18 AAC 50.030, as SIP strengthening. These revisions support the state's ability to reduce and manage emissions in the Fairbanks $PM_{2.5}$ nonattainment area. This action does not alter our prior approval of the plan as meeting Moderate area requirements; and we are not making any findings with respect to the serious plan requirements triggered upon reclassification (82 FR 21711).

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the regulations described in section III. *Regulations to Approve and Incorporate by Reference into the SIP.* The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and

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

In addition, this proposed action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: March 1, 2019.

Chris Hladick,

Regional Administrator, Region 10.

[FR Doc. 2019–04906 Filed 3–21–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0056; FRL–9991–27-Region 9]

Approval of California Air Plan Revisions; Imperial County Air Pollution Control District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Imperial County Air Pollution Control District (ICAPCD or District) portion of the California State Implementation Plan (SIP). This revision concerns the District's New Source Review (NSR) permitting program for new and modified sources of air pollution. We are proposing action on a local rule under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by April 22, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0056 at *http://www.regulations.gov,* or via email to T. Khoi Nguyen, at *nguyen.thien@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: T. Khoi Nguyen, EPA Region IX, (415) 947–4120, *nguyen.thien@epa.gov.* EPA Region IX is located at 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was amended by the ICAPCD and submitted by the California Air Resources Board (CARB), which is the governor's designee for California SIP submittals.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
ICAPCD	207	New and Modified Stationary Source Review	9/11/18	10/5/18

On February 22, 2019, the EPA determined that the submittal for ICAPCD Rule 207 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

On September 5, 2017, the EPA finalized a conditional approval of Rule 207, as amended October 22, 2013, into the California SIP. 82 FR 41895.

C. What is the purpose of the submitted rule?

Section 110(a) of the CAA requires states to submit regulations that include a pre-construction permit program for certain new or modified stationary sources of pollutants, including a permit program as required by Part D of Title I of the CAA.

The purpose of District Rule 207 is to implement a federal preconstruction permit program for new and modified minor sources of regulated NSR pollutants, and new and modified major sources of regulated NSR pollutants for which the area is designated nonattainment. Imperial County is currently designated as a marginal nonattainment area for the 2015 8-hr ozone National Ambient Air Quality Standard (NAAQS) and a moderate nonattainment area for the 2008 ozone NAAQS. Portions of the county are designated as a serious nonattainment area for the 1987 24-hr PM_{10} NAAQS, as a moderate nonattainment area for the 2006 24-hr $PM_{2.5}$ NAAQS, and as a moderate nonattainment area for the 2012 annual $PM_{2.5}$ NAAQS. 40 CFR 81.305. In addition, Imperial County was designated nonattainment for two revoked NAAQS: the 1979 1-hour ozone (moderate) and 1997 8-hour ozone (moderate) NAAQS.

The rule revision corrects a deficiency for which the EPA previously finalized a conditional approval. 82 FR 41895. In that action, we explained our finding that the rule did not fully satisfy 40 CFR 51.165(a)(13)'s requirements for regulation of $PM_{2.5}$ precursors as they pertain to ammonia. Our conditional approval of Rule 217 was based on a commitment by CARB and the ICAPCD to submit a revised Rule 207 that includes ammonia as a $PM_{2.5}$ precursor within twelve months of the effective date of our action (*i.e.,* by October 5, 2018). To fulfill the commitment, the ICAPCD amended Rule 207 on September 11, 2018 and the California Air Resources Board (CARB) submitted revised Rule 207 to the EPA on October 5, 2018.

We present our evaluation of revised Rule 207, as identified in Table 1, in general terms below. Our technical support document (TSD), which is available in the docket for the proposed rulemaking, contains a more detailed analysis for today's proposed action.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

The submitted rule must meet the CAA's general requirements for SIPs and SIP revisions in CAA sections 110(a)(2), 110(l), and 193 as well as the applicable requirements contained in part D of title I of the Act (sections 172 and 173) for a nonattainment NSR permit program. In addition, the submitted rule must contain the applicable regulatory provisions of 40 CFR 51.160–51.165 and 40 CFR 51.307.

Among other things, section 110 of the Act requires that SIP rules be enforceable and provides that the EPA may not approve a SIP revision if it would interfere with any applicable requirements concerning attainment and reasonable further progress or any other requirement of the CAA. In addition, section 110(a)(2) and section 110(l) of the Act require that each SIP or revision to a SIP submitted by a state must be adopted after reasonable notice and public hearing.

Section 110(a)(2)(c) of the Act requires each SIP to include a permit program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. The EPA's regulations at 40 CFR 51.160–51.164 provide general programmatic requirements to implement this statutory mandate commonly referred to as the ''minor NSR'' or ''general NSR'' permit program. These NSR program regulations impose requirements for SIP approval of state and local programs that are more general in nature as compared to the specific statutory and regulatory requirements for nonattainment NSR permitting programs under Part D of title I of the Act.

Part D of title I of the Act contains the general requirements for areas designated nonattainment for a NAAQS (section 172), including preconstruction permit requirements for new major sources and major modifications proposing to construct in nonattainment areas (section 173).

Additionally, 40 CFR 51.165 sets forth the EPA's regulatory requirements for SIP-approval of a nonattainment NSR permit program.

The protection of visibility requirements that apply to New Source Review programs are contained in 40 CFR 51.307. This provision requires that certain actions be taken in consultation with the local Federal Land Manager if a new major source or major modification may have an impact on visibility in any mandatory Class I Federal Area.

Section 110(l) of the Act prohibits the EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. Section 193 of the Act, which only applies in nonattainment areas, prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

The EPA has reviewed the submitted rule in accordance with the rule evaluation criteria described above. With respect to procedures, based on our review of the public process documentation included in the October 5, 2018 submittal, we are proposing to approve the submitted rule in part because we have determined that the ICAPCD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of this rule, in accordance with the requirements of CAA sections 110(a)(2) and 110(l). The amendment of Rule 207 now also includes ammonia as a potential precursor to $PM_{2.5}$, thus resolving the conditional approval issue from the September 2017 action. Specifically, the revised Rule 207 updated definitions of ''emission increase'', ''major stationary source'', ''precursors'', and ''significant'' to be consistent with local and federal regulations and added language to specify when best available control technology requirements apply to ammonia emissions. Our TSD, which can be found in the docket for this rule, contains a more detailed discussion of the approval criteria.

B. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until April 22, 2019. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally-enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the ICAPCD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 21, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, New Source Review, Particulate matter.

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

Dated: March 13, 2018.

Michael Stoker,

Regional Administrator, Region IX.

[FR Doc. 2019–05416 Filed 3–21–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151006928–9089–02]

RIN 0648–BF43

Fisheries of the Northeastern United States; Jonah Crab Fishery; Interstate Fishery Management Plan for Jonah Crab

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

ACTION: Proposed rule.

SUMMARY: Based on Atlantic States Marine Fisheries Commission recommendations, we, the National Marine Fisheries Service, are proposing to implement regulations for the Jonah crab fishery in Federal waters. This action is necessary to enact measures that provide stock protections to a previously unmanaged fishery. The action is intended to ensure compatibility between state and Federal Jonah crab management measures, consistent with the Commission's Interstate Fishery Management Plan for Jonah Crab and the intent of the Atlantic Coastal Fisheries Cooperative Management Act.

DATES: Public comments must be received by April 22, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0127, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0127,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2276. Mark the outside of the envelope: ''Comments on Jonah Crab Proposed Rule.''

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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

You may request copies of the Draft Environmental Impact Statement (DEIS), including the Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA), prepared for this action at the mailing address specified above or by calling (978) 281–9225. The document is also available online at *https://www.greateratlantic.fisheries.noaa.gov/nr/2018/May/jonahcrabDEIS.html.*

You may submit written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to the mailing address listed above and by email to *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281–9122.

SUPPLEMENTARY INFORMATION:

Background

Under its process for managing species that are managed by both the states and NOAA's National Marine Fisheries Service, the Atlantic States Marine Fisheries Commission decides upon a management strategy, and then recommends that the states and Federal government enact regulations to complement these measures when appropriate. The Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 *et seq.*) directs the Federal government to support the management efforts of the Commission and, to the extent the Federal government seeks to regulate a Commission species, to develop regulations that are compatible with the Commission's Interstate Fishery Management Plan and consistent with the Magnuson-Stevens Fishery Conservation and Management Act's National Standards.

Historically, Jonah crabs (*Cancer borealis*) have been harvested as an incidental catch in the American lobster trap fishery. That is, traditionally, lobster harvesters did not target Jonah crabs, but sometimes kept and brought them to market if they caught some while lobster fishing. Eventually, the Jonah crab market expanded, and lobster harvesters began making legal modifications to their lobster traps and setting traps for the specific purpose of catching Jonah crabs. Landings have dramatically increased from nearly 3 million lb (1360.78 mt) in 1994 to a high of over 17 million lb (7711.07 mt) in 2017.

The rapid increase in Jonah crab landings concerned fishery managers. Little is known about the species within U.S. waters other than the fact that fishing pressure has significantly increased. There has been no scientific stock assessment, so we do not know whether the stock is overfished or whether overfishing is occurring. The Jonah crab fishery has been wholly unregulated in Federal waters; anybody could fish for any amount of crabs. Minimal and inconsistent regulations had been issued by some states. Some states tied the harvest of Jonah crabs to their state lobster license, while others did not. The market did provide limited stock protection: Harvest was tempered at times by a low demand, and Jonah crabs with a carapace width smaller than 5 inches (12.7 cm) were considered less marketable. In recent years, targeted fishing pressure has increased, likely due to the decline of the Southern New England lobster stock and the growing market demand for crab.

The Commission initiated management of Jonah crab out of concern for its future sustainability. Given the linkage between the lobster and Jonah crab fisheries, the Jonah crab fishery is managed by the Commission's American Lobster Management Board. The Commission approved an Interstate Fishery Management Plan for Jonah Crab in August 2015, following its public process for review and approval of management actions. The goal of the Commission's Jonah Crab Plan is, ''to promote conservation, reduce the possibility of recruitment failure, and allow the full utilization of the resource by the industry.'' In general, the plan aimed to capture the fishery within the parameters that existed prior to approval of the plan in 2015. For example, this involved establishing a

fishery that was limited to and prosecuted by lobster trap harvesters. Shortly after the Commission approved the plan, the Commission initiated and approved Addenda I and II, refining incidental catch limits and claw-only measures. These documents are available on the Commission's website at: *http://www.asmfc.org/species/jonah-crab.* The Commission formally recommended that the Secretary of Commerce implement complementary measures to the Jonah Crab Plan on September 8, 2015. The Commission amended the Jonah Crab Plan to include additional measures on February 8, 2017 and at that time contemporaneously asked the Secretary to include those additional measures as part of the Federal regulatory process.

Proposed Measures

This rule proposes the following measures (Table 1) which are consistent with the Commission's recommendations in the Jonah Crab Plan and its addenda. Measures are discussed in greater detail below.

Table 1. Proposed Jonah Crab Regulations.

Sector	Management Measure	Requirement
Commercial	Permitting	Landing Requires a Lobster Permit
	Minimum Size	4.75-inch (12.065-cm) carapace width
	Broodstock Protection	Prohibit Retention of Egg-Bearing Females
	Incidental Limit	Up to 1,000 crabs per trip
	Incidental Catch Definition	Up to 50 percent of weight onboard
	Dealer Permits and Reporting	Mandatory Reporting
Recreational	Broodstock Protection	Prohibit Retention of Egg-Bearing Females
	Catch Limit	50 crabs per day

Commercial Measures

1. Permitting

We are proposing to limit Jonah crab fishing access and harvest to those harvesters who already have an existing permit within the limited-access American lobster permit system. As a result, there is no need to separately qualify or issue a Jonah crab-specific permit. Tying Jonah crab access to the lobster permits allows managers to take advantage of existing lobster regulations to protect Jonah crabs, which makes sense because the Jonah crab fishery has historically been prosecuted by lobster permit holders using lobster traps. This action is not expected to prevent historical Jonah crab harvesters from Jonah crab fishing in the future. Our analysis of Federal and state harvest data failed to identify a Jonah crab trap harvester that did not hold an American lobster permit. In multiple advance notices of proposed rulemaking (80 FR 31347, June 2, 2015; 81 FR 70658, October 13, 2016), we have requested information to identify any Jonah crab harvesters that did not hold a lobster permit, which would inform our proposal to link Jonah crab harvest to the existing lobster permit structure. To date, we have received no comments identifying Jonah crab harvesters that did not have a lobster permit. We conclude that linking Jonah crab harvest to the existing American lobster permitting structure is appropriate. We are, however, inviting the public to comment on this linkage between the Jonah crab and lobster permit structure.

Approximately 95 percent of Jonah crab landings are caught in lobster traps. By combining Jonah crab harvest with the Federal lobster permit, a Jonah crab trap would be considered a lobster trap under Federal regulations at 50 CFR 697.7. As a result, commercial lobster trap permit holders harvesting Jonah crabs would be subject to the Federal lobster effort control measures set forth in 50 CFR part 697 *et seq.,* including the trap tag program, allocation and trap cap limits, gear requirements, etc. Provided that all lobster requirements and the other requirements proposed by this rulemaking are complied with, a lobster trap permit holder may harvest an unlimited amount of crabs. No additional lobster traps are proposed to be authorized through this action.

Approximately five percent of the Jonah crab harvest is taken by non-trap gear. We are proposing that commercial non-trap lobster permit holders would be permitted to land an incidental amount of Jonah crabs (meeting both the incidental limit and incidental definition, discussed below), should these proposed measures be approved (see Table 1). Jonah crabs have not been a directed catch using trawl gear. As with trap harvesters, non-trap harvesters would remain obligated to comply with all applicable lobster regulations.

Charter/party permitted vessels must comply with the proposed recreational requirements (see Table 1). Finally,

recreational anglers and divers would be restricted to the recreational requirements, and, as with lobster, would not be permitted to set trap gear.

2. Minimum Size

We are proposing to implement a minimum carapace width size of 4¾ inches (12.065 cm). The proposed size restriction should have a negligible impact on the fishing industry because Jonah crabs smaller than 4¾ inches (12.065 cm) have not been traditionally marketable and therefore were not harvested and brought to market.

The draft Jonah Crab Plan included a range of minimum carapace width size alternatives ranging from 4 inches (10.16 cm) to 5½ inches (13.97 cm) in quarter-inch (0.635-cm) increments, along with a no coastwide minimum size alternative. When developing these alternatives, the Commission's Jonah Crab Plan Development Team (PDT) attempted to identify Jonah crab size at maturity. The PDT found minimal information, stating in the Jonah Crab Plan that, ''what little is known comes from unpublished documents and published studies with low sample sizes.'' Nevertheless, ''examination of the data suggests that both sexes reach near 100 percent maturity by 3 35/64 inches (9.0 cm).'' A 4¾-inch (12.065-cm) size restriction should allow Jonah crabs to reproduce before they grow to harvestable size.

The Commission's PDT looked at alternatives with larger and smaller carapace sizes and with different levels of enforcement tolerance (the amount of animals smaller than the minimum size which are harvested by mistake without the action being considered willful). Ultimately, the Commission selected a minimum carapace width size of 4¾ inches (12.065 cm) with no tolerance for undersized crabs. This minimum size was selected by the Lobster Board because it balances current market demands, biological concerns over the size at which crabs become mature, and industry concerns that enforcement officials would issue violations for crabs that are just under the market-preferred size in this high-volume fishery where measuring each crab may be difficult. States were required to implement regulations consistent with the 4¾-inches (12.065-cm) minimum size by June 1, 2016.

Minimum sizes are used in most Greater Atlantic commercial fisheries as a tool to protect immature fish and shellfish to ensure that some percentage of fish have the opportunity to reproduce. We support such measures because they have biological benefits and are enforceable. The measures are also recommended by the Commission and have already been implemented by most states. Adopting the same size restrictions in this action would provide for consistent size restrictions in state and Federal waters.

3. Broodstock Protection

We are proposing to prohibit the retention of egg-bearing female Jonah crabs and prohibit the removal of eggs from egg-bearing female Jonah crabs. Three alternatives aimed at affording such protections were considered in the draft Jonah Crab Plan: 1. No prohibition; 2. a prohibition on egg-bearing female crabs; and 3. a prohibition on the retention of all female crabs with a tolerance. Prohibitions on possessing egg-bearing crabs were considered in the draft plan because they help ensure that eggs are given the opportunity to hatch and add to the population. Similar measures have been successfully used in the lobster fishery, under the Interstate Fishery Management Plan for American Lobster. Ultimately, the Commission selected to prohibit the possession of egg-bearing female crabs. Most states had already implemented regulations to prohibit possession of egg-bearing female crabs by June 1, 2016.

Given the Commission's objective of giving eggs the opportunity to hatch and contribute to the overall crab population, we are also proposing to prohibit the removal of eggs from an egg-bearing female Jonah crab. While not specifically recommended by the Commission, this measure compliments the Jonah Crab Plan by providing an additional measure to fortify the Plan's biological objective of allowing eggs to hatch. It also closes a potential enforcement loophole which could allow a harvester to circumvent the Commission's prohibition of possessing egg-bearing female Jonah crabs. Finally, we believe this has been an important and effect element of our lobster regulations, and therefore we think it is important to include a similar provision for Jonah crabs.

4. Incidental Catch Limit

We are proposing to implement an incidental catch limit of up to 1,000 crabs per trip for commercial non-trap lobster permit holders, as recommended in Addendum I. The Commission spent several meetings establishing the incidental catch limit in the original Jonah Crab Plan and then perfected it in Addendum I. This Addendum also included discussion on gears that must abide by this limit. The Commission originally approved an incidental catch limit of up to 200 crabs per day and up to 500 crabs per trip which largely mirrored the lobster incidental catch limit. The Lobster Board believed that the original limit was sufficient to allow for an incidental catch while preventing non-trap gear from targeting Jonah crabs.

Following approval of the Jonah Crab Plan, some stakeholders raised concern that the incidental catch limit did not include historic Jonah crab harvest amounts. Other management measures developed in the Jonah Crab Plan attempted to capture historic fishery practices. The PDT reviewed available catch information and determined that the original Jonah Crab Plan limit would have restricted some past trips which landed more than 200 crabs per day or 500 crabs per trip. The PDT determined that a limit of 1,000 crabs per trip would cover the majority of past landings from non-trap gear.

Ultimately, the Commission approved a new, expanded limit of up to 1,000 crabs per trip for both non-trap gear and non-lobster trap gear as part of Addendum I. The Commission expected that this revised limit would be more consistent with the maximum incidental catch that existed in 2015 prior to developing the Jonah Crab Plan. Our catch data corroborates the Commission's basis for revising the incidental catch limit. A Federal incidental catch of up to 1,000 crabs would provide consistency between Federal and state regulations.

We support the Commission's Addendum I incidental limit of up to 1,000 crabs per trip, as only 3 trips between 2010 and 2014 landed more than 900 lb (408.2 kg). This higher limit balances the Jonah Crab Plan's goals of maintaining historic catch levels while preventing future expansion of the incidental fishery into a larger or more targeted fishery. We are proposing to adopt and apply the incidental limit of up to 1,000 crabs per trip to the American lobster commercial non-trap permit category.

5. Incidental Catch Definition

We are proposing to implement a requirement that Jonah crabs cannot comprise more than 50 percent, by weight, of all species kept onboard a commercial non-trap permitted vessel. This would be a second requirement governing the incidental possession of Jonah crabs and would complement the maximum incidental catch limit of 1,000 crabs per trip. To further ensure that the incidental catch of Jonah crabs does not expand into a targeted fishery, the Commission developed and approved an incidental catch definition (called a ''bycatch definition'') as part of Addendum II. Options included a status

quo no incidental catch limit and a 50-percent limit, which would require that Jonah crabs make up no more than 50 percent, by weight, of all species kept on board a vessel. This requirement is intended to work in conjunction with the incidental catch limit. In order to retain the full incidental Jonah crab trip limit, a vessel would need to have at least the same weight of other species, combined, onboard. The Commission developed this measure out of concern that fishermen harvesting Jonah crab under the incidental catch limit may, in fact, target Jonah crab by landing 1,000 crabs per trip. The Commission was also concerned that this small-scale targeted fishery would be allowed to land 1,000 crabs per trip, and nothing else. The Commission noted that these examples conflicted with their intent for the incidental catch limit, which was to account for Jonah crabs caught while targeting another species. States were required to implement regulations consistent with this definition by January 1, 2018.

We support the Commission's Addendum II goal of further ensuring that historic incidental harvest does not evolve into targeted harvest. Percentage-based catch caps have been used in other regionally-managed fisheries and are enforceable. Therefore, consistent with the Commission's recommendation and to complement state measures already in effect, we are proposing to implement a requirement that, in addition to the incidental catch limit, Jonah crabs cannot comprise more than 50 percent, by weight, of all species kept onboard a vessel.

6. Mandatory Dealer Reporting

We are proposing a dealer permitting requirement and a mandatory dealer reporting requirement for any dealer wishing to purchase Jonah crabs from Federally-permitted vessels, consistent with all other regionally-managed species. The Jonah Crab Plan included a goal to ''implement uniform collection, analysis, and dissemination of biological and economic information; and improve understanding of the status of the stock and the economics of harvest.'' To that end, the Commission developed several options requiring 100-percent dealer reporting in its draft Jonah Crab Plan, along with an option that did not require dealer reporting. Those options specified information for collection, including a unique trip identification number, species, quantity (lb), state and port of landing, market grade and category, areas fished and hours fished, and price per pound. As mandatory dealer reporting is now universally required in all other fisheries, this reporting requirement was passed with little debate at the Commission.

The Commission did not explicitly discuss a permitting program for dealers purchasing Jonah crabs. Permitting would be necessary to successfully implement a mandatory dealer reporting program. Therefore, we are proposing to require that a dealer obtain a Federal Jonah crab dealer permit if that dealer wishes to purchase Jonah crabs from a federally-permitted lobster permit holder. Due to the overlap of Jonah crab and lobster harvest, our analysis shows that the vast majority of dealers currently purchasing Jonah crabs already have Federal dealer permits due to the other species purchased, specifically lobster. Therefore, requesting an additional permit in the annual renewal application is not expected to be burdensome.

We are proposing to require that all federally-permitted Jonah crab dealers submit dealer reports electronically, on a weekly basis, consistent with dealer reporting requirements for all other regionally-managed commercial fisheries. The Jonah Crab Plan specified information to be collected in dealer reports. We are proposing to collect the Commission's recommended information. We intend to require the same information currently required in other fisheries, which includes some additional information. These requirements include: Dealer name; dealer permit number; name and permit number or name and hull number (U.S. Coast Guard documentation number or state registration number, whichever is applicable) of the vessel from which fish are purchased; trip identifier (vessel trip report identification number for vessels with mandatory vessel trip reporting requirement); date of purchase; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. Finally, to facilitate reporting of all market categories, we are proposing to add additional dealer codes, which will help more accurately assess Jonah crab landings.

We support the Commission's data collection and standardization goal, as well as the requirement for 100 percent dealer reporting. While our proposed dealer permitting and reporting program is more expansive than what is specified in the Jonah Crab Plan, we believe it is consistent with the Commission's intent and will ensure consistency with the dealer reporting requirements for other federally-managed fisheries.

Recreational Measures

1. Broodstock Protection

We are proposing to prohibit the retention of egg-bearing female Jonah crabs in the recreational fishery, consistent with the Commission's recommendation. Development of this measure occurred in parallel to broodstock protection measures for the commercial fishery. For more background, please see *Broodstock Protection* under the Commercial Measures heading above.

2. Recreational Catch Limit

We are proposing to limit the recreational Jonah crab harvest to 50 whole crabs per person, per day. The PDT included three measures in the draft Jonah Crab Plan for Commission and public consideration: 1. No coastwide possession limit; 2. a possession limit of 50 (whole crabs); or 3. a possession limit of 100 claws per person. Cautious, restrictive recreational catch limits were developed by the PDT because few data existed on the extent of the existing recreational Jonah crab fishery. Further, it was believed that such a small limit would help to maintain a recreational harvester's participation in the fishery while preventing expansion of effort and targeting for illegal commercial harvest. Following public comment and discussion, the Commission elected to approve a 50 whole-crab per person, per day recreational limit of Jonah crabs without allowing a recreational claw harvest. States were required to implement recreational regulations by June 1, 2016.

Consistent with the Commission's recommendation and to complement state measures already in effect, we are proposing to implement a recreational catch limit of 50 whole crabs per person, per day. Consistent with the regulations for recreational harvest of American lobster, non-trap gear must be used to recreationally harvest Jonah crab, including diving, charter/party trips, and personal angling. While little information exists on the recreational fishery, we believe this limit balances recreational access to the fishery while restricting future expansion.

Other Measures Considered by the Commission

1. Landing Disposition Requirements (i.e., Claw Fishery)

We do not intend to impose landing disposition requirements at this time. Landing disposition requirements, like

the incidental landing limit, evolved during the development of the Jonah Crab Plan and its addenda. In a first attempt to capture regional harvesting differences in the Jonah Crab Plan, the Commission approved a whole crab fishery with an exemption for individuals who could prove a history of claw landings before the June 2, 2015, control date in the states of New Jersey, Delaware, Maryland, and Virginia. During the development of the Jonah Crab Plan, we advocated for a whole-crab fishery due to biological, enforcement, and National Standard 4 concerns. National Standard 4 requires that conservation and management measures shall not discriminate between residents of different states. Following approval of the Jonah Crab Plan, we raised several concerns with this measure, indicating in a February 29, 2016, letter, that ''it may prove challenging for us to implement the claw-only exemption, as constructed in the August 2015 Jonah Crab Plan because of National Standard 4,'' because the plan included little rationale for implementing this measure differently based on state affiliation.

The Commission reconsidered its claw fishery requirements as part of Addendum II. This effort included a thorough investigation of state and Federal landings data in an attempt to determine the extent of Jonah crab claw landings. The Jonah Crab PDT developed a range of potential management measures, including: 1. Status quo (a whole crab fishery with an exemption for southern states); 2. a whole crab fishery coastwide; and 3. a coastwide regulated claw fishery. Incidental volumetric measure claw limits such as a maximum of one 5-gallon (18.93 L) bucket were also discussed. During the development of Addendum II, we advocated for a whole-crab fishery due to biological and enforcement concerns, but supported options that would allow a small amount of claw-only landings. The Commission ultimately approved a measure that established a coastwide standard for claw harvest, allowing for an unlimited amount of claws to be harvested subject to a minimum claw length requirement.

In response, states have implemented a wide range of measures. Some allow harvest of an unlimited claws that meet the minimum size, others allow harvest of a maximum of one 5-gallon (18.93 L) bucket of claws, while others allow only whole crabs to be landed. The Commission recommended that we implement complementary claw fishery measures, but the variety of state regulations complicated our ability to complement regulations. Specifically, we found it challenging to issue a single Federal regulation that is consistent with state landing disposition requirements, when the state regulations themselves are inconsistent. Therefore, we are not proposing regulations for the claw fishery at this time. As such, states will regulate crab landing disposition shore-side. We will monitor the effectiveness of these state regulations to determine whether future Federal regulation will be necessary. Deferring action on the claw fishery is expected to minimize disconnects between state and Federal regulations.

2. Mandatory Commercial Harvester Reporting

The Commission recommended a 100-percent mandatory harvester reporting program as part of the Jonah Crab Plan but allowed jurisdictions requiring less than 100 percent of lobster harvester reporting to maintain their current programs and extend them to Jonah crab. The Jonah Crab Plan established specific information to be reported, including: A unique trip identification (link to dealer report); vessel number; trip start date; location (NMFS stat area); traps hauled; traps set; quantity (lb); trip length; soak time in hours and minutes; and target species. We intend to restrict Jonah crab harvest to only Federal lobster permit holders, and at present, there is no mandatory harvester reporting requirement for Federal lobster permit holders. Therefore, we do not intend to modify Federal lobster permit holder's reporting requirements though this action. This action proposes to add an additional species code to better capture the landings of Jonah crab claws in states that permit such activity.

In recent months, the Commission has given additional consideration to the reporting requirements in both the lobster and Jonah crab fisheries. In February 2018, the Commission approved Addendum XXVI to the Interstate Fishery Management Plan for American Lobster, which also serves as Addendum III to the Jonah Crab Plan. The intent of this addendum is to expand lobster harvester reporting requirements, enhance the spatial and effort data collections, and improve the amount and type of biological data collected in the offshore trap fishery. Given the offshore expansion of lobster trap effort in recent years, the Commission developed this addendum to address data gaps due to inconsistent reporting and data collection requirements across state and Federal agencies. As a result, the recommended Jonah crab reporting would be subsumed by the lobster reporting requirements that the Commission already made as part of Addendum XXVI to the Lobster Plan/Addendum III to the Jonah Crab Plan. We are currently developing a proposed rule in a separate action to consider adopting these expanded lobster and Jonah crab harvester reporting recommendations.

Research Activities

Since the Commission's approval of the Jonah Crab Plan, several organizations have established Jonah crab research programs focused on the research needs identified in the plan. Researchers from the Massachusetts Division of Marine Fisheries (MA DMF), the Commercial Fisheries Research Foundation (CFRF), and the University of Maryland have requested exempted fishing permits (EFPs), including exemptions from Jonah crab regulations, to conduct research on migration, growth rates, and maturity in Federal waters. Because no Federal regulations existed for Jonah crab, we advised researchers that they were free to conduct their research activities in Federal waters, but that exemptions from lobster regulations would be required.

We have issued EFPs to MA DMF and CFRF, and are considering an EFP for the University of Maryland. These projects have centered around the collection of crabs and lobster using ventless traps and, to date, have received exemptions from the lobster trap regulations, including exemptions from escape vent, trap tagging, and number of allowable traps requirements. Several of these studies are also collecting information on lobsters, and therefore also have exemptions from lobster possession provisions in regulations, including provisions on minimum and maximum size, egg-bearing females, etc.

This action proposes to expand the exemptions granted to these three research projects to include exemptions from the proposed Jonah crab regulations, as outlined in Table 2. Exemptions would not be issued until a final rule for Jonah Crab Plan measures is published. These proposed exemptions do not expand the scope or scale of any existing research projects; they are intended to allow these research activities to continue without interruption.

TABLE 2—EXPANDED EXEMPTION PROPOSAL TO EXISTING RESEARCH PERMITS

Organization	Project title	Jonah crab exemptions
Commercial Fisheries Research Foundation	Southern New England Cooperative Ventless Trap Survey.	Minimum size.
Massachusetts Division of Marine Fisheries	Random Stratified Coastwide Ventless Lobster Trap Survey.	Minimum size Prohibition on the possession of egg-bearing female Jonah crabs.
University of Maryland	Sexual maturity investigation of Jonah crabs ..	Minimum size.

If approved, the applicants may request minor modifications and extensions to the EFP throughout the year. We may grant EFP modifications and extensions without further notice if the modifications and extensions are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP requests. The EFPs would prohibit any fishing activity conducted outside the scope of the exempted fishing activities. Finally, we invite any other organizations conducting Jonah crab research to contact us to discuss whether their research activities will require Federal permits.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Coastal Fisheries Cooperative Management Act, applicable provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

NMFS prepared a draft environmental impact statement for this Plan; a notice of availability was published on May 25, 2018 (83 FR 24305). This action establishes Federal management measures for the Jonah crab fishery. As the species was previously unregulated, slight positive impacts are expected on the target species. Such measures will help to ensure the future sustainability of the stock. This action is expected to have no impact to slight negative impacts on essential fish habitat because it authorizes trap gear to be used. Impacts are considered to be slight because these are the same traps that have already been authorized and are currently used in the lobster fishery, and trap gear is known to have a minimal footprint on the bottom. Other more administrate measures are expected to have no impact. No impact to slight negative impacts on protected species are expected because the fishery uses a gear type known to have interactions with several protected species, including North Atlantic right whales, humpback whales, fin whales, and sei whales; and Northwest Atlantic distinct population segment loggerhead and leatherback sea turtles. The number of traps will not increase through this proposed action. This action is expected to have a short-term slight negative impact, but a longer-term positive impact, on human communities. While, in general, the Commission recommended regulations that were consistent with industry norms, such regulations could limit a harvester's ability to land Jonah crabs in the short term to the extent that a harvester had previously fished outside of those norms. While our data does not suggest that harvesting outside of the norm took place, if it did, the restrictions could lead to a slight negative impact. In the longer term, the regulations proposed in this rule are likely to help ensure the sustainability of the Jonah crab population for future harvest, yielding slight positive long-term impacts.

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

This proposed rule does not contain policies with federalism implications as defined in E.O. 13132. NMFS has consulted with the states in the creation of the Jonah Crab Plan, which makes recommendations for Federal action. The measures proposed in this rule are based upon the Jonah Crab Plan and its addenda, which were created by the Commission, and, as such, were created by, and are overseen by, the states. These measures are already in place at the state level. Additionally, these proposed measures would not preempt state law and would not regulate the states.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this preamble and in the **SUMMARY** section. A summary of the analysis follows. A copy of this analysis is available from the NMFS (see **ADDRESSES**).

Description of the Reasons Why Action by NMFS Is Being Considered

Recent data indicate that Jonah crab landings have increased dramatically in the past 15 years. To ensure that the stock is sustainably harvested, the Commission initiated the Jonah Crab Plan, as well as Addenda I and II to the plan to implement coastwide regulations. The Commission recommended that the Federal government implement measures consistent with its plan. To the extent practicable, this proposed rule would implement regulations that are consistent with the Commission's recommendations and the regulations promulgated by our state partners.

The Objectives and Legal Basis for the Proposed Action

The objective of the proposed action is to ensure sustainable management of the Jonah crab fishery in Federal waters, recognizing that Federal management occurs in concert with state management.

The purpose of the proposed measures is to manage the Jonah crab fishery in Federal waters in a manner consistent with the Atlantic Coastal Fisheries Cooperative Management Act, the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act, the Jonah Crab Plan, other applicable Federal laws, and, to the extent practicable, State laws and regulations.

The Jonah Crab Plan, the Atlantic Coastal Fisheries Cooperative Management Act, and promulgating regulations at 50 CFR part 697 provide the legal basis for the proposed action.

Description and Estimate of the Number of Small Entities To Which the Proposed Rule Would Apply

The proposed action would implement regulations affecting commercial fishing activities (North American Industry Classification System (NAICS) code 11411), seafood dealers (NAICS code 424460), and operators of party/charter businesses

(NAICS code 487210). Because each of these activities has their own size standard under the RFA, consideration of the number of regulated entities and the potential economic impacts of the proposed action for each NAICS code is discussed below.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on the average annual revenue for the three years from 2014 through 2016.

Section 3 of the Small Business Act defines affiliation. Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

Affiliated entities based on reported vessel ownership information on the 2016 permit application were used to ascertain the number of affiliated regulated entities that were associated with at least one limited access lobster permit. During 2016 there were 2,377 limited access lobster permits included in the ownership database, of which, 640 held only a non-trap permit, 1,597 held only a trap permit, and 140 held both a trap permit and a non-trap gear permit. Applying the principles of affiliation, and based on sales reported through the NMFS dealer database, the total number of regulated entities in 2016 was 2,026, of which, 2,018 entities had gross receipts from all fishing activity less than $11 million, and 8 entities had combined gross sales by all affiliated permitted vessels that exceeded $11 million. Note that the number of regulated entities is less than the number of permitted vessels because some affiliated ownership groups own more than one permit; although the overwhelming majority of ownership groups (1,847) are associated with only one limited access lobster permit.

TABLE 3—SUMMARY, BY ENTITY SIZE, OF AVERAGE GROSS SALES, NUMBER OF REGULATED ENTITIES, AND LOBSTER SALES

	Number of entities	Mean gross sales ($1,000's)	Mean lobster and Jonah Crab sales ($1,000's)
Large Entities	8	21,562	.....
Non-Participating Large Entities	4	21,729	.....
Participating Large Entities	4	21,395	6,984
Small Entities	2,018	387	.....
Non-Participating Small Entities	609	564	.....
Participating Small Entities	1,409	311	220

Dealer data are the primary source of data used to estimate gross receipts for purposes of size class determination. Although dealer data is the best available source of revenues earned from commercial fishing, it is prone to missing gear information, which is needed to estimate the number of affected trap gear entities. For this reason, vessel trip reports (VTRs) are used to estimate the number of affected participating lobster trap gear entities. As previously noted, a significant number of vessel owners possess only a limited access lobster permit and are not subject to mandatory reporting. For this reason, the analysis based on vessel owners that do possess at least one other permit for which VTRs are mandatory is representative of the fleet of limited access lobster trap permit holders.

The number of permitted limited access trap vessels that reported one or more lobster trap trips from 2014–2016 ranged from 400 in 2014 to 412 in 2016 (Table 4). None of these vessels relied exclusively on Jonah crab. About 62 percent of these vessels exclusively reported landing lobster while 38 percent of vessels reported landing both lobster and Jonah crab. In terms of lobster trap trips, 87 percent of VTR records reported landing lobster with no Jonah crab. Less than 1 percent of trips reported landing Jonah crab and no lobster, and 12 percent to 13 percent of trips reported landing both lobster and Jonah crab.

TABLE 4—SUMMARY OF LOBSTER TRAP EFFORT AND NUMBER OF AFFECTED ENTITIES

	2014	2015	2016
Trips	Percent		
Lobster Only Effort	86.7	87.7	87.1
Jonah Crab Only Effort	0.5	0.4	0.4
Lobster and Jonah Crab Effort	12.8	11.9	12.5
Permits	Count		
Lobster Only Effort	252	251	258
Jonah Crab Only Effort	0	0	0
Lobster and Jonah Crab Effort	148	160	154

As previously noted, the ownership data used to determine the number of affected entities is based on aggregated dealer data. Because the proposed action would affect limited access lobster non-trap permits, VTR data were used to determine the number of participating vessels that would be affected by the proposed action. Analysis of data from 2010 through 2014 presented in Addendum I to the Jonah Crab Plan indicated only three trips would have exceeded the proposed trip limit. During calendar years 2014–2016, the number of limited access lobster non-trap permit holders was 647 in 2014 and 660 in 2016 (Table 6). These vessels took a reported total of between 30,000 to 34,000 trips each year. It should be noted that, while the incidental limit is defined in number of crabs, this analysis relies on pounds landed. It was assumed that a crab weighs one pound (0.45 kg), and this assumption may be an underestimate given that the market favors larger crabs. The median value of this distribution ranged from a high of 1,175 pounds in 2014 to a low of 1,046 pounds in 2015. Comparing the incidental harvest definition to the VTR reported weight of Jonah crab results in an estimated average number of affected trips of 145 trips ranging from a high of 180 trips in 2015 to a low of 115 trips in 2014. This is about 0.5 percent of the total number of trips taken by limited access lobster non-trap trip permitted vessels (Table 5). The total number of regulated entities that would be affected by at least one trip where harvested Jonah crabs would be constrained by the Jonah crab incidental harvest limit ranged from 11 to 15 vessels from 2014 to 2016.

TABLE 6—AFFECTED REGULATED NON-TRAP PERMITS

	2014	2015	2016
Number of Reporting Permits	647	659	660
Number of Affected Permits	11	15	12
Number of trips	30,865	31,192	33,891
Trips Landing Jonah Crab	502	608	413
Jonah Crab Above Limit	115	180	139

Under existing regulations for other regulated species, NMFS requires a Federal dealer permit for the purchase of seafood from a Federally-permitted commercial vessel. NMFS regulations also require that dealers report all purchases of fish and/or shellfish from any vessel, including state-waters-only vessels. This means that any dealer issued a Federal dealer permit would be regulated under the proposed action. During 2015, there were 750 Federal dealer permits issued to dealers in Greater Atlantic region states, ranging from a high of 221 dealer permits in Maine to a low of 6 dealer permits in Delaware (Table 7). According to 2015 County Business Patterns (CBP) data, there were 803 dealer establishments in Greater Atlantic Region states that employed a total of 8,118 people. For Maine, New Hampshire, Massachusetts, and Rhode Island, the CBP number of establishments ranged from 52 percent to 66 percent lower than the number of Federal permits issued to dealers in those states. By contrast, the number of CBP establishments was approximately equal to the number of Federal permits in both Delaware and New Jersey, but the number of CBP establishments was substantially higher than the number of Federal permits in all other states in the Mid-Atlantic region.

The number of CBP establishments by employment size class demonstrates that the overwhelming majority of establishments (796 of 803) employ fewer than 100 employees. Moreover, 86 percent of seafood dealer establishments in Greater Atlantic Region states employ fewer than 19 people. This suggests that the seafood dealer sector is dominated by businesses that are considered small entities for purposes of the RFA.

TABLE 7—NUMBER OF REGULATED SEAFOOD DEALERS AND EMPLOYMENT SIZE DISTRIBUTION FOR 2015

State	Federal permits	CBP establishments	CBP employment	CBP number of establishments by employment size class						
				1–4	5–9	10–19	20–49	50–99	100–249	250–499
ME	221	146	1,123	89	28	13	13	2	1	0
NH	17	9	108	3	3	1	2	0	0	0
MA	204	129	1,808	57	26	17	20	7	2	0
RI	51	28	182	13	7	8	0	0	0	0
CT	12	20	211	9	2	5	4	0	0	0
NY	100	275	2,056	178	38	31	23	4	1	0
NJ	85	78	784	43	10	15	7	2	1	0
DE	6	6	54	4	0	1	1	0	0	0
NC	42	59	1,187	27	10	10	8	3	0	1

Descriptions of Significant Alternatives Which Minimize any Significant Economic Impact of Proposed Action on Small Entities

This action imposes minimal impacts on small entities. Due to the expected high rate of dual permitting and the fact that the states are already compliant with these measures, the majority of Federal vessels are already abiding by these requirements, and therefore will not be impacted by the measures in this proposed rule. For those vessels not dually permitted, several measures in this proposed rule that regulate the harvest of Jonah crabs (minimum size, broodstock protections, etc.) can be expected to have a limited economic impact on permit holders, because existing market preferences encompass these measures. That is, long before the existence of any minimum size restrictions, harvesters threw back small crabs because dealers would not buy them. In other words, these smaller crabs were already protected from harvest due to market forces, and under the changes in this proposed rule, these smaller crabs would be protected for conservation purposes. Regardless, no crab will be thrown back based upon this regulation that would not have already been thrown back as unmarketable. As such, there will be limited economic impact on the fishing

industry from establishing the recommended minimum size. Furthermore, because the Jonah crab fishery has largely been prosecuted by lobster trap harvesters, the Jonah crab fishery remains restricted by effort control measures that already exist in the lobster regulations. Non-trap harvest limits proposed in this rule were set in a manner to ensure that the vast majority of past trips would be accounted for under the proposed limit. Because the measures in this proposed rule are consistent with Commission recommendations, current state regulations, and existing lobster fishery requirements, alternative measures would likely create inconsistencies and regulatory disconnects with the states, and, therefore, would likely worsen potential economic impacts.

Reporting, Recordkeeping and Other Compliance Requirements

This action contains several new reporting and recordkeeping requirements that would involve costs to vessels and dealers intending to land or purchase Jonah crabs. Vessels would be required to obtain a permit that authorizes the retention and sale of Jonah crabs and may be required to report catch via the Federal vessel trip report. Dealers wishing to purchase Jonah crabs would be required to obtain a Federal Jonah crab permit and report their purchases weekly, as required for other Federally-managed species. These proposed measures would impose several new compliance requirements; however, the proposed measures are already in place for states and are, by design, are intended to be consistent with past fishing practices and market requirements.

Duplication, Overlap or Conflict With Other Federal Rules

This action does not duplicate, overlap, or conflict with any other Federal laws.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Following are estimated averages for the public reporting burden for dealer permitting and dealer reporting:

1. Initial Federal dealer permit application, OMB# 0648–0202, (15 minutes/response); and

2. Dealer report of landings by species, OMB# 0648–0229, (4 minutes/response).

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Greater Atlantic Regional Fisheries Office at the **ADDRESSES** section above, and by email to *OIRA_Submission@omb.eop.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Authority: 16 U.S.C. 5101–5108; 16 U.S.C. 1801 et seq.

Dated: March 18, 2019.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 697 is proposed to be amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

■ 2. In § 697.2:

■ a. Delete definitions for ''berried female'' and ''carapace length;'' and

■ b. Add new definitions for ''berried female Jonah crab,'' ''berried female lobster,'' ''Jonah crab'', ''Jonah crab carapace width'', and ''lobster carapace length'', in alphabetical order.

The deletions and additions read as follows:

§ 697.2 Definitions.

* * * * *

Berried female Jonah crab means a female Jonah crab bearing eggs attached to the abdomen.

Berried female lobster means a female American lobster bearing eggs attached to the abdominal appendages.

* * * * *

Jonah crab means *Cancer borealis.*

Jonah crab carapace width is the straight line measurement across the widest part of the shell including the tips of the posterior-most, longest spines along the lateral margins of the carapace.

* * * * *

Lobster carapace length is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace. The carapace is the unsegmented body shell of the American lobster.

* * * * *

■ 3. In § 697.4, revise paragraph (a) introductory text to read as follows:

§ 697.4 Vessel permits and trap tags.

(a) *Limited access American lobster permit.* Any vessel of the United States that fishes for, possesses, or lands American lobster or Jonah crab in or harvested from the EEZ must have been issued and carry on board a valid Federal limited access lobster permit. This requirement does not apply to: Charter, head, and commercial dive vessels that possess 6 or fewer American lobsters per person or 50 Jonah crab per person aboard the vessel if such lobsters or crabs are not intended for, nor used, in trade, barter or sale; recreational fishing vessels; and vessels that fish exclusively in state waters for American lobster or Jonah crab.

* * * * *

■ 4. In § 697.5, revise paragraph (a) to read as follows:

§ 697.5 Operator permits.

(a) *General.* Any operator of a vessel issued a Federal limited access American lobster permit under § 697.4(a), or any operator of a vessel of the United States that fishes for, possesses, or lands American lobsters or Jonah crabs, harvested in or from the EEZ must have been issued and carry on board a valid operator's permit issued under this section. This requirement does not apply to: Charter, head, and commercial dive vessels that possess six or fewer American lobsters per person aboard the vessel if said lobsters are not intended for nor used in trade, barter or sale; recreational fishing vessels; and vessels that fish exclusively in state waters for American lobster.

* * * * *

■ 5. In § 697.6, revise paragraphs (a), (n)(1) introductory text, (n)(1)(i), (n)(1)(ii)(B), (n)(2), and (s) to read as follows:

§ 697.6 Dealer permits.

(a) Any person who receives, for a commercial purpose (other than solely for transport on land), American lobster or Jonah crabs from the owner or operator of a vessel issued a valid permit under this part, or any person

who receives, for a commercial purpose (other than solely for transport on land), American lobster or Jonah crabs, managed by this part, must have been issued, and have in his/her possession, a valid permit issued under this section.

* * * * *

(n) *Lobster and Jonah crab dealer recordkeeping and reporting requirements.* (1) *Detailed report.* All Federally-permitted lobster dealers and Jonah crab dealers, and any person acting in the capacity of a dealer, must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for a commercial purpose, other than solely for transport on land, within the time periods specified in paragraph (q) of this section, or as specified in § 648.7(a)(1)(f) of this chapter, whichever is most restrictive, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The following information, and any other information required by the Regional Administrator, must be provided in each report:

(i) *Required information.* All dealers issued a Federal lobster or Jonah crab dealer permit under this part must provide the following information, as well as any additional information as applicable under § 648.7(a)(1)(i) of this chapter: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are transferred, purchased or received for a commercial purpose; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under part 648 of this chapter with a mandatory vessel trip reporting requirement; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; cage tag numbers for surfclams and ocean quahogs, if applicable; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) * * *

(A) * * *

(B) When purchasing or receiving fish from a vessel landing in a port located outside of the Northeast Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases or receipts of species managed by the Northeast Region under this part (American lobster or Jonah crab), and part 648 of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Greater Atlantic Region, which are not affected by the provision; and

* * * * *

(2) *System requirements.* All persons required to submit reports under paragraph (n)(1) of this section are required to have the capability to transmit data via the internet. To ensure compatibility with the reporting system and database, dealers are required to utilize a personal computer, in working condition, that meets the minimum specifications identified by NMFS.

* * * * *

(s) *Additional dealer reporting requirements.* All persons issued a lobster dealer permit or a Jonah crab dealer permit under this part are subject to the reporting requirements set forth in paragraph (n) of this section, as well as §§ 648.6 and 648.7 of this chapter, whichever is most restrictive.

■ 6. In § 697.7, revise paragraphs (c)(1)(i), (iii), (iv), and (xxix), and add paragraph (g), to read as follows:

§ 697.7 Prohibitions.

* * * * *

(c) *American lobster.*

(1) * * *

(i) Retain on board, land, or possess at or after landing, whole American lobsters that fail to meet the minimum lobster carapace length standard specified in § 697.20(a). All American lobsters will be subject to inspection and enforcement action, up to and including the time when a dealer receives or possesses American lobsters for a commercial purpose.

(ii) * * *

(iii) Retain on board, land, or possess any berried female lobster specified in § 697.20(d).

(iv) Remove eggs from any berried female lobster, land, or possess any such lobster from which eggs have been removed. No person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 may land or possess any lobster that has come in contact with any substance capable of removing lobster eggs.

* * * * *

(xxix) Retain on board, land, or possess at or after landing, whole American lobsters that exceed the maximum lobster carapace length standard specified in § 697.20(b). All American lobsters will be subject to inspection and enforcement action, up to and including the time when a dealer receives or possesses American lobsters for a commercial purpose.

* * * * *

(g) *Jonah crab.* (1) In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to do any of the following:

(i) Retain on board, land, or possess at or after landing, Jonah crabs that fail to meet the minimum Jonah crab carapace width standard specified in § 697.20(h)(1). All Jonah crabs will be subject to inspection and enforcement action, up to and including the time when a dealer receives or possesses Jonah crabs for a commercial purpose.

(ii) Retain on board, land, or possess any berried female Jonah crabs specified in § 697.20(h)(2).

(iii) Remove eggs from any berried female Jonah crab, land, or possess any such Jonah crab from which eggs have been removed. No person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 may land or possess any Jonah crab that has come in contact with any substance capable of removing crab eggs.

(iv) Sell, transfer, or barter or attempt to sell, transfer, or barter to a dealer any Jonah crabs, unless the dealer has a valid Federal Dealer's Permit issued under § 697.6.

(v) Fish for, take, catch, or harvest Jonah crabs on a fishing trip in or from the EEZ by a method other than traps, in excess of up to 1,000 crabs per trip, unless otherwise restricted by § 697.7(g)(2)(i)(C) of this chapter.

(vi) Possess, retain on board, or land Jonah crabs by a vessel with any non-trap gear on board capable of catching Jonah crabs, in excess of up to 1,000 crabs per trip, unless otherwise

restricted by § 697.7(g)(2)(i)(C) of this chapter.

(vii) Transfer or attempt to transfer Jonah crabs from one vessel to another vessel.

(2) In addition to the prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraph (g)(1) of this section, it is unlawful for any person to do any of the following:

(i) Retain on board, land, or possess Jonah crabs unless:

(A) The Jonah crabs were harvested by a vessel that has been issued and carries on board a valid Federal limited access American lobster permit under § 697.4; or

(B) The Jonah crabs were harvested in state waters by a vessel without a valid Federal limited access American lobster permit; or

(C) The Jonah crabs were harvested by a charter boat, head boat, or commercial dive vessel that possesses 50 or fewer Jonah crabs per person on board the vessel (including captain and crew) and the Jonah crabs are not intended to be, or are not, traded, bartered, or sold; or

(D) The Jonah crabs were harvested for recreational purposes by a recreational fishing vessel; or

(E) The Jonah crabs were harvested by a vessel or person holding a valid State of Maine American lobster permit or license and is fishing under the provisions of and in the areas designated in § 697.24.

(ii) Sell, barter, or trade, or otherwise transfer, or attempt to sell, barter, or trade, or otherwise transfer, for a commercial purpose, any Jonah crabs from a vessel, unless the vessel has been issued a valid Federal limited access American lobster permit under § 697.4, or the Jonah crabs were harvested by a vessel without a valid Federal limited access American lobster permit that fishes for Jonah crabs exclusively in state waters or unless the vessel or person holds a valid State of Maine American lobster permit or license and that is fishing under the provisions of and in the areas designated in § 697.24.

(iii) To be, or act as, an operator of a vessel fishing for or possessing Jonah crabs in or from the EEZ, or issued a Federal limited access American lobster permit under § 697.4, without having been issued and possessing a valid operator's permit under § 697.5.

(iv) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, as, or in the capacity of, a dealer, Jonah crabs taken from or harvested by a fishing vessel issued a Federal limited access American lobster permit, unless in possession of a valid dealer's permit issued under § 697.6.

(v) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, as, or in the capacity of, a dealer, Jonah crabs caught by a vessel other than one issued a valid Federal limited access American lobster permit under § 697.4, or one holding or owned or operated by one holding a valid State of Maine American lobster permit or license and fishing under the provisions of and in the areas designated in § 697.24, unless the Jonah crabs were harvested by a vessel without a Federal limited access American lobster permit and that fishes for Jonah crabs exclusively in state waters.

(vi) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any Jonah crabs.

(vii) Violate any provision of this part, the ACFCMA, the Magnuson-Stevens Act, or any regulation, permit, or notification issued under the ACFCMA, the Magnuson-Stevens Act, or these regulations.

(viii) Retain on board, land, or possess any Jonah crabs harvested in or from the EEZ in violation of § 697.20.

(ix) Ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live Jonah crabs in violation of § 697.20.

(x) Violate any terms of a letter authorizing exempted fishing pursuant to § 697.22 or to fail to keep such letter aboard the vessel during the time period of the exempted fishing.

(xi) Possess, deploy, fish with, haul, harvest Jonah crabs from, or carry aboard a vessel any lobster trap gear on a fishing trip in the EEZ on a vessel that fishes for, takes, catches, or harvests Jonah crabs by a method other than lobster traps.

(xii) Fish for, take, catch, or harvest Jonah crabs on a fishing trip in the EEZ by a method other than traps, in excess of up to 1,000 crabs per trip, unless otherwise restricted by § 697.7(g)(2)(i)(C) of this chapter.

(xiii) Possess, retain on board, or land Jonah crabs by a vessel with any non-trap gear on board capable of catching lobsters, in excess of up to 1,000 crabs per trip, unless otherwise restricted by § 697.7(g)(2)(i)(C) of this chapter.

(xiv) Transfer or attempt to transfer Jonah crabs from one vessel to another vessel.

(xv) Fail to comply with dealer record keeping and reporting requirements as specified in § 697.6.

(3) *Presumptions.* (i) Any person possessing, or landing Jonah crabs at or prior to the time when those Jonah crabs are landed, or are received or possessed by a dealer for the first time, is subject to all of the prohibitions specified in paragraph (g) of this section, unless the Jonah crabs were harvested by a vessel without a Federal limited access American lobster permit and that fishes for Jonah crabs exclusively in state waters; or are from a charter, head, or commercial dive vessel that possesses or possessed 50 or fewer Jonah crabs per person aboard the vessel and the Jonah crabs are not intended for sale, trade, or barter; or are from a recreational fishing vessel.

(ii) Jonah crabs that are possessed, or landed at or prior to the time when the Jonah crabs are received by a dealer, or Jonah crabs that are possessed by a dealer, are presumed to have been harvested from the EEZ or by a vessel with a Federal limited access American lobster permit. A preponderance of all submitted evidence that such Jonah crabs were harvested by a vessel without a Federal limited access American lobster permit and fishing exclusively for Jonah crabs in state or foreign waters will be sufficient to rebut this presumption.

(iii) The possession of egg-bearing female Jonah crabs in violation of the requirements set forth in § 697.20(h)(1) or Jonah crabs that are smaller than the minimum sizes set forth in § 697.20(h)(2), will be prima facie evidence that such Jonah crabs were taken or imported in violation of these regulations. A preponderance of all submitted evidence that such Jonah crabs were harvested by a vessel not holding a permit under this part and fishing exclusively within state or foreign waters will be sufficient to rebut the presumption.

■ 7. In § 697.17, revise paragraphs (a), (b), and (c), and add paragraphs (d), (e), and (f) to read as follows:

§ 697.17 Non-Trap Harvest Restrictions.

(a) *Non-trap lobster landing limits.* In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for a vessel with any non-trap gear on board capable of catching lobsters, or, that fishes for, takes, catches, or harvests lobster on a fishing trip in or from the EEZ by a method other than traps, to possess, retain on board, or land, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip, unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(b) *Trap prohibition for non-trap lobster harvesters.* All persons that fish for, take, catch, or harvest lobsters on a fishing trip in or from the EEZ are prohibited from transferring or attempting to transfer American lobster from one vessel to another vessel.

(c) *Trap prohibition for non-trap lobster vessels.* Any vessel on a fishing trip in the EEZ that fishes for, takes, catches, or harvests lobster by a method other than traps may not possess on board, deploy, fish with, or haul back traps.

(d) *Non-trap Jonah crab landing limits.* In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for a vessel with any non-trap gear on board that fishes for, takes, catches, or harvests Jonah crabs on a fishing trip in or from the EEZ by a method other than traps, to possess, retain on board, or land, in excess of up to 1,000 Jonah crabs (or parts thereof), for each trip, unless otherwise restricted by § 697.7 of this chapter.

(e) *Restrictions on fishing for, possessing, or landing fish other than Jonah crabs.* Vessels are prohibited from possessing or landing Jonah crabs in excess of 50 percent, by weight, of all other species on board.

(f) *Trap prohibition for non-trap Jonah crab harvesters.* All persons that fish for, take, catch, or harvest Jonah crabs on a fishing trip in or from the EEZ are prohibited from transferring or attempting to transfer Jonah crabs from one vessel to another vessel.

* * * * *

■ 8. In § 697.20, revise paragraph (a), (b) and (d), and add paragraph (h) to read as follows:

§ 697.20 Size, harvesting and landing requirements.

(a) *Minimum lobster carapace length.* (1) The minimum lobster carapace length for all American lobsters harvested in or from the EEZ Nearshore Management Area 1 or the EEZ Nearshore Management Area 6 is 3¼ inches (8.26 cm).

(2) The minimum lobster carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in the Nearshore Management Area 1 or the EEZ Nearshore Management Area 6 is 3¼ inches (8.26 cm).

(3) The minimum lobster carapace length for all American lobsters harvested in or from the EEZ Nearshore Management Area 2, 4, 5 and the Outer Cape Lobster Management Area is 3⅜ inches (8.57 cm).

(4) The minimum lobster carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Nearshore Management Area 2, 4, 5 and the Outer Cape Lobster Management Area is 3 3⅜ inches (8.57 cm).

(5) Through April 30, 2015, the minimum lobster carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is 3½ inches (8.89 cm).

(6) Through April 30, 2015, the minimum lobster carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3½ inches (8.89 cm).

(7) Effective May 1, 2015, the minimum lobster carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is $3^{17}/_{32}$ inches (8.97 cm).

(8) Effective May 1, 2015, the minimum lobster carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is $3^{17}/_{32}$ inches (8.97 cm).

(9) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that is smaller than the minimum size specified in paragraph (a) of this section.

(b) *Maximum lobster carapace length.* (1) The maximum lobster carapace length for all American lobster harvested in or from the EEZ Nearshore Management Area 1 is 5 inches (12.7 cm).

(2) The maximum lobster carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 1 is 5 inches (12.7 cm).

(3) The maximum lobster carapace length for all American lobster harvested in or from the EEZ Nearshore Management Areas 2, 4, 5, and 6 is 5¼ inches (13.34 cm).

(4) The maximum lobster carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in one or more of EEZ Nearshore Management Areas 2, 4, 5, and 6 is 5¼ inches (13.34 cm).

(5) The maximum lobster carapace length for all American lobster harvested in or from EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6¾ inches (17.15 cm).

(6) The maximum lobster carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6¾ inches (17.15 cm).

(c) * * *

(d) *Berried female lobsters.*

(1) Any berried female lobster harvested in or from the EEZ must be returned to the sea immediately. If any berried female lobster is harvested in or from the EEZ Nearshore Management Areas 1, 2, 4, or 5, or in or from the EEZ Offshore Management Area 3, north of 42°30′ North latitude, it must be v-notched before being returned to sea immediately.

(2) Any berried female lobster harvested or possessed by a vessel issued a Federal limited access lobster permit must be returned to the sea immediately. If any berried female lobster is harvested in or from the EEZ Nearshore Management Areas 1, 2, 4, or 5, or in or from the EEZ Offshore Management Area 3, north of 42°30′ North latitude, it must be v-notched before being returned to sea immediately.

(3) No vessel, or owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may possess any berried female lobster.

(4) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any berried female lobster as specified in paragraph (d) of this section.

* * * * *

(h) *Jonah crabs.* (1) *Minimum Jonah crab carapace width.* The minimum Jonah crab carapace width for all Jonah crabs harvested in or from the EEZ 4¾ inches (12.065 inches).

(2) *Berried female Jonah crabs.* (A) Any berried female Jonah crab harvested in or from the EEZ must be returned to the sea immediately.

(B) No vessel, or owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may possess any berried female Jonah crab.

(C) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any berried female Jonah

crab as specified in paragraph (d) of this section.

(3) *Removal of eggs.* (A) No person may remove, including, but not limited to, the forcible removal and removal by chemicals or other substances or liquids, extruded eggs attached to the abdominal appendages from any female Jonah crab.

(B) No owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may remove, including but not limited to, the forcible removal, and removal by chemicals or other substances or liquids, extruded eggs attached to the abdominal appendages from any female Jonah crab.

(C) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live Jonah crab that bears evidence of the removal of extruded eggs from its abdominal appendages as specified in paragraph (e) of this section.

* * * * *

[FR Doc. 2019–05423 Filed 3–21–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–XG660

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment 17 to the Coastal Pelagic Species Fishery Management Plan

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

ACTION: Announcement of availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council has submitted Amendment 17 to the Coastal Pelagic Species Fishery Management Plan for review by the Secretary of Commerce. Amendment 17 would remove the pre-specified incidental landing limit that would become effective for live bait were a stock managed under the Fishery Management Plan to become overfished. Currently, if a coastal pelagic species stock were to become overfished, and even prior to adoption of a rebuilding plan, the Fishery Management Plan would automatically limit retention of live bait of that stock to incidentally caught fish with no more than 15 percent of any load being live bait from the overfished stock. The intent of Amendment 17 is to allow the Council flexibility in recommending restrictions on the live bait portion of the fishery when a stock is overfished. NMFS will consider public comments in deciding whether to approve, disapprove, or partially approve Amendment 17.

DATES: Comments on Amendment 17 must be received by May 21, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0137, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0137*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 501 W Ocean Blvd., Ste. 4200, Long Beach, CA 90802–4250; Attn: Lynn Massey.

Instructions: Comments must be submitted by one of the above methods 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).

Copies of the draft Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) as amended through Amendment 17, with notations showing how Amendment 17 would change the FMP, if approved, are available via the Federal eRulemaking Portal: *http://www.regulations.gov,* docket NOAA–NMFS–2018–0137, or by contacting the Pacific Fisheries Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Lynn Massey, Sustainable Fisheries Division, NMFS, at 562–436–2462; or Kerry Griffin, Pacific Fishery Management Council, at 503–820–2280.

SUPPLEMENTARY INFORMATION: The CPS fishery in the U.S. exclusive economic zone off the West Coast is managed under the CPS FMP. The Pacific Fishery Management Council (Council) developed the CPS FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* The Secretary of Commerce approved the CPS FMP and implemented the provisions of the plan through regulations at 50 CFR part 660, subpart I. Species managed under the CPS FMP include Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy, market squid and krill.

The Magnuson-Stevens Act requires each regional fishery management council to submit any amendment to an FMP to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment to an FMP, publish notification in the **Federal Register** that the amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve, disapprove, or partially approve Amendment 17.

The live bait fishery provides live bait to anglers and commercial vessels in California, Oregon, and Washington, making it an extremely important component of the West Coast's recreational fishing community, as well as some commercial fishery sectors such as the albacore tuna fishery. At the June 2018 Council meeting, in anticipation that the Northern subpopulation of Pacific sardine might be declared overfished if there were even a minor decline in the 2019 biomass estimate, the Council initiated an FMP amendment to address the prosecution of the live bait sector of the CPS fishery (primarily consisting of Pacific sardine and northern anchovy) after a stock is declared overfished. Additionally, several industry members offered testimony at the June and September 2018 Council meetings about probable adverse impacts to the live bait fishery if Pacific sardine were to become overfished in the 2019–2020 fishing year. At the November 2018 meeting, the Council took final action and approved Amendment 17 to the CPS FMP for submission to the Secretary for review under section 304(a) of the Magnuson-Stevens Act, 16 U.S.C. 1854(a).

Amendment 17 would remove the pre-specified incidental catch limit in the live bait fishery that would become

effective were a CPS stock declared overfished. Currently, if a CPS stock were to become overfished, and even before adoption of a rebuilding plan, the CPS FMP would automatically limit retention of live bait of that stock to incidentally caught fish with no more than 15 percent of any load being live bait from the overfished stock. Live bait is sold in units of single species; therefore the live bait fishery targets pure loads of the desired species since it is not operationally feasible to separate mixed loads. Stopping all live bait fishing would likely cause a de facto closure for catching the overfished species as live bait, which would seriously disrupt various recreational fisheries, most notably in Southern California, and the commercial albacore fishery that purchase and rely on live bait managed under the CPS FMP.

If a CPS stock becomes overfished, Amendment 17 would provide NMFS and the Council the ability to either set incidental catch limits or allow directed fishing in the live bait fishery with consideration of biological, environmental, or socio-economic factors during each management cycle or under a developed rebuilding plan without being restricted to predetermined limits. The intent of Amendment 17 is to allow more flexibility in setting restrictions on the live bait portion of the fishery when a stock is overfished and would not weaken any statutory requirements to rebuild an overfished stock.

There are no implementing regulations associated with Amendment 17, therefore NMFS will not promulgate a proposed rule to implement this amendment.

Public comments on Amendment 17 must be received by May 21, 2019. All comments received by the end of the comment period on Amendment 17 will be considered in the Secretary's decision to approve, disapprove, or partially approve this amendment. To be considered in this decision, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date. NMFS will respond to any substantive comments received by the end of the comment period on Amendment 17 in a subsequent **Federal Register** notice, either in conjunction with or following the agency's decision.

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

Dated: March 18, 2019.

Samuel D. Rauch III,

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

[FR Doc. 2019–05455 Filed 3–21–19; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 84, No. 56
Friday, March 22, 2019

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS–SC–19–0024]

Meeting of the Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), is announcing a meeting of the Fruit and Vegetable Industry Advisory Committee (Committee). The meeting is being convened to examine the full spectrum of fruit and vegetable industry issues and provide recommendations and ideas to the Secretary of Agriculture on how the U.S. Department of Agriculture (USDA) can tailor programs and services to better meet the needs of the U.S. produce industry.

DATES: The Committee will meet in-person on Thursday, May 9, 2019, from 8:30 a.m. to 5:00 p.m. Eastern Time (ET), and Friday, May 10, 2019, from 8:30 a.m. to 1:00 p.m., ET. In-person oral comments will be heard on Thursday, May 9, 2019, and possibly on Friday, May 10, 2019. The deadline to submit written comments and/or sign up for oral comments is 11:59 p.m. ET, April 17, 2019.

ADDRESSES: The Committee meeting will be held at the Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202. Detailed information pertaining to the meeting can be found at: *https://www.ams.usda.gov/about-ams/facas-advisory-councils/fviac.*

FOR FURTHER INFORMATION CONTACT: Darrell Hughes, Fruit and Vegetable Industry Advisory Committee, USDA, AMS, Specialty Crop Programs, 1400 Independence Avenue SW, Room 2083–S, STOP 0235, Washington, DC 20250–0235; Telephone: (202) 378–2576; Email: *SCPFVIAC@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), the Secretary of Agriculture (Secretary) established the Committee in 2001 to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. The committee was reestablished in March 2018 for a two-year period.

The AMS Deputy Administrator for the Specialty Crops Program serves as the Committee's Executive Secretary, leading the effort to administer the Committee's activities. Representatives from USDA mission areas and other government agencies affecting the fruit and vegetable industry are periodically called upon to participate in the Committee's meetings as determined by the Committee. AMS is giving notice of the Committee meeting to the public so that they may attend and present their views. The meeting is open to the public.

Agenda items may include, but are not limited to, welcome and introductions, administrative matters, consideration of topics for potential working group discussion and proposal, and presentations by subject matter experts as requested by the Committee.

Public Comments: Comments should address specific tops noted on the meeting agenda.

Written Comments: Written public comments will be accepted on or before 11:59 p.m. ET on April 17, 2019, via *http://www.regulations.gov:* Document #AMS–SC–19–0024. Comments submitted after this date will be provided to AMS, but the Committee may not have adequate time to consider those comments prior to the meeting. AMS-Specialty Crop Programs strongly prefers that comments be submitted electronically. However, written comments may also be submitted (*i.e.* postmarked) via mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

Oral Comments: The Committee is providing the public an opportunity to provide oral comments and will accommodate as many individuals and organizations as time permits. Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. ET, April 17, 2019, and can register for only one speaking slot. Instructions for registering and participating in the meeting can be found by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

Meeting Accommodations: The Hyatt Regency Crystal City is ADA compliant and the USDA provides reasonable accommodations to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this public meeting, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Determinations for reasonable accommodations will be made on a case-by-case basis.

Dated: March 18, 2019.

Bruce Summers,

Administrator.

[FR Doc. 2019–05431 Filed 3–21–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

Office of The Secretary; Privacy Act of 1974; System of Records

AGENCY: Department of Agriculture, USDA.

ACTION: Notice of a modified system of records.

SUMMARY: This notice proposes to revise to the Privacy Act System of Records titled Farm Records File (Automated) USDA, which includes information for certain Farm Service Agency under (FSA) Farm Programs and certain Commodity Credit Corporation (CCC) programs that are administered by FSA on behalf of CCC. The records include information about the majority of agricultural producers in the United States. In general, USDA is modifying the system of records to add three new routine uses and make updates to one routine use to comply with recent requirements.

DATES:

Comment Date: We will consider comments that we receive by April 22,

2019. The notice is applicable upon publication, and still subject to a 30-day comment period for the new routine uses.

Effective Date: May 1, 2019.

ADDRESSES: We invite you to submit comments on this notice. In your comment, include the system of records number (USDA/FSA–2), and include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, hand delivery, or courier:* USDA, Farm Production and Conservation, Farm Service Agency, STOP 0508, 1400 Independence Ave. SW, Washington, DC 20250–0508.

Comments will be available for viewing online at *http://www.regulations.gov.* In addition, comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Philip Buchan, (301) 504–1701, *Philip.Buchan@wdc.usda.gov.* Persons with disabilities or who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION: USDA maintains the Farm Records File (Automated), USDA/FSA–2 Privacy Act system of records to collect and manage information about the majority of agricultural producers in the United States. The mission of FSA is to deliver federal farm program benefits and loans to farm and ranch owners and operators to support farms and ranches, protect the environment, and enhance the marketing of agricultural products. The system of records covers information regarding current, former, and prospective producers or landowners, farm and ranch owners, operators, tenants, applicants, borrowers, cooperators, partner organizations, and other participants in certain FSA Farm Programs and certain CCC programs that are administered by FSA on behalf of CCC. The last revision of Farm Records File (Automated), USDA/FSA–2, was published in the **Federal Register** on March 14, 2012 (77 FR 15026–15033).

To ensure compliance with all applicable federal laws, USDA is modifying one routine use and adding three new routine uses. USDA is also expanding the types of individuals in the categories of the individuals covered in this system of records. FSA is also replacing the list of specific automated processing systems in the system of records by referring the public to the FSA website for the current automated processing systems. The one revised and three new routine uses are discussed below.

USDA is also making changes throughout the system of records notice for required updates to comply with OMB Circular A–108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act. USDA has made changes to the sections of authority for maintenance of the system, and policies and practices for storage of records. USDA removed the section of disclosure to consumer reporting agencies from the system of record notice and the section of storage is now policies and practices for storage of records.

Revised Routine Use E

FSA is revising routine use E to conform to OMB Memorandum M–17–12, Preparing for and Responding to a Breach of Personally Identifiable Information, issued on January 3, 2017, which updated agency routine use requirements for the disclosure of information necessary to respond to a breach of the agency's personally identifiable information.

Proposed New Routine Use DD

FSA is adding new routine use DD to establish that FSA will disclose records to the Department of Housing and Urban Development in support of Credit Alert Verification Reporting System (CAIVRS). CAIVRS is a federal government database of delinquent federal debtors that when reviewed, allows federal agencies to reduce the risk to federal loan and loan guarantee programs. CAIVRS alerts participating federal lending agencies when an applicant for credit benefits has a federal lien, judgment, or a federal loan that is currently in default or foreclosure, or has had a claim paid by a reporting agency. CAIVRS allows authorized employees of participating federal agencies to access a database of delinquent federal borrowers for the purpose of pre-screening direct loan applicants for credit worthiness and also permits approved private lenders acting on behalf of the federal agency to access the delinquent borrower database for the purpose of pre-screening the credit worthiness of applicants for federally guaranteed loans. CAIVRS authority derives from the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), as amended; Office of Management and Budget (OMB) Circular A–129 (Revised January 2013) Policies for Federal Credit Programs and Non-Tax Receivables; the Budget and Accounting Acts of 1921 and 1950, as amended; the Debt Collection Act of 1982, as amended; the Deficit Reduction Act of 1984, as amended; and, the Debt Collection Improvement Act of 1996, as amended.

Proposed New Routine Use EE

FSA is adding new routine use EE to establish that FSA will disclose records to the Department of the Treasury in support of the Do Not Pay Program. In order to help eliminate waste, fraud, and abuse in federal programs, federal agencies are required to prevent payment errors before they occur. The purpose of the Do Not Pay Program is to reduce improper payments by intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal Government, while continuing to ensure that federal programs serve and provide access to their intended beneficiaries. Federal agencies will do a thorough review of the Do Not Pay computer matching database, to the extent permitted by law, to determine applicant eligibility before the release of any federal funds. By checking the Do Not Pay database before making payments, federal agencies can identify ineligible recipients and prevent certain improper payments from being made. The Do Not Pay program authority is from the Improper Payments Elimination and Recovery Improvement Act of 2012 (Pub. L. 112–248).

Proposed New Routine Use FF

FSA is adding new routine use FF to conform to OMB Memorandum M–17–12, Preparing for and Responding to a Breach of Personally Identifiable Information, issued on January 3, 2017. Routine Use FF establishes that FSA will disclose the records when needed to assist another Federal agency or Federal entity in its response to a breach of personally identifiable information.

Privacy Act

As required by the Privacy Act (specifically 5 U.S.C. 552a(r)) and implemented by the Office of Management and Budget (OMB) Circular A–108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act, USDA provided a report of this system of records to the Office of Information and Regulatory Affairs, Office of Management and Budget; the Chairman, Committee on Government Reform and Oversight, House of Representatives;

and, the Chairman, Committee on Governmental Affairs, United States Senate.

Richard Fordyce,

Administrator, Farm Service Agency.

Thomas W. Christensen,

Acting Executive Vice President,

Commodity Credit Corporation.

SYSTEM NAME AND NUMBER:

Farm Records File (Automated), USDA/FSA–2.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This system of records is under the control of the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), 1400 Independence Avenue SW, Stop 0539, Washington, DC 20250–0539.

Records are maintained at the FSA county offices, the FSA State offices, the FSA National office, the FSA Aerial Photography Field Office, and the USDA National Information Technology Center. The address of each FSA county office and FSA State office can be found in the local telephone directory under the heading ''United States Government, Department of Agriculture, Farm Service Agency.'' The FSA Aerial Photography Field Office is located in Salt Lake City, UT. The USDA National Information Technology Center is located in Kansas City, MO.

SYSTEM MANAGER(S):

Bill Beam, Deputy Administrator for Farm Programs, FSA, 1400 Independence Avenue SW, Stop 0539, Washington, DC 20250–0539; *bill.heam@usda.gov;* (202) 720–9875.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104, 44 U.S.C. Chapter 3118, U.S.C. 2071, 18 U.S.C. 641, and 36 CFR Chapter XII, Subchapter B.

PURPOSE(S) OF THE SYSTEM:

To deliver Federal farm program benefits and loans that are authorized by law to farm and ranch owners and operators to support farms and ranches, protect the environment, and enhance the marketing of agriculture products.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former, and prospective producers or landowners, farm and ranch owners, operators, tenants, applicants, borrowers, cooperators, representatives of partner organizations, entity members and other FSA agricultural production program participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in the system of records consists of electronic and hard copy documentation of participation in FSA programs, including active programs as well as discontinued programs. This includes names and addresses of producers and also includes, but is not necessarily limited to:

- Farm allotments, quotas, bases, and history;
- Compliance data; producer entity data;
- Combined producer data;
- Production and marketing data;
- Lease and transfer of allotments and quotas;
- Appeals;
- New grower applications;
- Conservation program documents;
- Program participation and payment documents; including information related to a person's indirect interest in payments through shares or interest in a payee entity;
- Appraisals, leases, and data for farm reconstitution; and
- For payment limitation and conservation compliance purposes, financial statements, and other applicable farm information such as tax statements, wills, trusts, partnership agreements, and corporate charters.

The geospatial (GIS) data set, containing producer boundaries of Common Land Units (CLUs), farms, tracts, field identifiers and attributes is used to identify the location of land that can be traced back to a producer's crops and benefits. By definition, a CLU identifies a farm's subdivisions and boundaries and is recommended as the common location identifier for reporting acreage. The GIS Crop Reporting Layer, consisting of tabular crop acreage data and including producer share, is the location of land where a crop is planted, and crop acreage compliance data.

Digital renditions of farm record boundaries include farm, tract, CLUs (fields), and personal attributes of that property such as, but not limited to, cropland designation, wetland location, program participation designation (for example, Conservation Reserve Program), and presence of structures located on a property (for example, buildings, well heads, or other identifying structures). Crop Acreage Data is used to promote a viable agriculture economy essential to effectively administering and enforcing the national crop insurance program and for the purpose of fulfilling loss adjustment obligations as well as audits and reviews of claims.

A listing of the automated systems processing the records (that is, the FSA Systems Inventory Book) may be found through a search on the USDA-Farm Service Agency Home Page (*http://www.fsa.usda.gov*). The FSA Systems Inventory Book is a detailed reference guide, sourced from the FSA Systems Inventory, which compiles descriptive data and characteristics pertaining to each system, sub-system, and component; organized by Investment Number. The FSA Systems Inventory Book is prepared to provide additional information including the nature and character of the programs themselves, including the overall Information Technology (IT) environment of systems, subsystems, and components supporting them. The FSA Systems Inventory Book helps tie business and applications or systems and infrastructure back to their reason for existence—supporting the mission of FSA.

The FSA Systems Inventory Book also maintains information about inactive, retired, and transferred systems; summary of systems listed by office; and current IT Investment listing. It is updated and published twice a year, with a wide distribution to FSA employees, contractors, and both Government and non-Government visitors.

RECORD SOURCE CATEGORIES:

Information in this system of records is submitted by FSA State and county committees and their representatives, the Office of Inspector General and other investigatory agencies, the Office of the General Counsel, the Natural Resources and Conservation Service, by third parties, and by the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information contained in this system of records may be disclosed outside USDA as a routine use (see 5 U.S.C. 552a(b)(3)) as follows:

A. To the Department of Justice when:

1. USDA or any part of USDA;

2. Any USDA employee in an official capacity if the Department of Justice has agreed to represent the employee; or

3. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, USDA determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by USDA to be for a purpose that is compatible with the purpose for which FSA collected the records.

B. To a Member of Congress or to a Congressional staff member in response

to a request of the Congressional office made at the written request of the constituent about whom the record is maintained.

C. To the National Archives and Records Administration or to the General Services Administration, for records management inspections conducted as specified in 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to the specific audit or oversight.

E. To appropriate agencies, entities, and persons when:

1. USDA suspects or has confirmed that there has been a breach of the system of records;

2. USDA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USDA (including its information systems, programs, and operations), the Federal Government, or national security; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To contractors, grantees, experts, consultants, and their agents, and others performing or working on a contract, grant, cooperative agreement, or other assignment for USDA, when necessary to accomplish a USDA function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to USDA officers and employees.

G. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general law or particular program law, or by regulation, rule, or order issued as a result of that law, disclosure may be made to the appropriate agency, whether federal, foreign, State, local, or Tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the law, or rule, regulation, or order issued as a result of that law, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

H. To a cooperative marketing association (CMA), designated marketing association (DMA), or loan servicing agent (LSA) approved to carry out Commodity Credit Corporation (CCC) price support loan and marketing programs, which are administered by FSA on behalf of CCC. Records that will be disclosed include only data that is necessary for the CMA, DMA, or LSA to make producer eligibility determinations, reasonable quantity determinations, producer payment limitations, and denied benefit determinations.

I. To the Internal Revenue Service to establish the tax liability of individuals as required by the Internal Revenue Code.

J. To State or local tax authorities having an agreement with CCC to withhold taxes or fees from loan proceeds.

K. To the Department of Interior, Bureau of Reclamation (BOR), but only that data necessary for the BOR to administer the Reclamation Act of 1982, as amended.

L. To boards or other entities authorized by State law to collect commodity assessments.

M. To the Peanut Board, with respect to producers of peanuts and their participation in the peanut price support program.

N. To the Department of Interior, Bureau of Indian Affairs, the name and correspondence address of producers to assist in the distribution of funds to Native American Indians.

O. To candidates for FSA county committee positions, the names and correspondence addresses of producers in the county for the purpose of county committee elections.

P. To the public, farm allotment and quota data for marketing quota crops, as allowed by the Agricultural Act of 1938, as amended, and payment information for farm and related programs including information of indirect benefits from payments as indicated by shares of each individual or entity that receive payments or that themselves are considered to have an indirect interest in payments.

Q. To State Foresters, the names and correspondence addresses of producers and crop-specific data regarding their operations with respect to forestry conservation practices.

R. To cotton buyers, the name and correspondence address of cotton producers.

S. To cotton ginners, the names, correspondence addresses, farm numbers, cotton yields, and cotton acreages of cotton producers.

T. To members of Congress, the names and correspondence addresses of all producers in the system of records.

U. To the public when they need to obtain the names and correspondence addresses of producers who have commodity loans with FSA or CCC to prevent one of those producers from purchasing a commodity that has been placed under a CCC loan.

V. To State or local taxing authorities or their contracted appraisal companies, the name and correspondence address of producers for tax appraisal purposes.

W. To State-certified or State-licensed appraisers and employees of federal agencies qualified to perform and actually performing real estate appraisals for USDA. Records that will be disclosed include only the data that is necessary for the appraiser to complete the appraisal.

X. To cooperating persons or federal, State, local, or Tribal agencies working in cooperation with the Secretary in any USDA program. Records that will be disclosed include only the data that is necessary for the cooperating person or agency to complete work on the USDA program.

Y. To any federal agency or any approved insurance provider (AIP), the information collected using the Comprehensive Information Management System (CIMS) used to administer the programs of the Federal Crop Insurance Corporation (FCIC) and FSA as specified in 7 U.S.C. 8002(b)(2). All information disclosed to CIMS may be further disclosed to any contractor engaged in the development or maintenance of CIMS. Select CIMS data may also be further disclosed to AIPs and AIP employees, insurance agents, and loss adjusters, but will be limited to only the producer reported information that is associated with a given AIP's insured producers and that insured producer's farming operations (for data to be disclosed, the producer must actually be insured by the given AIP). For the disclosure of CLU information, CIMS will provide the AIP a limited file of CLU information containing data elements for those States in the AIP plan of operation to include Shape, (CLU boundaries), Location State Code, Location County Code, Administrative State Code, Administrative County Code, CLU Number, CLU Calculated Acres, CLU Class, Last Change Date, Common Land Unit Identifier, Farm Number, Tract Number, and Field Number information. The limited CLU data set provided to the AIP will not contain data reported to FSA by the producer via the FSA–578, ''Report of Acreage'' (for example, planted acres, name, address, crops, etc.).

Z. To any federal agency or any AIP, the information in the USDA data warehouse and data mining operation

collected as authorized by the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1515(j)). All information disclosed to the USDA data warehouse and data mining operation may be further disclosed to any contractor engaged in the development or maintenance of the USDA data warehouse and data mining operation. Select data may also be further disclosed to AIPs and AIP employees, insurance agents, and loss adjusters. Disclosure is limited to only the producer reported information that is associated with a given AIP's insured producers and that insured producer's farming operations (for data to be disclosed, the producer must actually be insured by the given AIP).

AA. To the AIPs (excluding the AIP's insurance agents) and loss adjusters. USDA will disclose records that may include the producer's name, crop name, FSA county office address, program years, and the last 4 digits of producer's tax ID number. USDA may disclose a copy of both current and prior Producer Print and Map Photocopies, Farm Operating Plan for Payment Eligibility Review for an Individual, Highly Erodible Land Conservation (HELC), and Wetland Conservation (WC) Certification. Disclosure will be made only in response to a properly submitted request for certain information.

BB. USDA will disclose information about individuals from this system of records in accordance with the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101–6106); section 204 of the E-Government Act of 2002 (44 U.S.C. 3501 note), and the Office of Federal Procurement Policy Act (41 U.S.C. 403–440), or similar laws requiring agencies to make available publicly names, locations, and other information concerning federal financial assistance, including grants, subgrants, loan awards, cooperative agreements, and other financial assistance; and contracts, subcontracts, purchase orders, task orders, and delivery orders.

CC. To a court or adjudicative body in a proceeding when:

1. USDA or any part of USDA;

2. Any USDA employee in an official capacity;

3. Any USDA employee in an individual capacity if USDA has agreed to represent the employee; or

4. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, USDA determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by USDA to be for a purpose that is compatible with the purpose for which FSA collected the records.

DD. Information may be disclosed to federal agencies pursuant to the Debt Collection Improvement Act and related authorities for any purpose related to debt collection, including locating debtors for debt collection efforts and/or effecting remedies against monies payable to such debtors by the Federal Government. In accordance with computer matching or data sharing programs, information may be disclosed to federal agencies, the Department of Housing and Urban Development for the purpose of evaluating a loan applicant's creditworthiness, information that will allow for the pre-screening of applicants through the Credit Alert Verification Reporting System (CAIVRS) computer matching program. An applicant will be pre-screened for any debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government. Authorized employees of, and approved private lenders acting on behalf of, the federal agencies participating in the CAIVRS computer matching program will be able to search the CAIVRS database. The disclosure may include the applicant's name, home address, Social Security Number, and income or financial information.

EE. To the Department of Treasury for administering the Do Not Pay Initiative under the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA). As required by IPERIA and the Bipartisan Budget Act of 2018, records maintained in this system will be disclosed to, (1) a Federal or state agency, its employees, agents (including contractors of its agents) or contractors; (2) a fiscal or financial agent designated by the Bureau of the Fiscal Service or other Department of the Treasury bureau or office, including employees, agents or contractors of such agent; or (3) a contractor of the Bureau of the Fiscal Service, for the purpose of identifying, preventing, and recovering improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state in a state-administered, federally-funded program. Records disclosed under this routine use may be used to conduct computerized comparisons to identify, prevent and recover improper payments, and to identify and mitigate fraud, waste and abuse in federal payments.

FF. To another Federal agency or Federal entity, when USDA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, mitigating, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system of records are stored electronically on security measure protected (for example, e-authentication, password, restricted access protocol, etc.) databases, electronically on e-media devices (computer hard drive, magnetic disc, tape, digital media, CD, DVD, etc.), and on paper copy. Record storage is located within secured or locked facilities.

See also ''Policies and Practices for Retrieval of Records'', ''Policies And Practices For Retention And Disposal Of Records'', ''Administrative, Technical, and Physical Safeguards'', ''Record Access Procedure'' and ''Notification Procedures'' below.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by the individual's name, Social Security Number, tax identification number, loan number, and farm number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in file folders and Department computer systems at applicable locations as set out above under the heading ''System Location.'' Detailed retention and disposal instructions are provided in Records Control Schedule RG 0145: Farm Service Agency and Records Control Schedule RG 0161: Commodity Credit Corporation.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system of records are safeguarded in accordance with applicable rules and policies, including all applicable USDA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer systems containing the records in this system of records is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORDS ACCESS PROCEDURE:

To request notification of and access to any record contained in the system of records, or to contest the content of a record, submit a request in writing to the FSA FOIA officer or the FOIA officer for the relevant part of USDA responsible for your information (FIOA contact information is at *http://www.da.usda.gov/foia.htm*. If you believe more than one USDA agency maintains Privacy Act records concerning you, submit the request to the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations in 7 CFR 1.110–1.122, as follows. Verify your identity by providing your:

- Full name,
- Current address, and
- Date and place of birth.

You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, which is a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250. In addition, you should provide the following:

- Explain why you believe USDA would have information on you,
- Identify which USDA agency you believe may have the information about you,
- Specify when you believe the records would have been created, and
- Provide any other information that will help the FOIA staff determine which USDA component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying agreement for you to access the records.

If your request does not include the information specified above, FSA may not be able to conduct an effective search, and may result in your request being denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records pertaining to an individual should contain:

- Name,
- Address,
- ZIP code,
- Name of system of record,
- Year of records in question, and
- Any other pertinent information to help identify the file.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to the individual from the System Manager above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The prior document for this system of record was published on March 14, 2012 (77 FR 15026).

[FR Doc. 2019–05466 Filed 3–21–19; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

Office of the Secretary; Privacy Act of 1974; System of Records

AGENCY: Department of Agriculture, USDA.

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A–108, this notice proposes that the United States Department of Agriculture (USDA or Department) revisions to the Privacy Act System of Records titled Applicant/Borrower USDA/FSA–14, which include information on current, former, and prospective applicants and borrowers including members of entities. The system contains information on agricultural producers in the United States requesting or obtaining the Farm Service Agency (FSA) Farm Loan Programs benefits. In general, USDA proposes to revise the system of records to make minor corrections and updates to meet additional requirements. USDA is also revising the system of records to add 10 new routine uses.

DATES: *Comment Dates:* We will consider comments that we receive on or before April 22, 2019.

Effective Date: This notice is applicable upon publication, subject to a 30-day comment period for the routine uses.

ADDRESSES: We invite you to submit comments on this notice. In your comment, include the system of records number (USDA/FSA–14). You may submit comments by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, hand delivery, or courier:* USDA, Farm Production and Conservation, Farm Service Agency, STOP 0508, 1400 Independence Ave. SW, Washington, DC 20250–0508.

All comments will be made public by USDA and will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: John Shea, Acting Director, External Affairs, Farm Production and Conservation-Business Center, 1400 Independence Ave. SW, Room 6740 South Building, Washington, DC 20250, email address—*john.shea@rma.usda.gov,* 202–690–0437; or Kaveh Sadeghzadeh, Acting Director, External Affairs, Farm Production and Conservation-Business Center, 1400 Independence Ave. SW, Room 6121, Washington, DC 20250, email address—*Kaveh.Sadeghzadeh@wdc.usda.gov,* 202–720–2182, or Philip Buchan, (301) 504–1701, *Philip.Buchan@wdc.usda.gov.* Persons with disabilities or who require alternative means for communications should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION: USDA maintains the Applicant/Borrower USDA/FSA–14 Privacy Act system of records to collect and manage information on current, former, and prospective applicants and borrowers who are agricultural producers in the United States including members of entities. The mission of FSA is to deliver federal farm program benefits and loans to farm and ranch owners and operators to support farms and ranches, protect the environment, and enhance the marketing of agricultural products. The system of records covers information regarding current, former, and prospective applicants, and current and former borrowers.

The last revision of Privacy Act system of records for USDA/FSA–14 was published in the **Federal Register** on September 10, 2001 (66 FR 46986–46991).

USDA is making changes throughout the systems of records for required

updates, clarity, and other minor administrative updates to the systems. USDA is also expanding the types of individuals in the categories of the individuals covered in this system of records. USDA is also replacing the list of specific automated processing systems in the system of records by referring the public to the FSA website for the current and specific automated processing systems. In addition, USDA is change to the following sections:

- System Classification,
- System Location;
- System of manager(s);
- Authority for maintenance of the system;
- Purpose(s) of the system;
- Categories of individual covered by the system;
- Categories of records in the system;
- Record source categories;
- Routine uses of records maintained in the system, including categories of users and the purposes of such use;
- Policies and practices for storage of records;
- Policies and practices for retention and disposal of records;
- Administrative, technical, and physical safeguards,
- Record Access Procedures;
- Contesting record procedures; and
- Notification procedure; and
- History.

USDA is revising the current designations in USDA/FSA–14 from a numbered routine use designation to a lettered designation and reordering the current routine uses. In addition, USDA is establishing 10 new routine uses, revising 1 existing routine use, removing 1 unnecessary routine use, and making miscellaneous minor adjustments throughout the system of records notice to update and better reflect the information in the system of records and to update the system of records notice to comply with all applicable laws. USDA added a purpose section to describe the purpose for which FSA uses the systems. Each of the revised and new routine uses are discussed below. Specifically, USDA is:

1. Revising currently designated routine uses to lettered designations and reordering the routine uses;

2. Revising currently designated routine uses 1 through 5, and 7 through 17;

3. Adding 10 new routine uses to be designated as routine uses C, D, E, F, U, V, W, X, Y, and Z, and

4. Deleting currently designated routine use 6.

The revised designations and order are shown in the following table, listed in the new order:

Redesignated routine use letter	Former routine use number	Status (new, revised, redesignated, or deleted)
A	13	redesignated.
B	4	redesignated.
C		new.
D		new.
E		new.
F		new.
G	1	redesignated.
H	2	redesignated.
I	3	redesignated.
J	5	redesignated.
K	7	redesignated.
L	8	redesignated.
M	9	redesignated.
N	10	redesignated.
O	11	redesignated.
P	12	redesignated.
Q	14	Revised and redesignated.
R	15	redesignated.
S	16	redesignated.
T	17	redesignated.
U		new.
V		new.
W		new.
X		new.
Y		new.
Z		new.
	6	deleted.

Proposed Revised Routine Use Q (Formerly Routine Use 14)

USDA is revising routine use Q to establish that FSA will disclose records to the Department of Housing and Urban Development in support of the Credit Alert Verification Reporting System (CAIVRS). CAIVRS is a Federal Government database of delinquent federal debtors that when reviewed, allows federal agencies to reduce the risk to federal loan and loan guarantee programs. CAIVRS alerts participating federal lending agencies when an applicant for credit benefits has a federal lien, judgment, or a federal loan that is currently in default or foreclosure, or has had a claim paid by a reporting agency. CAIVRS allows authorized employees of participating federal agencies to access a database of delinquent federal borrowers for the purpose of pre-screening direct loan applicants for credit worthiness and also permits approved private lenders acting on behalf of the federal agency to access the delinquent borrower database for the purpose of pre-screening the credit worthiness of applicants for federally guaranteed loans. CAIVRS authority is from the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) as amended, Office of Management and Budget (OMB) Circular A–129 Revised (Policies for Federal Credit Programs and Non-Tax Receivables), and the Budget and Accounting Acts of 1921 and 1950, as amended, the Debt Collection Act of 1982, as amended, the Deficit Reduction Act of 1984, as amended, and the Debt Collection Improvement Act of 1996, as amended.

Proposed New Routine Use C

USDA is adding a new routine use C to establish that FSA will disclose the records to the National Archives and Records Administration or to the General Services Administration for records management program purposes as specified in 44 U.S.C. 2906(a)(1).

Proposed New Routine Use D

USDA is adding a new routine use D to establish that FSA will disclose the records to an agency, organization, or individual that is required for performing audit or oversight operations as authorized by law.

Proposed New Routine Use E

USDA is adding a new routine use E to establish that under the identified conditions, FSA will disclose the records to appropriate agencies, entities, and persons in response to a suspected or confirmed information security incident or breach.

Proposed New Routine Use F

USDA is adding a new routine use F to establish that FSA will disclose the records to contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, grant, cooperative agreement, or other assignment for USDA when certain conditions are met.

Proposed New Routine Use U

USDA is adding a new routine use U to establish that FSA will disclose the records to those persons or federal, State, local, or tribal agencies working in cooperation with the USDA Secretary in any USDA program.

Proposed New Routine Use V

USDA is adding a new routine use V to establish that FSA will disclose the records to consumer reporting agencies.

Proposed New Routine Use W

USDA is adding a new routine use W to establish that FSA will disclose the records in accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282; codified at 31 U.S.C. 6101–6104); section 204 of the E-Government Act of 2002 (Pub. L. 107–347; 44 U.S.C. 3501 noted), and the Office of Federal Procurement Policy Act (41 U.S.C. 1102–1122), or similar laws.

Proposed New Routine Use X

USDA is adding a new routine use X to establish that FSA will disclose the records to the news media and the public.

Proposed New Routine Use Y

USDA is adding new routine use Y to establish that FSA will disclose records to the Department of the Treasury in support of the Do Not Pay program. In order to help eliminate waste, fraud, and abuse in federal programs, federal agencies are to focus on preventing payment errors before they occur. The purpose of the Do Not Pay program is to reduce improper payments by intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal Government, while continuing to ensure that federal programs serve and provide access to their intended beneficiaries. Federal agencies will do a thorough review of the Do Not Pay computer matching database, to the extent permitted by law determine applicant eligibility before the release of any federal funds. By checking the Do Not Pay database before making payments, federal agencies can identify ineligible recipients and prevent certain improper payments from being made. The Do Not Pay program authority is from the Improper Payments Elimination and Recovery Improvement Act of 2012 (Pub. L. 112–248).

Proposed New Routine Use Z

USDA is adding new routine use Z to disclose records to another Federal entity or Federal entity, when information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, mitigating, or remedying the risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security.

Deleted Routine Use 6

USDA is deleting routine use number 6. The deleted routine use addressed disclosure of information to a court or adjudicative body before which the agency was authorized to appear. This routine use is addressed under redesignated routine use A.

Privacy Act

As required by the Privacy Act (specifically 5 U.S.C. 552a(r)) and implemented by the Office of Management and Budget (OMB) Circular A–108, USDA has provided a report of this system of records to the Office of Information and Regulatory Affairs, Office of Management and Budget; the Chairman, Committee on Government Reform and Oversight, House of Representatives; and the Chairman, Committee on Governmental Affairs, United States Senate.

Richard Fordyce,

Administrator, Farm Service Agency.

Thomas W. Christensen,

Acting Executive Vice President, Commodity Credit Corporation.

SYSTEM NAME AND NUMBER

Applicant/Borrower, USDA/FSA–14.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This system of records is under the control of the Deputy Administrator, Farm Loan Programs, Farm Service Agency (FSA), 1400 Independence Avenue SW, Stop 0520, Washington, DC 20250–0520.

Records are maintained at the FSA county offices through which the financial assistance was sought or obtained: The FSA State offices; the Farm Loan Programs Office, FSA, 1400 Independence Ave, SW, Stop 0520, Washington, DC 20250–0520; the Financial Management Division, FSA, 4300 Goodfellow Boulevard, Building 104, Stop FC 51, St. Louis, MO 63120–1703; and the USDA National Information Technology Center, 8930 Ward Parkway, Kansas City, MO 64114–3302. The address of each FSA county office and FSA State office can be found in the local telephone directory under the heading ''United States Government, Department of Agriculture, Farm Service Agency.''

SYSTEM MANAGER(S):

Bill Cobb, Acting. Deputy Administrator, Farm Loan Programs, FSA, 1400 Independence Avenue SW, Stop 0520, Washington, DC 20250–0520, *bill.cobb@wdc.usda.gov,* (202) 720–1059.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1921–2009.

PURPOSE(S) OF THE SYSTEM:

To deliver federal farm loan programs benefits to farm and ranch owners and operators to support farms and ranches and protect the environment.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former, and prospective producers or landowners, farm and ranch owners, operators, tenants, applicants, and borrowers, cooperators, representatives of including members of entities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in the system of records consists of electronic and hard copy documentation of participation in FSA programs, including active programs as well as discontinued programs. The information in the system of records consists of files containing characteristics of applicants and borrowers and their respective household members, such as such as gross and net income, sources of income, capital, assets, liabilities, net worth, age, race, number of dependents, marital status, reference material, farm or ranch operating plans, property appraisals, credit reports, and personal references from credit agencies, lenders, businesses, and individuals. In addition, a running record of observation concerning the operations of the person being financed is included. A record of deposits to and withdrawals from an individual's supervised bank account is also contained in those files where appropriate.

A listing of the automated systems processing the records (that is, the FSA Systems Inventory Book) may be found through a search on the USDA–FSA home page (*http://www.fsa.usda.gov*). The FSA Systems Inventory Book is detailed reference guide, sourced from the FSA Systems Inventory, which compiles descriptive data and characteristics pertaining to each system, sub-system, and component; organized by Investment Number. The FSA Systems Inventory Book is prepared to provide additional information including the nature and character of the programs themselves, including the overall Information Technology (IT) environment of systems, subsystems, and components supporting them. The FSA Systems Inventory Book helps tie business and applications or systems and infrastructure back to their reason for existence—supporting the mission of FSA.

The FSA Systems Inventory Book also maintains information about inactive, retired, and transferred systems; summary of systems listed by office; and current IT Investment listing. It is updated and published twice a year, with a wide distribution to FSA employees, contractors, and both Government and non-Government visitors.

RECORDS SOURCE CATEGORIES:

Information in this system of records is provided by the individual borrower,

credit reports, and personal references from credit agencies and creditors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information contained in this system of records may be disclosed outside USDA as a routine use (see 5 U.S.C. 552a(b)(3)) as follows:

A. To the Department of Justice when:

1. USDA or any part of USDA;

2. Any USDA employee in an official capacity if the Department of Justice has agreed to represent the employee; or

3. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, USDA determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by USDA to be for a purpose that is compatible with the purpose for which FSA collected the records.

B. To a Member of Congress or to a Congressional staff member in response to a request of the Congressional office made at the written request of the constituent about whom the record is maintained.

C. To the National Archives and Records Administration or to the General Services Administration, for records management inspections conducted as specified in 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to the specific audit or oversight.

E. To appropriate agencies, entities, and persons when (1) USDA suspects or has confirmed that there has been a breach of the system of records; (2) USDA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USDA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To contractors, grantees, experts, consultants, and their agents, and others performing or working on a contract, grant, cooperative agreement, or other assignment for USDA, when necessary to accomplish a USDA function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to USDA officers and employees.

G. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general law or particular program law, or by regulation, rule, or order issued as a result of that law, disclosure may be made to the appropriate agency, whether federal, foreign, State, local, or Tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the law, rule, regulation, or order issued as a result of that law, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

H. To business firms in a trade area that buy chattel or crops or sell them for commission. The disclosure may include the name, home address, Social Security Numbers, and financial information. This is being done so that FSA may benefit from the purchaser notification provisions of section 1324 of the Food Security Act of 1985 (7 U.S.C. 163(e)), which requires that potential purchasers of farm commodities must be advised ahead of time that a lien exists in order for the creditor to perfect its lien against such purchases.

I. To the appropriate authority when a default involves a security interest in Indian reservation. The disclosure may include the name, home address, and information concerning default on loan repayment. Pursuant to the section 335 (e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1985), liquidation may be pursued only after offering to transfer the account to an eligible tribal member, to and Indian corporate entity of the tribe, or the tribe.

J. To a collection or servicing contractor, financial institution, or a federal, State, or local agency, when FSA determines such referral is appropriate for servicing or collecting the borrower's account or as provided in contracts with servicing or collection agencies. The disclosure may include name, home address, Social Security Number, and financial information.

K. To financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources when FSA determines such referral is appropriate to encourage the borrowers to refinance their FSA indebtedness as required by section 345 (e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1993). The disclosure may include name, address, and financial information for selected borrowers.

L. To the Department of the Treasury, Internal Revenue Service (IRS), any legally enforceable debt(s), to be offset against any tax refund that may become due to the debtor for the tax year in which the referral is made, in accordance with the IRS regulations in 26 CFR 301.6402–6T, ''Offset of Past Due Legally Enforceable Debt Against Overpayment,'' and under the authority in 31 U.S.C. 3720A.

M. To the Defense Manpower Data Center, Department of Defense, and the United States Postal Service any information regarding indebtedness, for the purpose of conducting computer matching programs to identify and locate individuals receiving federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by FSA in order to collect debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, administrative or salary offset procedures, or by collection agencies.

N. To lending institutions any financial information when FSA determines the individual may be financially capable of qualifying for credit with or without a guarantee. The referral may contain name, home address, and financial information.

O. To lending institutions that have a lien against the same property as FSA, for the purpose of the collection of the debt for loans under the direct or guaranteed loan programs. Disclosure may include names, home addresses, Social Security Numbers, and financial information.

P. To private attorneys under contract with either FSA or with the Department of Justice for the purpose of foreclosure and possession actions and collection of past due accounts in connection with FSA loans.

Q. The Department of Housing and Urban Development, Credit Alert Interactive Verification Reporting System (CAIVRS), for its use in providing information to federal agencies and private lenders to assist in evaluating the credit worthiness of federal loan applicants. Information may be disclosed to federal agencies pursuant to the Debt Collection Improvement Act and related authorities for any purpose related to debt collection, including locating debtors for debt collection efforts and/or effecting remedies against monies payable to such debtors by the Federal Government. In accordance with

computer matching or data sharing programs, information may be disclosed to federal agencies. The disclosure may include the applicant's name, home address, Social Security Number, and income or financial information.

R. To the Department of Labor, State Wage Information Collection agencies, and other federal, State, and local agencies, as well as those responsible for verifying information furnished to qualify for federal benefits, to conduct wage and benefit matching through manual or automated means, for the purpose of determining compliance with federal regulations and appropriate servicing actions against those not entitled to program benefits, including possible recovery of improper benefits. This may include name, home addresses, Social Security Numbers, and financial information.

S. To financial consultants, advisors, or underwriters, when FSA determines such referral is appropriate for developing packaging and marketing strategies involving the sale of FSA loan assets. The referral may include names, home addresses, and financial information.

T. To State-certified or State-licensed appraisers and employees of federal agencies qualified to perform and actually performing real estate appraisals for USDA. Records that will be disclosed include only the data that is necessary for the appraiser to complete the appraisal.

U. To cooperating persons or federal, State, local, or Tribal agencies working in cooperation with the Secretary in any USDA program. Records that will be disclosed include only the data that is necessary for the cooperating person or agency to complete work on the USDA program.

V. To consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act, as amended (31 U.S.C. 3701(a)(3)).

W. USDA will disclose information about individual from this system of records in accordance with the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101–6106); section 204 of the E-Government Act of 2002 (44 U.S.C. 3501 note), and the Office of Federal Procurement Policy Act (41 U.S.C. 403–440), or similar laws requiring agencies to make available publicly names, locations, and other information concerning federal financial assistance, including grants, subgrants, loan awards, cooperative agreements and other financial assistance; and contracts, subcontracts, purchase orders, task orders, and delivery orders.

X. To the media and the public, in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of USDA or is necessary to demonstrate the accountability of USDA's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Y. To the Department of Treasury for administering the Do Not Pay Initiative under the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA). As required by IPERIA and the Bipartisan Budget Act of 2018, records maintained in this system will be disclosed to (1) a Federal or state agency, its employees, agents (including contractors of its agents) or contractors; or, (2) a fiscal or financial agent designated by the Bureau of the Fiscal Service or other Department of the Treasury bureau or office, including employees, agents or contractors of such agent; or, (3) a contractor of the Bureau of the Fiscal Service, for the purpose of identifying, preventing, and recovering improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state in a state-administered, federally-funded program. Records disclosed under this routine use may be used to conduct computerized comparisons to identify, prevent and recover improper payments, and to identify and mitigate fraud, waste, and abuse in federal payments. The disclosure may include applicant's name, home address, Social Security Number, income or financial data, date of birth, personal telephone number, and personal email address.

Z. To another Federal agency or Federal entity, when information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, mitigating, or remedying the risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system of records are stored electronically on security measure protected (for example, e-authentication, password, restricted access protocol, etc.) databases, electronically on e-media devices (computer hard drive, magnetic disc, tape, digital media, CD, DVD, etc.), and on paper copy. Record storage is located within secured or locked facilities.

See also ''Policies and Practices for Retrieval of Records,'' ''Policies and Practices for Retention and Disposal of Records,'' ''Administrative, Technical, and Physical Safeguards,'' ''Records Access Procedures,'' and ''Notification Procedures.''

POLICIES AND PRACTICES FOR RETRIEVEAL OF RECORDS:

Records may be retrieved by the individual's name, Social Security Number, tax identification number, loan number, and farm number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in file folders and Department computer systems at applicable locations as set out above under the heading ''System Location.'' Detailed retention and disposal instructions are provided in Records Control Schedule RG 0145: Farm Service Agency.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system of records are safeguarded in accordance with applicable rules and policies, including all applicable USDA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer systems containing the records in this system of records is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORDS ACCESS PROCEDURES:

To request notification of and access to any record contained in the system of records, or to contest the content of a record, submit a request in writing to the FSA FOIA officer or the FOIA officer for the relevant part of USDA responsible for your information (FIOA contact information is at *http://www.da.usda.gov/foia.htm*). If you believe more than one USDA agency maintains Privacy Act records concerning you, submit the request to the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations in 7 CFR 1.110–1.122, as

follows. Verify your identity by providing your:

- Full name,
- Current address, and
- Date and place of birth.

You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, which is a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief FOIA Officer, Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250. In addition, you should provide the following:

- Explain why you believe USDA would have information on you,
- Identify which USDA agency you believe may have the information about you,
- Specify when you believe the records would have been created, and
- Provide any other information that will help the FOIA staff determine which USDA component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying agreement for you to access the records.

If your request does not include the information specified above, FSA may not be able to conduct an effective search, and may result in your request being denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records pertaining to an individual should contain:

- Name,
- Address,
- ZIP code,
- Name of system of record,
- Year of records in question, and
- Any other pertinent information to help identify the file.

NOTIFICATION PROCEDURES:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to the individual from the System Manager above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The prior document for this system of record was published on September 10, 20001 (66 FR 46986).

[FR Doc. 2019–05464 Filed 3–21–19; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—WIC Participant and Program Characteristics Study 2020 and 2022

AGENCY: Food and Nutrition Service (FNS), United States Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) invites the general public and other public agencies to comment on this proposed information collection for the WIC Participant and Program Characteristics study. This collection is an extension, without change, of a currently approved collection and the data collected from this study will be used to produce biennial reports on participant and program characteristics in WIC for 2020 and 2022.

DATES: Written comments on this notice must be received on or before May 21, 2019.

ADDRESSES: Comments may be sent to: Anna Potter Clifford, Policy Analyst, Office of Policy Support, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Anna Potter Clifford at 703–305–2719 or via email to *anna.potter@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Anna Potter Clifford at 703–305–2719.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: WIC Participant and Program Characteristics Study 2020 and 2022.

Form Number: N/A.

OMB Number: 0584–0609.

Expiration Date: August 31, 2019.

Type of Request: Extension without change, of a currently approved collection.

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is administered by the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS). WIC benefits include nutritious supplemental foods; nutrition education; counseling, including breastfeeding promotion and support; and referrals to health care, social service, and other community providers for pregnant, breastfeeding, and postpartum women, infants, and children up to the age of 5 years. For pregnant women, WIC seeks to improve fetal development and reduce the incidence of low birth weight, short gestation, and anemia through intervention during the prenatal period. For infants and children, WIC seeks to provide nutritious foods during critical times of growth and development in an effort to prevent health problems and to improve the health status of these children.

WIC was established in 1972 by an amendment to the Child Nutrition Act of 1966. WIC is not an entitlement program. To receive WIC benefits, an individual must be categorically eligible: A pregnant, breastfeeding, or postpartum woman; an infant up to the age of 1 year; or a child age 1 through his or her fifth birthday. In addition, each applicant must be found to be income eligible and at nutritional risk. Eligible applicants receive supplemental food, usually in the form of vouchers, checks, or Electronic Benefits Transfer cards that allow them to obtain specific types of food (for example, milk, juice, and cereal) from participating retail vendors at no charge.

Since 1988, FNS has produced biennial reports on participant and program characteristics in WIC. This information is used for general program monitoring as well as for managing the information needs of the program. FNS uses this regularly updated WIC information to estimate budgets, submit civil rights reporting, identify research needs, and review current and proposed WIC policies and procedures. This study will be the 17th and 18th completed in the WIC Participant and Program Characteristics (PC) Study series.

Like all biennial WIC PC reports since 1992, the 2020 and the 2022 reports (PC2020 and PC2022) employ the prototype reporting system developed by FNS in consultation with the Centers for Disease Control and Prevention (CDC) and WIC State Agencies that uses participant information compiled from State WIC administrative records. The reports, including PC2020 and PC2022, contain information on a census of WIC participants in April of the reporting year, and provide information as summary statistics and maps.

The current system for reporting participant data is based on the automated transfer of an agreed-upon set of data elements. WIC State agencies download routinely collected information from their existing automated client and management information systems. State and local WIC staff use these data to certify applicant eligibility for WIC benefits and to issue food vouchers and checks. This set of 20 agreed-upon items is called the Minimum Data Set (MDS) and was developed by FNS working with the Information Committee of the National WIC Association (formerly the National Association of WIC Directors) and the CDC. This minimum data set will be used for this study. The MDS consists of 20 items, and the Supplemental Data Set (SDS) consists of 11 items. State agencies can provide supplemental data if they are available.

Affected Public: State, Local, or Tribal Government.

Type of Respondents: State WIC Officials.

Estimated Total Number of Respondents: 360.

Frequency of Response: 2.37.

Estimated Total Annual Responses: 852.

Estimated Time per Response: The average estimated time per response is 0.62 hours for all participants. The estimated time of response varies from 3 minutes (0.05 hours) for reminder emails to 60 minutes (1 hour) for running the reports.

Estimated Total Annual Burden on Respondents: The total estimated annual burden is 530 hours. See the table below for the estimated total annual burden for the State WIC officials.

TABLE 1—ESTIMATED TOTAL ANNUAL BURDEN HOURS

Respondent category	Type of respondent	Data collection activity	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Total annual burden estimate (hours)
State Agency Officials (2020).	Office and Administrative Support Staff.	Guidance (and Cover Letter)	90	1	90	0.25	22.50
	Office and Administrative Support Staff.	Nutritional Risk Crosswalk	40	1	40	0.5	20.00
	Office and Administrative Support Staff.	Reminder Email	30	1	30	0.05	1.5
	Office and Administrative Support Staff.	Follow-Up Email	90	1	90	0.5	45.00
	Subtotal for Office and Administrative Support Staff		90	2.78	250	0.36	89.00
	State Database Administrator	MDS Reports	90	1	90	1	90.00
	State Database Administrator	SDS Reports	86	1	86	1	86.00
	Subtotal for State Database Administrator		90	1.96	176	1.00	176.00
Total for PC2020			180	2.37	426	0.62	265.00
State Agency Officials (2022).	Office and Administrative Support Staff.	Guidance (and Cover Letter)	90	1	90	0.25	22.50
	Office and Administrative Support Staff.	Nutritional Risk Crosswalk	40	1	40	0.5	20.00
	Office and Administrative Support Staff.	Reminder Email	30	1	30	0.05	1.5
	Office and Administrative Support Staff.	Follow-Up Email	90	1	90	0.5	45.00
	Subtotal for Office and Administrative Support Staff		90	2.78	250	0.36	89.00
	State Database Administrator	MDS Reports	90	1	90	1	90.00
	State Database Administrator	SDS Reports	86	1	86	1	86.00
	Subtotal for State Database Administrator		90	1.96	176	1.00	176.00
Total for PC2022			180	2.37	426	0.62	265.00
Total for PC2020 and PC2022.			360	2.37	852	0.62	530.00

Dated: March 11, 2019.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2019–05525 Filed 3–21–19; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspaper Used for Publication of Legal Notices in the Southwestern Region, Gila National Forest, Black Range Ranger District, New Mexico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice updates the newspaper that will be used by the Black Range Ranger District, Gila National Forest, of the Southwestern Region to publish legal notices. The intended effect of this action is to inform interested members of the public the newspaper the Forest Service will use to publish notices of proposed actions, notices of decision, and notices of opportunity to file an objection or appeal. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment, appeal, or object, and establish the date that the Forest Service will use to determine if comments, appeals, or objections were timely.

DATES: Publication of legal notices in the listed newspapers will begin on the date of this publication and continue until further notice.

ADDRESSES: Roxanne Turley, Regional Administrative Review Coordinator, Forest Service, Southwestern Region; 333 Broadway SE, Albuquerque, NM 87102–3498.

FOR FURTHER INFORMATION CONTACT: Roxanne Turley, Regional Administrative Review Coordinator; (505) 842–3178.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 CFR 218 and 219 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR 218 and 219. In general, the notices will identify: The decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments, appeals, or objections. The date the notice is published will be used to establish the official date for the beginning of the comment, appeal, or objection period.

Gila National Forest

Notices of Availability for Comments, Decisions and Objections by District Ranger, Black Range Ranger District, are published in: —''*Sierra County Sentinel*'', Truth or Consequences, New Mexico.

Dated: March 4, 2019.

Allen Rowley,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019–05503 Filed 3–21–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Extend a Currently Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations which implement the Paperwork Reduction Act of 1995, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to request approval to extend the currently approved information collection in support of authorizations to use the 4–H Club Name and/or Emblem.

DATES: Written comments on this notice must be received by May 21, 2019 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments concerning this notice and requests for copies of the information collection may be submitted by any of the following methods: Email: *rmartin@nifa.usda.gov;* Mail: Office of Information Technology (OIT), NIFA, USDA, STOP 2216, 1400 Independence Avenue SW, Washington, DC 20250–2216.

FOR FURTHER INFORMATION CONTACT: Robert Martin, eGovernment Program Leader; Email: *rmartin@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Authorization to Use the 4–H Club Name and/or Emblem.

OMB Number: 0524–0034.

Expiration Date of Current Approval: April 30, 2019.

Type of Request: Intent to seek approval for the extension of a currently approved information collection for three years.

Abstract: Use of the 4–H Club Name and/or Emblem is authorized by an Act of Congress (18 U.S.C. 707). Use of the 4–H Club Name and/or Emblem by anyone other than 4–H Clubs and those duly authorized by them, representatives of the United States Department of Agriculture, the land grant colleges and universities, and persons authorized by the Secretary of Agriculture is prohibited by the provisions of 18 U.S.C. 707. The Secretary of Agriculture has delegated authority to the Director of NIFA to authorize others to use the 4–H Club Name and Emblem. The Director has promulgated regulations at 7 CFR part 8 that govern such use. The regulatory requirements for use of the 4–H Club Name and/or Emblem reflect the high standards of 4–H and its educational goals and objectives. Pursuant to provisions of 7 CFR part 8, anyone requesting authorization from the Director to use the 4–H Club Name and Emblem must describe the proposed use in a formal application. The collection of this information is used to determine whether the applicant's proposed use meets the regulatory requirements in 7 CFR parts 8 and whether an authorization for use should be granted.

Need and Use of the Information: NIFA will collect information on the name of the individual, partnership, corporation, or association; the organizational address; the name of an authorized representative; the telephone number, facsimile number, and email address; the proposed use of the 4–H Club Name and/or Emblem; and the plan for sale or distribution of the product bearing the 4–H Club Name and/or Emblem. The information collected by NIFA will be used to determine if those applying to use the 4–H Name and/or Emblem meet the regulatory requirements. If the information is not collected, it would not be possible to ensure that the products, services, and materials meet the regulatory requirements as well as 4–H educational goals and objectives.

Estimate of Burden: No changes in burden. The public reporting burden remains at the estimated average .5 hours per response.

Respondents: Individuals, households, business or other for-profit or not-for-profit institutions.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to

enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Done in Washington, DC, this 15th day of March, 2019.

Robert Holland,

Associate Director for Operations, National Institute of Food and Agriculture.

[FR Doc. 2019–05533 Filed 3–21–19; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for the currently approved information collection in support of our program for Complaints and Compensation for Construction Defects.

DATES: Comments on this notice must be received by May 21, 2019 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, Room 5164, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email *Thomas.dickson@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, Room 5164, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email *Thomas.dickson@usda.gov.*

Title: RD Instruction 1924–F, ''Complaints and Compensation for Construction Defects.''

OMB Number: 0575–0082.

Type of Request: Extension of a currently approved information collection.

Abstract: The Complaints and Compensation for Construction Defects program under Section 509C of Title V of the Housing Act of 1949, as amended, provides funding to eligible persons who have structural defects with their Agency financed homes to correct these problems. Structural defects are defects in the dwelling, installation of a manufactured home, or a related facility or a deficiency in the site or site development which directly and significantly reduces the useful life, habitability, or integrity of the dwelling or unit. The defect may be due to faulty material, poor workmanship, or latent causes that existed when the dwelling or unit was constructed. The period in which to place a claim for a defect is within 18 months after the date that financial assistance was granted. If the defect is determined to be structural and is covered by the builder's/dealer's-contractor's warranty, the contractor is expected to correct the defect. If the contractor cannot or will not correct the defect, the borrower may be compensated for having the defect corrected, under the Complaints and Compensation for Construction Defects program. Provisions of this subpart do not apply to dwellings financed with Section 502 Guaranteed loans.

Estimate of Burden: Public reporting for this collection of information is estimated to average .32 hours per response.

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 1.25.

Estimated Number of Responses: 125.

Estimated Total Annual Burden on Respondents: 40 hours.

Copies of this information collections can be obtained from Diane M. Berger, Rural Development Innovation Center—Regulatory Team; phone (715) 619–3124; or email *diane.berger@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Richard A. Davis,

Acting Administrator, Rural Housing Service.

[FR Doc. 2019–05433 Filed 3–21–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Utah Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the meeting of the Utah Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Mountain Time) Friday, April 26, 2019. The purpose of this meeting is for the Committee to continue discussing civil rights topics and to vote for a vice chair.

DATES: The meeting will be held on Friday, April 26, 2019 at 12:00 p.m. MT.

Public Call Information: Dial: 877–260–1479, Conference ID: 8959987.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 877–260–1479, conference ID number: 8959987. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal

Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzltAAA.*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Administrative
  a. Scheduling Meetings
  b. Vice Chair
III. Discussion Regarding Civil Rights Topics
  a. Review Topics
  b. Open Discussion
IV. Public Comment
V. Next Steps
Adjournment

Dated: March 19, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–05534 Filed 3–21–19; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–62–2018]

Foreign-Trade Zone (FTZ) 294—Western Kentucky; Authorization of Production Activity; Mayfield Consumer Products; (Candles); Mayfield and Hickory, Kentucky

On October 10, 2018, the Paducah McCracken County Riverport Authority, grantee of FTZ 294, submitted a notification of proposed production activity to the FTZ Board on behalf of Mayfield Consumer Products, within Subzone 294A, in Mayfield and Hickory, Kentucky.

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 (83 FR 52383, October 17, 2018). On March 19, 2019, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: March 19, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–05519 Filed 3–21–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–878]

Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) determines that Dongkuk Steel Mill Co., Ltd. (Dongkuk) made sales of certain corrosion-resistant steel products (CORE) from the Republic of Korea (Korea) at less than normal value, and Hyundai Steel Company (Hyundai) did not, during the period of review (POR), January 4, 2016, through June 30, 2017.

DATES: Applicable March 22, 2019.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang or Elfi Blum-Page, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–2316 or at 202–482–0197, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* on August 10, 2018.[1] On February 7, 2019, Commerce determined that a cost-based particular market situation existed with respect to the production cost of CORE in Korea during the POR.[2] For a history of events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3] On November 19, 2018, Commerce postponed the final results of this review until February 6, 2019.[4] As a result of the partial government shutdown, the deadline for the final results of this review was revised to March 18, 2019.[5]

Scope of the Order

The products covered by this order are certain corrosion-resistant steel products. For a complete description of the scope of this order, *see* attachment to the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the IDM, which is hereby adopted by this notice. The issues are identified in the Appendix to this notice. The IDM is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit (CRU), Room

[1] *See Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 39666 (August 10, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Commerce February 7, 2019 Memorandum re: Post-Preliminary Decision Memorandum on Particular Market Situation Allegation (PMS Memorandum).

[3] *See* Memorandum re: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review of Corrosion-Resistant Steel Products from the Republic of Korea; 2016–2017 (Issues and Decision Memorandum, or IDM), dated concurrently with, and hereby adopted by, this notice.

[4] *See* Commerce November 19, 2018 Memorandum re: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review; 2016–2017.

[5] *See* Commerce January 28, 2019 Memorandum re: Deadlines Affected by the Partial Shutdown of the Federal Government. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days.

B8024 of the main Commerce building. In addition, a complete version of the IDM can be accessed at *http://enforcement.trade.gov/frn/index.html.* The signed IDM and the electronic versions of the IDM are identical in content.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties, we made certain revisions to the preliminary margin calculations for Dongkuk and Hyundai.[6]

Final Results of the Administrative Review

We have determined the following weighted-average dumping margins for the exporters or producers listed below for the POR: [7]

Exporter/producer	Weighted-average dumping margin (percent)
Dongkuk Steel Mill Co., Ltd ..	7.33
Dongbu Steel Co., Ltd	7.33
Hyundai Steel Company	0.00
POSCO	7.33

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protections (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. We will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).

For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 8.31 percent, the all-others cash deposit rate established in the investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: March 19, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final IDM

[6] *See* Dongkuk's and Hyundai's Final Calculation Memorandum, dated March 18, 2019.

[7] For POSCO and Dongbu Steel Co, Ltd. which were not selected for individual review, we assign a rate based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[8] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016), as amended by *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Results,* 83 FR 39054 (August 8, 2018).

VII. Recommendation

[FR Doc. 2019–05523 Filed 3–21–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–075, C–570–076]

Certain Plastic Decorative Ribbon From the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Countervailing Duty Order

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (the ITC), Commerce is issuing antidumping duty (AD) and countervailing duty (CVD) orders on certain plastic decorative ribbon (plastic ribbon) from the People's Republic of China (China). In addition, Commerce is amending its final AD determination of sales at less than fair value (LTFV) as a result of ministerial errors.

DATES: Applicable March 22, 2019.

FOR FURTHER INFORMATION CONTACT: Charlotte Baskin-Gerwitz at (202) 482–4880 (CVD); or Nancy Decker, or Lauren Caserta, at (202) 482–0196, (202) 482–4737, respectively (AD), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2019, and in accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), Commerce published its final affirmative determination of sales at LTFV with respect to plastic ribbon from China,[1] and, in accordance with section 705(d) of the Act, Commerce published its final affirmative determination that countervailable subsidies are being provided to producers and exporters of plastic ribbon from China.[2] On March 1, 2019, we published a *Corrected CVD Final Determination* for the CVD investigation.[3]

On February 4 and 5, 2019, Commerce received timely ministerial error allegations in the AD investigation.[4] On February 13, 2019, Commerce received rebuttal comments to the ministerial error allegations.[5] *See* the ''Amendment to the AD Final Determination'' section below.

On March 15, 2019, pursuant to sections 735(d) and 705(d) of the Act, the ITC notified Commerce of its affirmative final determination that an industry in the United States is materially injured within the meaning of sections 735(b)(1)(A)(i) and 705(b)(1)(A)(i) of the Act by reason of LTFV imports and subsidized imports of subject merchandise, respectively, from China.[6]

Scope of the Orders

The product covered by these orders is plastic ribbon from China. For a complete description of the scope of these orders, *see* the Appendix to this notice.

Amendment to the AD Final Determination

Pursuant to 19 CFR 351.224(e), Commerce is amending the *AD Final Determination* to correct certain ministerial errors made in the *AD Final Determination* with respect to Ricai and Junlong.[7] This amended final AD determination corrects these errors and revises the weighted-average margins that were calculated for Ricai and Junlong. Because the margin for the separate rate companies is based on the rates for Junlong and Ricai, and their rates changed due to the aforementioned ministerial errors, we are revising the margin applicable to the non-individually investigated separate rate companies in this amended final AD determination.[8] The amended weighted-average margin rates are listed in the ''Estimated Weighted-Average Dumping Margins'' table below.

Antidumping Duty Order

In accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured by reason of imports of plastic ribbon from China that are sold in the United States at LTFV.[9] Therefore, in accordance with sections 735(c)(2) and 736(a) of the Act, we are issuing this antidumping duty order. Because the ITC determined that imports of plastic ribbon from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from these countries, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of plastic ribbon from China. Antidumping duties will be assessed on unliquidated entries of plastic ribbon from China entered, or withdrawn from warehouse, for consumption on or after August 8, 2018, the date of publication of the *AD Preliminary Determination,*[10] and before February 4, 2019. Section 733(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. At the request of Junlong and Dongguan Mei Song Plastic Industry Co., Ltd. (Mei Song), two

[1] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 84 FR 1055 (February 1, 2019), and accompanying Issues and Decision Memorandum (*AD Final Determination*).

[2] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 84 FR 1064 (February 1, 2019), and accompanying Issues and Decision Memorandum (*CVD Final Determination*).

[3] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Corrected Final Affirmative Countervailing Duty Determination,* 84 FR 7019 (March 1, 2019) (*Corrected CVD Final Determination*).

[4] *See* Letter from Berwick Offray LLC (the petitioner), ''Certain Plastic Decorative Ribbon from the People's Republic of China: Ministerial Error Comments,'' dated February 4, 2019, and Letter from Dongguan Ricai Plastic Technology Co., Ltd. and Ricai Film Artwork Materials Co., Ltd. (collectively, Ricai), a respondent in the AD investigation, ''Plastic Decorative Ribbons from PRC (''Decorative Ribbons''); A–570–075; Ministerial Error Allegation,'' dated February 5, 2019.

[5] *See* Letter from Ningbo Junlong Craft Gift Co., Ltd. (Junlong), a respondent in the AD investigation, ''Certain Plastic Decorative Ribbon from the People's Republic of China—Reply to Ministerial Error Comments,'' dated February 13, 2019.

[6] *See* ITC Notification Letter to the Acting Assistant Secretary for Enforcement and Compliance referencing ITC Investigation Nos. 701–TA–592 and 731–TA–1400 (March 15, 2019) (ITC Notification).

[7] For a detailed discussion, *see* the Memorandum, ''Ministerial Error Memorandum for the Affirmative Final Determination of the Antidumping Duty Investigation of Certain Plastic Decorative Ribbon from the People's Republic of China'' dated March 11, 2019 (AD Ministerial Error Memorandum).

[8] *See* AD Ministerial Error Memorandum.

[9] *See ITC Determination.*

[10] See Certain Plastic Decorative Ribbon from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 83 FR 39058 (August 8, 2018) (Preliminary Determination).

mandatory respondents that account for a ''significant portion'' of subject merchandise in the LTFV investigation, we extended the four-month period to no more than six months in this case.[11] Therefore, entries of subject merchandise from China made on or after February 4, 2019, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of antidumping duties due to Commerce's discontinuation of the suspension of liquidation.

Suspension of Liquidation (AD)

In accordance with section 736 of the Act, we will instruct CBP to reinstitute suspension of liquidation of all appropriate entries of plastic ribbon from China as described in the ''Scope of the Orders'' section, effective on the date of publication of the ITC's notice of final determination in the **Federal Register**. Pursuant to section 735(c)(1)(B) of the Act, Commerce will direct CBP to require a cash deposit for each entry of subject merchandise, equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated in the table below. The cash deposit rates are as follows: (1) For the producer/exporter combinations listed in the table below, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table below, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or the China-wide entity) that supplied that third country exporter. These suspension of liquidation instructions will remain in effect until further notice.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows.

Exporter	Producer	Weighted-average dumping margin (percent)
Ningbo Junlong Craft Gift Co., Ltd	Ningbo Junlong Craft Gift Co., Ltd	132.07
Ricai Film Artwork Materials Co., Ltd	Dongguan Ricai Plastic Technology Co., Ltd	61.99
Sun Rich (Asia) Ltd	Kai Feng Decoration (Hui Zhou) Co., Ltd	105.33
Sun Rich (Asia) Ltd	Sheng Yi Decoration (Dong Guan) Co., Ltd	105.33
Joynice Gifts & Crafts Co., Ltd	Joynice Gifts & Crafts Co., Ltd	105.33
Chiapton Gifts Decorative Limited	Nan Mei (Huizhou) Ribbon Art Factory Ltd	105.33
Chiapton Gifts Decorative Limited	Shantou Longhu YingXin Art Craft Factory Co. Ltd	105.33
Colorart Plastic Ribbon Productions Limited	Colorart Industrial Limited	105.33
Zhejiang Shaoxing Royal Arts & Crafts Co., Ltd	Santa's Collection Shaoxing Co. Ltd	105.33
Zhejiang Shaoxing Royal Arts & Crafts Co., Ltd	Zheijang Shaoxing Royal Arts & Crafts Co., Ltd	105.33
Wingo Gift & Crafts (Shenzhen) Co., Ltd	Wingo Gift & Crafts (Shenzhen) Co., Ltd	105.33
Seng San Enterprises Co., Ltd	Xin Seng San Handicraft (ShenZhen) Co., Ltd	105.33
Xiangxin Decoration Factory	Xiangxin Decoration Factory	105.33
Xinghui Packaging Co., Ltd	Xinghui Packaging Co., Ltd	105.33
Shenzhen SHS Technology R&D Co., Ltd	Shenzhen SHS Technology R&D Co., Ltd	105.33
China-Wide Entity		370.04

Countervailing Duty Order

In accordance with section 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured by reason of subsidized imports of plastic ribbon from China. As a result, and in accordance with sections 705(c)(2) and 706 of the Act, we are publishing this countervailing duty order.

In accordance with section 706(a) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, countervailing duties on unliquidated entries of plastic ribbon from China entered, or withdrawn from warehouse, for consumption on or after June 22, 2018, the date of publication of the *CVD Preliminary Determination* in the **Federal Register**,[12] and before October 20, 2018, the effective date on which Commerce instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of plastic ribbons made on or after October 20, 2018, and prior to the date of publication of the ITC's final determination in the **Federal Register**, are not liable for the assessment of countervailing duties, due to Commerce's discontinuation of the suspension of liquidation.

Suspension of Liquidation (CVD)

In accordance with section 706 of the Act, we will instruct CBP to reinstitute suspension of liquidation of all appropriate entries of plastic ribbon from China as described in the ''Scope of the Orders'' section, effective on the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, we will instruct CBP to require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for each entry of subject merchandise equal to

[11] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Postponement of Final Determination of Sales at Less Than Fair Value,* 83 FR 40226 (August 14, 2018).

[12] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 FR 29096 (June 22, 2018) (*Preliminary Determination*).

the rates listed below. These instructions suspending liquidation will remain in effect until further notice. The all-others rate applies to all producers and exporters of subject merchandise not specifically listed.

Estimated Countervailing Duty Cash Deposit Rates

Company	Subsidy rate (percent)
Seng San Enterprises Co., Ltd.	18.03
Joynice Gifts & Crafts Co., Ltd ...	14.27
Santa's Collection Shaoxing Co., Ltd	94.67
All-Others	16.15

Notifications to Interested Parties

This notice constitutes the AD and CVD orders with respect to plastic ribbon from China pursuant to sections 736(a) and 706(a) of the Act, respectively. Interested parties may visit *https://enforcement.trade.gov/stats/iastats1.html* or contact Commerce's Central Records Unit, Room B8024 of the main Commerce Building, for copies of an updated list of antidumping and countervailing duty orders currently in effect.

These orders and the amended AD Final Determination are published in accordance with sections 706(a), 735(e), 736(a), and 777(i) of the Act, and 19 CFR 351.211(b) and 351.224(e).

Dated: March 19, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The merchandise covered by these orders is certain plastic decorative ribbon, having a width (measured at the narrowest span of the ribbon) of less than or equal to four (4) inches, but disregarding any features that measure 4 inches or less in width, such as tapering or cutting at the ends or in a bow knot, provided that aggregate length of such features comprises no more than 20% of the length of the ribbon. Subject merchandise includes but is not limited to ribbon wound onto itself; a spool, a core or a tube (with or without flanges); attached to a card or strip; wound into a keg- or egg-shaped configuration; made into bows, bow-like items, or other shapes or configurations; and whether or not packaged or labeled for retail sale. The subject merchandise is typically made of substrates of polypropylene, but may be made in whole or in part of any type of plastic, including without limitation, plastic derived from petroleum products and plastic derived from cellulose products. Unless the context otherwise clearly indicates, the word ''ribbon'' used in the singular includes the plural and the plural ''ribbons'' includes the singular.

The subject merchandise includes ribbons comprised of one or more layers of substrates made, in whole or in part, of plastics adhered to each other, regardless of the method used to adhere the layers together, including without limitation, ribbons comprised of layers of substrates adhered to each other through a lamination process. Subject merchandise also includes ribbons comprised of (a) one or more layers of substrates made, in whole or in part, of plastics adhered to (b) one or more layers of substrates made, in whole or in part, of non-plastic materials, including, without limitation, substrates made, in whole or in part, of fabric.

The ribbons subject to these orders may be of any color or combination of colors (including without limitation, ribbons that are transparent, translucent or opaque) and may or may not bear words or images, including without limitation, those of a holiday motif. The subject merchandise includes ribbons with embellishments and/or treatments, including, without limitation, ribbons that are printed, hot-stamped, coated, laminated, flocked, crimped, die-cut, embossed (or that otherwise have impressed designs, images, words or patterns), and ribbons with holographic, metallic, glitter or iridescent finishes.

Subject merchandise includes ''pull-bows'' an assemblage of ribbons connected to one another, folded flat, and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage, and ''pre-notched'' bows, an assemblage of notched ribbon loops arranged one inside the other with the notches in alignment and affixed to each other where notched, and which the end user forms into a bow by separating and spreading the loops circularly around the notches, which form the center of the bow. Subject merchandise includes ribbons that are packaged with non-subject merchandise, including ensembles that include ribbons and other products, such as gift wrap, gift bags, gift tags and/or other gift packaging products. The ribbons are covered by the scope of these orders; the ''other products'' (*i.e.,* the other, non-subject merchandise included in the ensemble) are not covered by the scope of these orders.

Excluded from the scope of these orders are the following: (1) Ribbons formed exclusively by weaving plastic threads together; (2) ribbons that have metal wire in, on, or along the entirety of each of the longitudinal edges of the ribbon; (3) ribbons with an adhesive coating covering the entire span between the longitudinal edges of the ribbon for the entire length of the ribbon; (4) ribbon formed into a bow without a tab or other means for attaching the bow to an object using adhesives, where the bow has: (a) An outer layer that is either flocked, made of fabric, or covered by any other decorative coating such as glitter (whether of plastic or non-plastic materials), and (b) a flexible metal wire at the base which permits attachment to an object by twist-tying; (5) elastic ribbons, meaning ribbons that elongate when stretched and return to their original dimension when the stretching load is removed; (6) ribbons affixed as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non subject merchandise; (7) ribbons that are (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where the ribbon comprises a book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a ''belly band'' around a pair of pajamas, a pair of socks or a blanket; (8) imitation raffia made of plastics having a thickness not more than one (1) mil when measured in an unfolded/untwisted state; (9) cords, *i.e.,* multiple strands of materials that have been braided, gimped or twisted together; and (10) ribbons in the form of bows having a diameter of less than seven-eighths (7/8) of an inch, or having a diameter of more than 16 inches, based on actual measurement. For purposes of this exclusion, the diameter of a bow is equal to the diameter of the smallest circular ring through which the bow will pass without compressing the bow.

The scope of these orders excludes shredded plastic film or shredded plastic strip, in each case where the shred does not exceed 5 mm in width and does not exceed 18 inches in length.

The scope of these orders excludes plastic garlands and plastic tinsel garlands, imported in lengths of not less than three (3) feet. The longitudinal base of these garlands may be made of wire or non-wire material, and these garlands may include plastic die-cut pieces. Also excluded are items made of plastic garland and/or plastic tinsel where the items do not have a tab or other means for attaching the item to an object using adhesives. This exclusion does not apply to plastic garland bows, plastic tinsel bows, or other bow-like products made of plastic garland or plastic tinsel.

The scope of these orders excludes ribbons made exclusively of fabric formed by weaving or knitting threads together, or by matting, condensing or pressing fibers together to create felt fabric, regardless of thread or fiber composition, including without limitation, fabric ribbons of polyester, nylon, acrylic or terylene threads or fibers. This exclusion does not apply to plastic ribbons that are flocked.

The scope of these orders excludes ribbons having a width of less than three (3) mm when incorporated by weaving into mesh material (whether flat or tubular) or fabric ribbon (meaning ribbon formed by weaving all or any of the following: Man-made fibers, natural fibers, metal threads and/or metalized yarns), in each case only where the mesh material or fabric ribbon is imported in the form of a decorative bow or a decorative bow-like item.

Further, excluded from the scope of the antidumping duty order are any products covered by the existing antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from the People's

Republic of China (China). *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595 (November 10, 2008).

Merchandise covered by these orders is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3920.20.0015 and 3926.40.0010. Merchandise covered by these orders also may enter under subheadings 3920.10.0000; 3920.20.0055; 3920.30.0000; 3920.43.5000; 3920.49.0000; 3920.62.0050; 3920.62.0090; 3920.69.0000; 3921.90.1100; 3921.90.1500; 3921.90.1910; 3921.90.1950; 3921.90.4010; 3921.90.4090; 3926.90.9996; 5404.90.0000; 9505.90.4000; 4601.99.9000; 4602.90.0000; 5609.00.3000; 5609.00.4000; and 6307.90.9889. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of these orders is dispositive.

[FR Doc. 2019–05520 Filed 3–21–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty Administrative Review; 2016

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

SUMMARY: The Department of Commerce (Commerce) determines that Jindal Poly Films Limited of India (Jindal) and SRF Limited (SRF), exporters of polyethylene terephthalate film, sheet, and strip (PET film) from India, received countervailable subsidies during the period of review (POR) January 1, 2016, through December 31, 2016.

DATES: Applicable March 22, 2019.

FOR FURTHER INFORMATION CONTACT: Elfi Blum at 202–482–0197, AD/CVD Operations, Office VII, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this review on August 10, 2018.[1] For a history of events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] On November 27, 2018, we postponed the final results of review by sixty days until February 6, 2019. Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 to January 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The deadline for the final results of this administrative review is now March 18, 2019.[3]

Based on an analysis of the comments received and record information, we have revised our calculations for SRF. The final subsidy rates are listed in the ''Final Results of Administrative Review'' section below.

Scope of the Order

For the purposes of the order, the products covered are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet and strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. The issues are identified in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://trade.gov/enforcement/frn/index.html.* The signed Issues and Decision Memorandum and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the GOI, Jindal, and SRF, and the rebuttal comments received from the petitioners, we made changes to our rate calculations for Jindal and SRF. We determined countervailability for certain income tax programs and calculated rates for Jindal and SRF: ''Income Tax Deductions under Section 35 for Research and Development (R&D) Expenses (Section 35 R&D Tax Deductions)'' and ''Section 32 for Investments into new Plants and Machinery (Section 32 Capital Investment Deductions) of the Income Tax Act, 1961.'' In addition, we made minor changes for two of SRF's programs: ''Exemption from Payment of Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material'' and ''State and Union Territory Sales Tax Incentive Programs.'' For a discussion of these issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a description of the methodology underlying all of Commerce's conclusions, *see* the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

For the companies not selected for individual review, because the rates calculated for Jindal and SRF were above *de minimis* and not based entirely on facts available, we applied, consistent with section 705(c)(5)(A) of

[1] *See Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2016,* 83 FR 39677 (August 10, 2018) (*Preliminary Results*).

[2] *See* Memorandum re: Issues and Decision Memorandum for the Final Results in the Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet and Strip from India,'' dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum).

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

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

the Act, a subsidy rate based on a simple average of the subsidy rates calculated for Jindal and SRF because publicly ranged sales value data was not submitted by both respondents.

Final Results of Administrative Review

In accordance with section 777A(e)(1) of the Act and 19 CFR 351.221(b)(5), we determine the total estimated net countervailable subsidy rates for the period January 1, 2016, through December 31, 2016 to be:

Manufacturer/exporter	Subsidy rate (percent *ad valorem*)
Jindal Poly Films of India Limited	11.26
SRF Limited	7.54
Chiripal Poly Films Limited	9.40
Ester Industries Limited	9.40
Garware Polyester Ltd	9.40
Polyplex Corporation Ltd	9.40
Vacmet India Limited	9.40

Assessment and Cash Deposit Requirements

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of the final results of this review. Commerce will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by the companies listed above, entered or withdrawn from warehouse, for consumption from January 1, 2016, through December 31, 2016, at the percent rates, as listed above for each of the respective companies, of the entered value.

Commerce intends also to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

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

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 19, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Issues and Decision Memorandum

[FR Doc. 2019–05521 Filed 3–21–19; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* the Agreement on Subsidies and Countervailing Measures, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization (SCM Agreement).

[6] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–844]

Narrow Woven Ribbons With Woven Selvedge From Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) determines that Ming Wei Co., Ltd. (Ming Wei), the lone respondent in this administrative review, made sales of certain narrow woven ribbon with woven selvedge at prices below normal value during the period of review (POR) September 1, 2016, through August 31, 2017.

DATES: Applicable March 22, 2019.

FOR FURTHER INFORMATION CONTACT: David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3693.

SUPPLEMENTARY INFORMATION:

Background

The review covers five producers/exporters of the subject merchandise, Banduoo Ltd. (Banduoo), Fujian Rongshu Industry Co., Ltd. (Fujian Rongshu), Ming Wei, Roung Shu Industry Corporation (Roung Shu), and Xiamen Yi-He Textile Co., Ltd. (Xiamen Yi-He).

On October 9, 2018, Commerce published the *Preliminary Results* in the **Federal Register**.[1] Although we invited parties to comment on the preliminary results of the review,[2] no interested

[1] *See Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017,* 83 FR 50637 (October 9, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Preliminary Results,* 83 FR at 50638.

party submitted comments. Commerce conducted this administrative review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of this order covers narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the order may:

- Also include natural or other non-man-made fibers;
- be of any color, style, pattern, or weave construction, including but not limited to single faced satin, double-faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- consist of such ribbons affixed to like ribbon and/or cut-edge woven ribbon, a configuration also known as an ''ornamental trimming;''
- be wound on spools; attached to a card; hanked (*i.e.,* coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the order include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of this antidumping duty order.

Excluded from the scope of the order are the following:

(1) Formed bows composed of narrow woven ribbons with woven selvedge;

(2) ''pull-bows'' (*i.e.,* an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.,* filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the Harmonized Tariff Schedule of the United States (HTSUS), Section XI, Note 13) or rubber thread;

(4) narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) narrow woven labels and apparel tapes, cut-to-length or cut-to-shape, having a length (when measured across the longest edge-to-edge span) not exceeding eight centimeters;

(6) narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) cut-edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono-bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) narrow woven ribbons constructed from pile fabrics (*i.e.,* fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);

(10) narrow woven ribbon affixed (including by tying) as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise;

(11) narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a ''belly band'' around a pair of pajamas, a pair of socks or a blanket;

(12) narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

(13) narrow woven ribbon(s) included with non-subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven ribbon(s) included in the kit are each no greater than eight inches, the aggregate amount of narrow woven ribbon(s) included in the kit does not exceed 48 linear inches, none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to this order is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050; and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by this order is dispositive.

Final Determination of No Shipments

As explained in the *Preliminary Results,* we preliminarily determined that Banduoo, Fujian Rongshu, Roung Shu, and Xiamen Yi-He had no shipments of subject merchandise during the POR. Also, in the *Preliminary Results,* Commerce stated that, consistent with its practice, it would complete the review with respect to these companies and issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on the final results.[3]

After issuing the *Preliminary Results,* Commerce received no comments from interested parties, and has not received any information that would cause it to

[3] *See Preliminary Results,* 83 FR at 50638.

alter its preliminary determinations. Therefore, because the record indicates that these companies did not export subject merchandise to the United States, Commerce continues to find that Banduoo, Fujian Rongshu, Roung Shu, and Xiamen Yi-He had no shipments of subject merchandise during the POR. Commerce received no comments for consideration in these final results.

Final Results of the Review

Because Commerce received no comments for consideration in these final results, our determinations, as explained in the *Preliminary Results,* remain unchanged. Accordingly, no decision memorandum accompanies this **Federal Register** notice.[4] As a result of this review, we determine the dumping margin for Ming Wei for the period September 1, 2016, through August 31, 2017, is as follows:

Exporter/producer	Dumping margin (percent)
Ming Wei Co., Ltd	137.20

Assessment Rates

In accordance with the final results of this review, Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. For Ming Wei, we will instruct CBP to apply an assessment rate to all entries it produced and/or exported equal to the dumping margin indicated above. Additionally, because Commerce determined that Banduoo, Fujian Rongshu, Roung Shu, and Xiamen Yi-He had no shipments of subject merchandise during the POR, any suspended entries that entered under Banduoo, Fujian Rongshu, Roung Shu, or Xiamen Yi-He's case number (*i.e.,* at that exporter's rate) will be liquidated at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[5]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Ming Wei will be the rate shown above; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.37 percent, the all-others rate made effective by the LTFV investigation.[6] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: March 18, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–05428 Filed 3–21–19; 8:45 am]

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[4] For further details of the issues addressed in this proceeding, *see Preliminary Results* and PDM.

[5] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[6] *See Narrow Woven Ribbons with Woven Selvedge from Taiwan and the People's Republic of China: Amended Antidumping Duty Orders,* 75 FR 56982, 56985 (September 17, 2010).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Rescission of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: On April 16, 2018, the Department of Commerce (Commerce) initiated an administrative review on frozen warmwater shrimp from India for the period February 1, 2017, through January 31, 2018, for 241 companies. Because all interested parties timely withdrew their requests for administrative review for certain companies, we are rescinding this administrative review with respect to those companies, pursuant to 19 CFR 351.213(d)(1). For a list of the companies for which we are rescinding this review, *see* the Appendix to this notice.

DATES: Applicable March 22, 2019.

FOR FURTHER INFORMATION CONTACT: Manuel Rey or Brittany Bauer, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5518 or (202) 482–3860.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2018, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on frozen warmwater shrimp from India for the period February 1, 2017, through January 31, 2018.[1] In February 2018, Commerce received timely requests, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), to conduct an administrative review of this antidumping duty order from the Ad Hoc Shrimp Trade Action Committee (the petitioner), the

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 4639 (February 1, 2018).

American Shrimp Processors Association (ASPA), and certain individual companies.[2] Based upon these requests, on April 16, 2018, in accordance with section 751(a) of the Act, Commerce published in the **Federal Register** a notice of initiation listing 248 companies for which Commerce received timely requests for review.[3]

In July 2018, all interested parties timely withdrew their requests for an administrative review of 234 companies.[4] These companies are listed in the Appendix to this notice. The review continues for Blue-Fin Frozen Foods Pvt. Ltd., Calcutta Seafoods Pvt. Ltd., Crystal Sea Foods Private Limited, Forstar Frozen Foods Pvt. Ltd., Magnum Estates Limited, Magnum Sea Foods Limited, and Milsha Agro Exports Pvt. Ltd.

[2] *See* Petitioner's Letter, ''Certain Frozen Warmwater Shrimp from India: Request for Administrative Reviews,'' dated February 27, 2018; ASPA's Letter, ''Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater Shrimp from India (POR 13: 02/01/17–01/31/18): American Shrimp Processors Association's Request for an Administrative Review,'' dated February 27, 2018; Crystal Sea Foods's Letter, ''Frozen Warmwater Shrimp from India—Request for Administrative Review of Crystal Sea Foods Private Limited,'' dated February 25, 2018; West Coast Frozen Foods Letter, ''Frozen Warmwater Shrimp from India—Request for Administrative Review of West Coast Frozen Foods Private Limited,'' dated February 26, 2018; Blue-Fin's Letter, ''Frozen Warmwater Shrimp from India—Request for Administrative Review of Blue-Fin Frozen Foods Private Limited,'' dated February 26, 2018; Devi's Letter, ''Certain Frozen Warmwater Shrimp from India: Devi Fisheries Group (comprising, Devi Fisheries Limited, Satya Seafoods Private Limited, and Usha Seafoods) (''Devi'') Request for Administrative Review and Request for Voluntary Respondent Treatment (02/01/17–01/31/18),'' dated February 28, 2018; Falcon's Letter, ''Certain Frozen Warmwater Shrimp from India: Falcon Marine Exports Ltd./K.R. Enterprises Request for Administrative Review and Request for Voluntary Respondent Treatment (02/01/17–01/31/18),'' dated February 29, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 16298 (April 16, 2018) (*Initiation Notice*).

[4] *See* Petitioner's Letters, ''Certain Frozen Warmwater Shrimp from India: Domestic Producers' Partial Withdrawal of Review Requests,'' dated July 12 and 16, 2018; ASPA's Letters, ''Administrative Review of the Antidumping Duty Order on Frozen Warmwater Shrimp from India (02/01/2017–01/31/2018); ASPA's Partial Withdrawal of Request for Administrative Review,'' dated July 12 and 16, 2018; Respondents' Letter, ''Certain Frozen Warmwater Shrimp from India: Withdrawal of Requests for Administrative Review for Liberty Group, Falcon, and Devi Fisheries Group,'' dated July 12, 2018; Respondents' Letter, ''Certain Frozen Warmwater Shrimp from India: Withdrawal of Requests for Administrative Review for 33 Indian Producers/Exporters (02/01/17–01/31/18),'' dated July 12, 2018; and West Coast Frozen's Letter, ''Frozen Warmwater Shrimp from India—Withdrawal of Request for Antidumping Duty Admin Review of West Coast Frozen Foods Private Limited,'' dated July 13, 2018.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. As noted above, certain parties withdrew their requests for review by the 90-day deadline. Accordingly, we are rescinding this administrative review with respect to the companies listed in the Appendix to this notice.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

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

This notice is issued and published in accordance with section 751(a)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: March 15, 2019.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

Abad Fisheries
Akshay Food Impex Private Limited
Alashore Marine Exports (P) Ltd.
Albys Agro Private Limited
Allana Frozen Foods Pvt. Ltd.
Allanasons Ltd.
Alpha Marine
Amarsagar Seafoods Exports Private Limited
AMI Enterprises
Amulya Seafoods
Ananda Aqua Applications/Ananda Aqua Exports (P) Limited/Ananda Foods
Ananda Enterprises (India) Private Limited
Angelique Intl
Anjaneya Seafoods
Apex Frozen Foods Private Limited
Aquatica Frozen Foods Global Pvt. Ltd.
Arya Sea Foods Private Limited
Asvini Exports
Asvini Fisheries Ltd./Asvini Fisheries Private Limited
Avanti Feeds Limited/Avanti Frozen Foods Private Limited
Ayshwarya Seafood Private Limited
B-One Business House Pvt. Ltd.
B R Traders
Baby Marine Exports
Baby Marine International
Baby Marine Sarass
Baby Marine Ventures
Balasore Marine Exports Private Limited
Bay Seafoods
Bell Exim Pvt. Ltd.
Bhatsons Aquatic Products
Bhavani Seafoods
Bijaya Marine Products
Bluepark Seafoods Private Ltd.
Blue Water Foods & Exports P. Ltd.
BMR Exports
BMR Industries Private Limited
Britto Seafood Exports Pvt Ltd.
C P Aquaculture (India) Ltd.
Canaan Marine Products
Capithan Exporting Co.
Cargomar Private Limited
Castlerock Fisheries Ltd.
Chakri Fisheries Private Limited
Chemmeens (Regd)
Cherukattu Industries (Marine Div.)
Choice Trading Corporation Private Limited
Coastal Aqua
Coastal Corporation Ltd.
Cochin Frozen Food Exports Pvt. Ltd.
Continental Fisheries India Pvt. Ltd.
Coreline Exports
Corlim Marine Exports Pvt. Ltd.
D2 D Logistics Private Limited
Damco India Private Limited
Delsea Exports Pvt. Ltd.
Devi Fisheries Limited/Satya Seafoods Private Limited/Usha Seafoods/Devi Aquatech Private Limited
Devi Marine Food Exports Private Ltd./Kader Exports Private Limited/Kader Investment and Trading Company Private Limited/Liberty Frozen Foods Pvt. Ltd./Liberty Oil Mills Ltd./Premier Marine Products Private

Limited/Universal Cold Storage Private Limited
Devi Sea Foods Limited
Diamond Seafoods Exports/Edhayam Frozen Foods Pvt. Ltd./Kadalkanny Frozen Foods/Theva & Company
Esmario Export Enterprises
Exporter Coreline Exports
Falcon Marine Exports Limited/K.R. Enterprises
Febin Marine Foods
Five Star Marine Exports Private Limited
Frontline Exports Pvt. Ltd.
G A Randerian Ltd.
Gadre Marine Exports
Galaxy Maritech Exports P. Ltd.
Geo Aquatic Products (P) Ltd.
Geo Seafoods
Goodwill Enterprises
Grandtrust Overseas (P) Ltd.
Green House Agro Products
Growel Processors Private Limited
GVR Exports Pvt. Ltd.
Hari Marine Private Limited
Haripriya Marine Export Pvt. Ltd.
Harmony Spices Pvt. Ltd.
HIC ABF Special Foods Pvt. Ltd.
Hindustan Lever, Ltd.
Hiravata Ice & Cold Storage
Hiravati Exports Pvt. Ltd.
Hiravati International Pvt. Ltd. (located at APM—Mafco Yard, Sector—18, Vashi, Navi, Mumbai—400 705, India).
Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India).
HN Indigos Private Limited
Hyson Logistics and Marine Exports Private Limited
IFB Agro Industries Ltd.
Indian Aquatic Products
Indo Aquatics
Indo Fisheries
Indo French Shellfish Company Private Limited
Innovative Foods Limited
International Freezefish Exports
Interseas
ITC Limited, International Business
ITC Ltd.
Jagadeesh Marine Exports
Jayalakshmi Sea Foods Pvt. Ltd.
Jinny Marine Traders
Jiya Packagings
K V Marine Exports
Kalyan Aqua & Marine Exp. India Pvt. Ltd.
Kanch Ghar
Karunya Marine Exports Private Limited
Kaushalya Aqua Marine Product Exports Private Limited
Kay Kay Exports
Kings Marine Products
KNC Agro Limited
Koluthara Exports Ltd.
Landauer Ltd.
Libran Cold Storages (P) Ltd.
Magnum Export
Malabar Arabian Fisheries
Malnad Exports Pvt. Ltd.
Mangala Marine Exim India Pvt. Ltd.
Mangala Seafoods
Mangala Sea Products
Marine Harvest India
Meenaxi Fisheries Pvt. Ltd.
Milesh Marine Exports Private Limited
Monsun Foods Pvt. Ltd.
MTR Foods
Munnangi Sea Foods Pvt. Limited
N.C. John & Sons (P) Ltd.
Naga Hanuman Fish Packers
Naik Frozen Foods Private Limited
Naik Oceanic Exports Private Limited
Naik Seafoods Ltd.
Neeli Aqua Private Limited
Nekkanti Sea Foods Limited
Nezami Rekha Sea Foods Private Limited
NGR Aqua International
Nila Sea Foods Exports
Nila Sea Foods Pvt. Ltd.
Nine Up Frozen Foods
Nutrient Marine Foods Ltd.
Oceanic Edibles International Limited
Paragon Sea Foods Pvt. Ltd.
Paramount Seafoods
Parayil Food Products Pvt., Ltd.
Pasupati Aquatics Private Limited
Penver Products Pvt. Ltd.
Pesca Marine Products Pvt. Ltd.
Pijikay International Exports P Ltd.
Pisces Seafood International
Pravesh Seafood Private Limited
Premier Exports International
Premier Marine Foods
Premier Seafoods Exim (P) Ltd.
R V R Marine Products Limited
Raa Systems Pvt. Ltd.
Rafiq Naik Exports Private Limited
Raju Exports
Ram's Assorted Cold Storage Ltd.
Raunaq Ice & Cold Storage
Raysons Aquatics Pvt. Ltd.
Razban Seafoods Ltd.
RBT Exports
RDR Exports
RF Exports
Riviera Exports Pvt. Ltd.
Rohi Marine Private Ltd.
Royal Marine Impex Private Limited
RSA Marines
S & S Seafoods
S. A. Exports
S Chanchala Combines
Safa Enterprises
Sagar Foods
Sagar Grandhi Exports Pvt. Ltd.
Sagar Samrat Seafoods
Sagarvihar Fisheries Pvt. Ltd.
Sai Marine Exports Pvt. Ltd.
Sai Sea Foods
Salvam Exports (P) Ltd.
Samaki Exports Prviate Limited
Sanchita Marine Products Private Limited
Sandhya Aqua Exports
Sandhya Aqua Exports Pvt. Ltd.
Sandhya Marines Limited
Santhi Fisheries & Exports Ltd.
Sarveshwari Exports
Sea Foods Private Limited
Seagold Overseas Pvt. Ltd.
Selvam Exports Private Limited
Sharat Industries Ltd.
Sharma Industries
Shimpo Exports Pvt. Ltd.
Shimpo Seafoods Private Limited
Shiva Frozen Food Exports Pvt. Ltd.
Shree Datt Aquaculture Farms Pvt. Ltd.
Shroff Processed Food & Cold Storage P Ltd.
Silver Seafood
Sita Marine Exports
Southern Tropical Foods Pvt. Ltd.
Sowmya Agri Marine Exports
Sprint Exports Pvt. Ltd.
Sri Sakkthi Cold Storage
Sri Venkata Padmavathi Marine Foods Pvt. Ltd.
Srikanth International
Star Agro Marine Exports Private Limited
Star Organic Foods Incorporated
Star Organic Foods Private Limited
Sterling Foods
Sun Agro Exim
Sun-Bio Technology Ltd.
Sunrise Aqua Food Exports
Supran Exim Private Limited
Suryamitra Exim Pvt. Ltd.
Suvarna Rekha Exports Private Limited
Suvarna Rekha Marines P Ltd.
TBR Exports Pvt. Ltd.
Teekay Marine P. Ltd.
The Waterbase Limited
Triveni Fisheries P Ltd.
U & Company Marine Exports
Ulka Sea Foods Private Limited
Uniroyal Marine Exports Ltd.
Unitriveni Overseas
V V Marine Products
V.S. Exim Pvt. Ltd.
Vasai Frozen Food Co.
Vasista Marine
Veejay Impex
Veerabhadra Exports Private Limited
Veronica Marine Exports Private Limited
Victoria Marine & Agro Exports Ltd.
Vinner Marine
Vitality Aquaculture Pvt., Ltd.
Wellcome Fisheries Limited
West Coast Fine Foods (India) Private Limited
West Coast Frozen Foods Private Limited
Z A Sea Foods Pvt. Ltd.

[FR Doc. 2019–05425 Filed 3–21–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Estimating the Economic Burden of *Vibrio parahaemolyticus* in Washington State Aquaculture.

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Request: New collection.

Number of Respondents: 128.

Average Hours per Response: 0.5.

Burden Hours: 48 hours (assuming a 75% response rate).

Needs and Uses: The National Ocean Service (NOS) proposed a new collection in order to pursue three of the strategic goals of the NOAA Office of

Aquaculture: To advance understanding of the interactions of aquaculture and the environment; to increase the supply of nutritious, safe, high-quality domestic seafood; develop and use socioeconomic and business research to advance domestic aquaculture. NOS proposes to estimate the costs associated with reported Vibrio illnesses, which is a demand expressed in a number of industry settings. Washington State Department of Health expressed desire for this information in order to more accurately plan their budgets.

Management agency staff, restaurant staff, and oyster farm staff will be asked to help develop a model of what kind of expenditures accrue during a response to a reported Vibrio illness and estimate the value of those expenditures. The results of the project will be used to develop a model to estimate the full suite of costs of seafood-borne illness and will provide an estimate for agency and business budget planners.

Affected Public: Management agency staff, oyster farm staff, restaurant staff.

Frequency: Once.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–05438 Filed 3–21–19; 8:45 am]

BILLING CODE 3510–JS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits and permit amendments.

SUMMARY: Notice is hereby given that permits or permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427–8401; fax: (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan (Permit No. 14450–05 and 20532–01), Sara Young (Permit No. 16632–02 and 21856), Carrie Hubard (Permit No. 18182–01), and Amy Hapeman (Permit No. 14809–03); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the research, go to *www.federalregister.gov* and search on the permit number provided in the table below.

Permit No.	RIN	Applicant	Previous **Federal Register** notice	Permit or amendment issuance date
14450–05	0648–XS35	NMFS Southeast Fisheries Science Center (Responsible Party: Theophilus Brainerd, Ph.D.), 75 Virginia Beach Drive, Miami, FL 33149.	83 FR 21766; May 10, 2018	February 6, 2019.
14809–03	0648–XB157	Doug Nowacek, Ph.D., Duke University Marine Laboratory, 135 Duke Marine Lab Rd., Beaufort, NC 28516.	81 FR 1620; January 13, 2016	February 14, 2019.
16632–02	0648–XC521	NMFS Pacific Islands Fisheries Science Center (Responsible Party: Charles Littnan, Ph.D.), 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818.	79 FR 35728; June 24, 2014	February 6, 2019.
18182–01	0648–XD002	Marilyn Mazzoil, Harbor Branch Oceanographic Institute, Florida Atlantic University, 5600 US 1 North, Ft. Pierce, FL 34946.	79 FR 14484; March 14, 2014	February 13, 2019.
20532–01	0648–XE766	Stephen John Trumble, Ph.D., Baylor University, 101 Bagby Ave, Waco, TX 76706.	83 FR 63631; December 11, 2018	February 12, 2019.
21856	0648–XG241	ABR, Inc. Environmental Research and Services (Responsible Party: Lauren Attanas), P.O. Box 80410, Fairbanks, AK 99708.	83 FR 24978; May 31, 2018	February 19, 2019.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

For the original Permit No. 16632, in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS determined that the activities proposed were consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Hawaiian Monk Seal Recovery Actions (NMFS 2014), and that issuance of the permit would not have a significant adverse impact on the human environment. The minor amendment to Permit No. 16632–02 extends the duration of the permit for one year, but does not change any other terms or conditions of the permit and no additional NEPA analysis was required.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the

regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: March 18, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–05441 Filed 3–21–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Reporting Requirements for Commercial Fisheries Authorization under Section 118 of the Marine Mammal Protection Act.

OMB Control Number: 0648–0292.

Form Number(s): None.

Type of Request: Regular (extension of currently approved collection).

Number of Respondents: 200.

Average Hours per Response: 0.25.

Burden Hours: 50.

Needs and Uses: This request is for an extension of a currently approved information collection. Reporting injury to and/or mortalities of marine mammals is mandated under Section 118 of the Marine Mammal Protection Act. This information is required to determine the impacts of commercial fishing on marine mammal populations. This information is also used to categorize commercial fisheries into Categories I, II, or III. Participants in the first two categories must be authorized to take marine mammals, while those in Category III are exempt from that requirement. All categories must report injuries or mortalities on a National Marine Fisheries Service form.

Affected Public: Business or other for-profit organizations; Individuals or households; State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–05439 Filed 3–21–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Region Amendment 80 Program.

OMB Control Number: 0648–0565.

Form Number(s): None.

Type of Request: Regular. (Revision and extension to a previously approved collection).

Number of Respondents: 25.

Average Hours per Response: 2 hours each for Application for Amendment 80 (A80) Quota Share (QS), Application for A80 Cooperative Quota (CQ) Permit, Application for A80 Limited Access Fishery Permit, Application to Transfer A80 QS, Application for A80 Vessel Replacement, and Application for Inter-cooperative Transfer of A80 CQ; 4 hours for A80 appeals letter; 5 minutes for Flatfish Exchange Application.

Burden Hours: 20 hours.

Needs and Uses: This is an extension and a revision of a currently approved information collection that contains applications for permits and transfers necessary to manage the Amendment 80 (A80) Program. The A80 Program is a limited access privilege program that allocates several Bering Sea and Aleutian Islands non-pollock trawl groundfish species among trawl fishery sectors and facilitates the formation of harvesting cooperatives in the non-American Fisheries Act trawl catcher/processor sector.

This collection contains applications used by persons to apply for A80 QS, to transfer A80 QS, and to apply for an A80 limited access fishery permit; by A80 cooperatives to apply for CQ and transfer CQ; by cooperatives or CDQ groups to exchange CQ for one eligible flatfish species with CQ of a different eligible flatfish species; and by A80 vessel owners to replace their vessels.

The National Marine Fisheries Service uses information from this collection to establish eligibility to receive A80 QS, CQ, and permits; transfer and assign harvest quota; replace vessels used in the A80 Program; determine A80 species initial total allowable catch assignments; determine which vessels must be tracked for catch accounting; and review ownership and control information to ensure that QS and CQ use caps are not exceeded.

Affected Public: Business or other for-profit organizations; Individuals or households.

Frequency: Annually; on occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of Chief Information Officer, Department of Commerce.

[FR Doc. 2019–05440 Filed 3–21–19; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services previously furnished by such agencies.

DATES: Comments must be received on or before: April 21, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSNs—Product Names:
MR 10777—Platters, Christmas, Red, Includes Shipper 20777
MR 10778—Platters, Christmas, Blue, Includes Shipper 20777
MR 11102—Bags, Roasting, Includes Shipper 21102
MR 11103—Pan, Roasting, Oval, Includes Shipper 21103
MR 11101—Paper, Parchment, Includes Shipper 21101
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency
NSN—Product Name: 2815–01–464–5543—Parts Kit, Piston Assembly, HMMWV Engine
Mandatory Source of Supply: Georgia Industries for the Blind, Bainbridge, GA
Contracting Activity: Defense Logistics Agency, DLA Land and Maritime

Deletions

The following services are proposed for deletion from the Procurement List:

Services

Service Type: Supply and Warehousing Service
Mandatory for: The Dredge WHEELER Spare Parts Warehouse, 400 Edwards Avenue, Suite F, Harahan, LA
Mandatory Source of Supply: The Lighthouse for the Blind in New Orleans, Inc., New Orleans, LA
Contracting Activity: Dept of the Army, W40M RHCO–ATLANTIC USAHCA

Service Type: Janitorial Service
Mandatory for: U.S. Army Corps of Engineers, Col Francis R. Hunter USARC, San Pablo, CA, U.S. Army Corps of Engineers, PFC Robert H. Young Hall USARC, Vallejo, CA
Mandatory Source of Supply: Solano Diversified Services, Vallejo, CA
Contracting Activity: Dept of the Army, W6QM MICC FT MCCOY (RC)

Service Type: Janitorial/Custodial
Mandatory for: Social Security Administration District: 22 Morris Street-Office Building, Hackensack, NJ
Mandatory Source of Supply: North Jersey Friendship House, Inc., Hackensack, NJ
Contracting Activity: Health and Human Services, Department of

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–05530 Filed 3–21–19; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* April 21, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 8/31/2018 (83 FR 170) and on 2/8/2019 (84 FR 27), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSNs—Product Names:
MR 1100—Set, Brush
MR 1110—Brush, Bottle
MR 13135—Tray, Ice Cube, No Spill
MR 13134—Container, Square, Pop, Small, 0.3 Qt.
MR 13133—Container, Rectangle, Pop, 2.5 Qt.
MR 13132—Container, Square, Pop, Small, 0.9 Qt.
MR 13131—Container, Rectangle, Pop, 1.5 Qt
MR 13130—Set, Bowl, Colander, Large, 3 pc
MR 13129—Set, Container, Plastic, 16 pc
MR 13128—Set, Bowl, Mixing, 3 pc
MR 13127—Colander, Plastic
MR 13126—Board, Cutting, Prep
MR 13125—Board, Cutting, Utility
MR 13124—Set, Clip, 8 pc
MR 13122—Box, Grater
MR 13121—Clips, Magnetic
MR 13120—Set, Container, Pop, 5pc
MR 1124—Basket, Suction, Sink, Steel
MR 1123—Mat Drying, Silicone, Large
MR 1122—Brush, Dish
MR 1119—Rack, Dish
MR 1118—Holder, Sponge
MR 1114—Mat, Sink, Small
MR 1112—Set, Cleaning, Water Bottle
MR 1111—Strainer, Sink
MR 13009—Salad Chopper with Bowl
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Mandatory For Contracting Activity: Military Resale-Defense Commissary Agency

Deletions

On 2/1/2019 (84 FR 22), the Committee for Purchase From People

Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

NSNs—Product Names:
8345–00–673–9992—Streamer, Warning, Aircraft, Red, 24″ x 3″
Mandatory Source of Supply: Coastal Enterprises of Jacksonville, Inc., Jacksonville, NC
Contracting Activity: DLA Troop Support, Philadelphia, PA

NSNs—Product Names: MR 893—Ergo Grater
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
MR 443—Candle, Soy, Cucumber Melon Scented, 8.5oz
MR 445—Candle, Soy, Thai Lemon Scented, 8.5oz
MR 447—Candle, Soy, Venetian Nights Scented, 8.5oz
MR 410—Bag, Shopping Tote, Laminated, Small, Summer
MR 411—Bag, Shopping Tote, Laminated, Large, Summer
MR 412—Grocery Shopping Tote Bag, Laminated, Seasonal, Fall, Small
MR 422—Grocery Shopping Tote Bag, Laminated, Breast Cancer, Small
MR 459—Grocery Shopping Tote Bag, Laminated, Easter, Blue Eggs, Gift
MR 460—Grocery Shopping Tote Bag, Laminated, Easter, Blue Eggs, Small
MR 461—Grocery Shopping Tote Bag, Laminated, Easter, Blue Eggs, Large
MR 466—Grocery Shopping Tote Bag, Laminated, Easter, Orange Eggs, Gift
MR 468—Grocery Shopping Tote Bag, Laminated, Easter, Orange Eggs, Large
MR 11011—Grocery Shopping Tote Bag, Laminated, Commissary 150th Anniversary, Exterior Scene
MR 11050—Grocery Shopping Tote Bag, Laminated, Spring, Purple, Small
MR 11084—Grocery Shopping Tote Bag, Laminated, Heart Smart, Small
Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
MR 11301—Cooler, Styrofoam, Handled, 12 Qt.
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency

NSNs—Product Names:
7510–01–624–8699—Refill, Pen, Roller Ball, Retractable, Airplane Safe, Black Ink, 0.5mm
7510–01–624–8698—Refill, Pen, Roller Ball, Retractable, Airplane Safe, Blue Ink, 0.5mm
7510–01–624–8697—Refill, Pen, Roller Ball, Retractable, Airplane Safe, Black Ink, 0.7mm
7510–01–624–8700—Refill, Pen, Roller Ball, Retractable, Airplane Safe, Blue Ink, 0.7mm
Mandatory Source of Supply: San Antonio Lighthouse for the Blind, San Antonio, TX
7530–01–515–7901—Paper, Printer, Ink Jet, Photo Quality, Matte, Letter, 89 Bright White
Mandatory Source of Supply: Wiscraft, Inc., Milwaukee, WI
6645–01–492–9821—Clock, Wall, Atomic, Bronze, Custom Logo, 12 ¾″ Diameter
6645–01–491–9830—Clock, Wall, Atomic, White, Custom Logo, 9 ¼″ Diameter
6645–01–491–9805—Clock, Wall, Atomic, White, 9 ¼″ Diameter
6645–01–421–6905—Clock, Wall, Slimline, Stone Gray, 9 ¼″ Quartz
6645–01–456–6031—Clock, Wall, 24 Hour, Slimline, Bronze, Custom Logo, 9 ¼″ Quartz
Mandatory Source of Supply: Chicago Lighthouse Industries, Chicago, IL
7530–01–600–2019—Notebook, Spiral Bound, Biobased Bagasse Paper, 8x10½″ , 70 sheets, College Rule, White
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN—Product Name: 8010–00–935–7079—Enamel, Lacquer, Acrylic, Flat Black
Mandatory Source of Supply: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: Defense Logistics Agency

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–05532 Filed 3–21–19; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Renewal of Credit Union Advisory Council

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), after consultation with the Committee Management Secretariat of the General Services Administration, will establish the Credit Union Advisory Council (the committee or the CUAC) effective on March 21, 2019. The CUAC was established to consult with the Bureau in the exercise of its functions under the federal consumer financial laws as they pertain to credit unions with total assets of $10 billion or less.

FOR FURTHER INFORMATION CONTACT: Matt Cameron, Acting Staff Director, Office of Advisory Board and Councils, External Affairs, at 202–435–7708, or *Matt.Cameron@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), the Bureau of Consumer Financial Protection hereby gives notice of re-establishment of the Credit Union Advisory Council. The CUAC is a discretionary committee being renewed for the purposes of compliance with FACA and applicable statutes. This committee is being renewed concurrently with the publication of this notice by filing a charter with the Director of the Bureau, the Committee Management Secretariat of the General Services Administration, the Library of Congress, the Committee on Banking, Housing, and Urban Affairs of the United States Senate, and the Committee on Financial Services of the United States House of Representatives. The charter will also be posted on the Bureau's website at *www.consumerfinance.gov.* This charter will expire two years after the filing date unless renewed by appropriate action.

The CUAC shall advise the Bureau in its exercise of its functions under the Federal consumer financial laws as they pertain to credit unions with total assets of $10 billion or less. To carry out the committee's purpose, the scope of its activities shall include providing information, and analysis in support of recommendations to the Bureau. The output of committee meetings should serve to better inform the Bureau's policy development, rulemaking, and

engagement functions as they relate to credit unions.

The duties of the CUAC are solely advisory and shall extend only to the submission of advice and recommendations to the Bureau relating to the activities and operations of credit unions, which shall be non-binding on the Bureau. No determination of fact or policy will be made by the committee, and the committee will have no formal decision-making role and no access to confidential supervisory or other confidential information.

In appointing members to the CUAC, the Director shall seek to assemble members with diverse points of view, institution asset sizes, and geographical backgrounds. Only credit union employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership. Membership is limited to employees of credit unions with total assets of $10 billion or less that are not affiliates of depository institutions or credit unions with total assets of more than $10 billion. The CUAC shall consist of at least seven members serving two-year terms. Equal opportunity practices in accordance with the Bureau's policies shall be followed in all appointments to the CUAC.

Dated: March 18, 2019.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2019–05450 Filed 3–21–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Renewal of Consumer Advisory Board

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), after consultation with the Committee Management Secretariat of the General Services Administration, will renew the Consumer Advisory Board (the committee or the CAB) effective on March 21, 2019. The CAB will ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information,'' as outlined in section 1014(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

FOR FURTHER INFORMATION CONTACT: Matt Cameron, Acting Staff Director, Office of Advisory Board and Councils, External Affairs, at 202–435–7708, or *Matt.Cameron@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act ('FACA') (5 U.S.C. App.), the Bureau of Consumer Financial Protection hereby gives notice of renewal of the Consumer Advisory Board, effective immediately. The CAB is a continuing committee being renewed for the purposes of compliance with FACA and applicable statutes. This committee is being renewed concurrently with the publication of this notice by filing a charter with the Director of the Bureau, the Committee Management Secretariat of the General Services Administration, the Library of Congress, the Committee on Banking, Housing, and Urban Affairs of the United States Senate, and the Committee on Financial Services of the United States House of Representatives. The charter will also be posted on the Bureau's website at *www.consumerfinance.gov.* This charter will expire two years after the filing date unless renewed by appropriate action.

The CAB's purpose is outlined in section 1014(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which states that the committee shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.''

To carry out the CAB's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The CAB will generally serve as a vehicle for trends and themes in the consumer finance marketplace for the Bureau. Its objectives will include identifying and assessing the impact on consumers and other market participants of new, emerging, and changing products, practices, or services. The duties of the committee are solely advisory and shall extend only to the submission of advice and recommendations to the Bureau, which shall be non-binding on the Bureau. No determination of fact or policy will be made by the committee, and the committee will have no formal decision-making role and no access to confidential supervisory or other confidential information.

The committee shall consist of no fewer than approximately ten members serving two-year terms, including at least six members appointed upon the recommendation of the regional Federal Reserve Bank Presidents on a rotating basis, and shall be chosen to ensure a fairly balanced membership. In accordance with the Dodd-Frank Act, ''in appointing the members of the Consumer Advisory Board, the Director shall seek to assemble experts in: Consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation.'' Equal opportunity practices in accordance with the Bureau's policies shall be followed in all appointments to the committee.

Dated: March 18, 2019.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2019–05452 Filed 3–21–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Renewal of Academic Research Council

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), after consultation with the Committee Management Secretariat of the General Services Administration, will renew the Academic Research Council (the committee or the ARC) effective on March 21, 2019. The ARC will (1) provide the Bureau with advice about its strategic research planning process and research agenda, including views on the research that the Bureau should conduct relating to consumer financial products or services, consumer behavior, cost-benefit analysis, or other topics to enable the agency to further its statutory purposes and objectives; and, (2) provide the Office of Research with

technical advice and feedback on research methodologies, data collection strategies, and methods of analysis, including methodologies and strategies for quantifying the costs and benefits of regulatory actions, and provide the Bureau's Office of Research with advice and feedback on research methodologies, framing research questions, data collection, and analytic strategies.

FOR FURTHER INFORMATION CONTACT: Matt Cameron, Acting Staff Director, Office of Advisory Board and Councils, External Affairs, at 202–435–7708, or *Matt.Cameron@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), the Bureau of Consumer Financial Protection hereby gives notice of renewal of the Academic Research Council. The ARC is a discretionary committee being renewed for the purposes of compliance with FACA. This committee is being renewed concurrently with the publication of this notice by filing a charter with the Director of the Bureau, the Committee Management Secretariat of the General Services Administration, the Library of Congress, the Committee on Banking, Housing, and Urban Affairs of the United States Senate, and the Committee on Financial Services of the United States House of Representatives. The charter will also be posted on the Bureau's website at *www.consumerfinance.gov.* This charter will expire two years after the filing date unless renewed by appropriate action.

The ARC will (1) provide the Bureau with advice about its strategic research planning process and research agenda, including views on the research that the Bureau should conduct relating to consumer financial products or services, consumer behavior, cost-benefit analysis, or other topics to enable the agency to further its statutory purposes and objectives; and, (2) provide the Office of Research with technical advice and feedback on research methodologies, data collection strategies, and methods of analysis, including methodologies and strategies for quantifying the costs and benefits of regulatory actions. The duties of the committee are solely advisory and shall extend only to the submission of advice and recommendations to the Bureau. No determination of fact or policy will be made by the committee, and the committee will have no formal decision-making role.

In appointing members to the ARC, the Director shall seek to assemble members who are economic experts and academics with diverse points of view; such as experienced economists with a strong research and publishing background, and a record of involvement in research and public policy, including public or academic service. Additionally, members should be prominent experts who are recognized for their professional achievements and rigorous economic analysis including those specializing in household finance, finance, financial education, labor economics, industrial organization, public economics, and law and economics; and experts from related social sciences related to the Bureau's mission. In particular, the Director will seek to identify academics with strong methodological and technical expertise in structural or reduced form econometrics; modeling of consumer decision-making; survey and random controlled trial methods; benefit cost analysis, welfare economics and program evaluation; or marketing.

The ARC shall consist of approximately eight members serving two-year terms. All members appointed by the Director shall serve at the pleasure of the Director. Committee members will be designated as special government employees (SGEs). Equal opportunity practices in accordance with the Bureau's policies shall be followed in all appointments to the committee.

Dated: March 18, 2019.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2019–05453 Filed 3–21–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Renewal of Community Bank Advisory Council

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), after consultation with the Committee Management Secretariat of the General Services Administration, will establish the Community Banker Advisory Council (the committee or the CBAC) effective on March 21, 2019. The CBAC was established to consult with the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.

FOR FURTHER INFORMATION CONTACT: Matt Cameron, Acting Staff Director, Office of Advisory Board and Councils, External Affairs, at 202–435–7708, or *Matt.Cameron@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (''FACA'') (5 U.S.C. App.), the Bureau of Consumer Financial Protection hereby gives notice of renewal of the Community Banker Advisory Council. The CBAC is a discretionary committee being renewed for the purposes of compliance with FACA and applicable statutes. This committee is being renewed concurrently with the publication of this notice by filing a charter with the Director of the Bureau, the Committee Management Secretariat of the General Services Administration, the Library of Congress, the Committee on Banking, Housing, and Urban Affairs of the United States Senate, and the Committee on Financial Services of the United States House of Representatives. The charter will also be posted on the Bureau's website at *www.consumerfinance.gov.* This charter will expire two years after the filing date unless renewed by appropriate action.

The CBAC shall advise the Bureau in its exercise of its functions under the Federal consumer financial laws as they pertain to banks or thrifts with total assets of $10 billion or less. To carry out the committee's purpose, the scope of its activities shall include providing information and analysis in support of recommendations to the Bureau. The output of committee's meetings should serve to better inform the Bureau's policy development, rulemaking, and engagement functions as they relate to community banking institutions.

The duties of the CBAC are solely advisory and shall extend only to the submission of advice and recommendations to the Bureau relating to the activities and operations of community banks, which shall be non-binding on the Bureau. No determination of fact or policy will be made by the committee, and the committee will have no formal decision-making role and no access to confidential supervisory or other confidential information.

In appointing members to the CBAC, the Director shall seek to assemble members with diverse points of view, institution asset sizes, and geographical backgrounds. Only bank or thrift

employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership. Membership is limited to employees of banks and thrifts with total assets of $10 billion or less that are not affiliates of depository institutions or credit unions with total assets of more than $10 billion. The CBAC shall consist of at least seven members serving two-year terms. Equal opportunity practices in accordance with the Bureau's policies shall be followed in all appointments to the CBAC.

Dated: March 18, 2019.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2019–05451 Filed 3–21–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Advisory Committees Solicitation of Applications for Membership

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice.

SUMMARY: Pursuant to the authorities given to the Director of the Bureau of Consumer Financial Protection (Bureau) under the Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) Director Kraninger invites the public to apply for membership for appointment to its Consumer Advisory Board (CAB), Community Bank Advisory Council, Credit Union Advisory Council (CUAC), and Academic Research Council (ARC), (collectively, advisory committees). Membership of the advisory committees includes representatives of consumers, diverse communities, the financial services industry, academics, and economists. Appointments to the committees are generally for two years. However, the Director may amend the respective committee charters from time to time during the charter terms, as the Director deems necessary to accomplish the purpose of the committees. The Bureau expects to announce the selection of new members in September 2019.

DATES: The application will be available on March 22, 2019 here: *https://consumer-financial-protection-bureau.forms.fm/application-to-serve-on-advisory-board-body-panel-committee-or-group.* Complete application packets received on or before May 5, 2019, will be given consideration for membership on the committees.

ADDRESSES: If electronic submission is not feasible, the completed application packet can be mailed to Crystal Dully, Outreach and Engagement Associate, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

All applications for membership on the advisory committees should be sent:

- *Electronically: https://consumer-financial-protection-bureau.forms.fm/application-to-serve-on-advisory-board-body-panel-committee-or-group.* We strongly encourage electronic submissions.
- *Mail:* Crystal Dully, Outreach and Engagement Associate, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Submissions must be postmarked on or before May 5, 2019.
- *Hand Delivery/Courier in Lieu of Mail:* Crystal Dully, Outreach and Engagement Specialist, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Submissions must be received on or before 5 p.m. eastern standard time on May 5, 2019.

FOR FURTHER INFORMATION CONTACT: Crystal Dully, Outreach and Engagement Specialist, at (202) 435–9588. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau is charged with regulating ''the offering and provision of consumer financial products or services under the Federal consumer financial laws,'' so as to ensure that ''all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.'' Pursuant to section 1021(c) of the Wall Street Reform and Consumer Protection Act, Public Law 111–203, Dodd-Frank Act, the Bureau's primary functions are:

1. Conducting financial education programs;
2. Collecting, investigating, and responding to consumer complaints;
3. Collecting, researching, monitoring, and publishing information relevant to the function of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;
4. Supervising persons covered under the Dodd-Frank Act for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;
5. Issuing rules, orders, and guidance implementing Federal consumer financial law; and
6. Performing such support activities as may be needed or useful to facilitate the other functions of the Bureau.

As described in more detail below, section 1014 of the Dodd-Frank Act calls for the Director of the Bureau to establish a Consumer Advisory Board to advise and consult with the Bureau regarding its functions, and to provide information on emerging trends and practices in the consumer financial markets.

Pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Act, the Director of the Bureau of Consumer Financial Protection established the discretionary committees, CBAC, CUAC, and ARC, under agency authority in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C., App. 2.

III. Qualifications

Pursuant to section 1014(b) of the Dodd-Frank Act, in appointing members to the Consumer Advisory Board, ''the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation.'' The determinants of ''expertise'' shall depend, in part, on the constituency, interests, or industry sector the nominee seeks to represent, and where appropriate, shall include significant experience as a direct service provider to consumers.

Pursuant to section 12 of the Community Bank Advisory Council Charter, in appointing members to the committee the Director shall seek to assemble members with diverse points of view, institution asset sizes, and geographical backgrounds. Only bank or thrift employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership. Membership is limited to employees of banks and thrifts with total assets of $10 billion or less that are not affiliates of depository institutions or community banks with total assets of more than $10 billion.

Pursuant to section 12 of the Credit Union Advisory Council Charter, in appointing members to the committee the Director shall seek to assemble members with diverse points of view, institution asset sizes, and geographical backgrounds. Only credit union employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership. Membership is limited to employees of credit unions with total assets of $10 billion or less that are not affiliates of depository institutions or credit unions with total assets of more than $10 billion.

Pursuant to section 12 of the Academic Research Council Charter, in appointing members to the committee the Director shall seek to assemble members who are economic experts and academics with diverse points of view; such as experienced economists with a strong research and publishing background, and a record of involvement in research and public policy, including public or academic service. Additionally, members should be prominent experts who are recognized for their professional achievements and rigorous economic analysis including those specializing in household finance, finance, financial education, labor economics, industrial organization, public economics, and law and economics; and experts from related social sciences related to the Bureau's mission. In particular, the Director will seek to identify academics with strong methodological and technical expertise in structural or reduced form econometrics; modeling of consumer decision-making; survey and random controlled trial methods; benefit cost analysis, welfare economics and program evaluation; or marketing.

The Bureau has a special interest in ensuring that the perspectives of women and men, all racial and ethnic groups, and individuals with disabilities are adequately represented on the advisory committees, and therefore, encourages applications from qualified candidates from these groups. The Bureau also has a special interest in establishing advisory committees that are represented by a diversity of viewpoints and constituencies, and therefore encourages applications from qualified candidates who:

1. Represent the United States' geographic diversity; and

2. Represent the interests of special populations identified in the Dodd-Frank Act, including service members, older Americans, students, and traditionally underserved consumers and communities.

IV. Application Procedures

Any interested person may apply for membership on the committees.

A complete application packet must include:

1. A recommendation letter from a third party describing the applicant's interests and qualifications to serve on the committee;

2. A complete résumé or curriculum vitae for the applicant; and

3. A one-page cover letter, which summarizes the applicant's expertise and provides reason(s) why he or she would like to join the committee.

4. A complete application. *https://consumer-financial-protection-bureau.forms.fm/application-to-serve-on-advisory-board-body-panel-committee-or-group.*

To evaluate potential sources of conflicts of interest, the Bureau will ask potential candidates to provide information related to financial holdings and/or professional affiliations, and to allow the Bureau to perform a background check. The Bureau will not review applications and will not answer questions from internal or external parties regarding applications until the application period has closed.

The Bureau does not accept applications from federally registered lobbyists or current elected officials for a position on the advisory committees.

Only complete applications will be given consideration for membership on the advisory committees.

Dated: March 18, 2019.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2019–05506 Filed 3–21–19; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Intent To Grant an Exclusive License; Interleaf Learning, LLC

AGENCY: National Security Agency, DoD.

ACTION: Notice of intent.

SUMMARY: The National Security Agency hereby gives notice of its intent to grant Interleaf Learning, LLC a revocable, non-assignable, exclusive, license to practice the following Government-Owned invention as described and claimed in United States Patent Number (USPN), 8,380,485 B1, Device for and method of language processing; United States Trademark Registration Number (USTRN), 3802723, Design Plus Words, Letters, and/or numbers Mark: Scribezone; and USTRN, 3802712, Standard Character Mark: Scribezone.

DATES: Anyone wishing to object to the grant of this license has until April 8, 2019 to file written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

ADDRESSES: Written objections are to be filed with the National Security Agency Technology Transfer Program, 9800 Savage Road, Suite 6843, Fort George G. Meade, MD 20755–6843.

FOR FURTHER INFORMATION CONTACT: Linda L. Burger, Director, Technology Transfer Program, 9800 Savage Road, Suite 6843, Fort George G. Meade, MD 20755–6843, telephone (443) 634–3518.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The patent rights in these inventions have been assigned to the United States Government as represented by the National Security Agency.

Dated: March 18, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–05437 Filed 3–21–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0032]

Proposed Collection; Comment Request

AGENCY: Office of the General Counsel, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the General Counsel announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 21, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the General Counsel, ATTN: Standards of Conduct Office (Mr. Green), 1600 Defense Pentagon, Suite 3E783, Washington, DC 20301–1600.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Post Government Employment Advice Opinion Request; DD Form 2945; OMB Control Number 0704–0467.

Needs and Uses: The information collection requirement is necessary to obtain minimal information on which to base an opinion about post Government employment of select former and departing DoD employees seeking to work for Defense Contractors within two years after leaving DoD. The departing or former DoD employee uses the form to organize and provide employment-related information to an ethics official who will use the information to render an advisory opinion to the employee requesting the opinion. The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, section 847, requires that select DoD officials and former DoD officials who, within two years after leaving DoD, expect to receive compensation from a DoD Contractor, shall, before accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

Affected Public: Individuals or households.

Annual Burden Hours: 250.

Number of Respondents: 250.

Responses per Respondent: 1.

Annual Responses: 250.

Average Burden per Response: 60 minutes.

Frequency: On occasion.

The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, section 847, requires that select DoD officials and former DoD officials who, within two years after leaving DoD, expects to receive compensation from a DoD contractor, shall, before accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

The departing or former DoD employee uses the form to organize and provide employment-related information to an ethics official who will use the information to provide an opinion to the employee on the applicability of post-Government employment restrictions. The information requested is employment-related and identifying information about the person requesting the opinion.

Dated: March 19, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–05510 Filed 3–21–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0033]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of a Modified System of Records.

SUMMARY: The Office of the Secretary of Defense (OSD) proposes to modify a system of records, titled ''Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System,'' DUSDI 01-DoD. This system enables DoD to implement the requirements of Executive Order (E.O.) 13587, Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information; and Presidential Memorandum dated November 21, 2012, the National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs. The system analyzes, monitors, and audits insider threat information to detect and mitigate DoD insider threats to U.S. Government installations, facilities, personnel, missions, or resources. The system supports the DITMAC and DoD Component insider threat programs, enables the identification of systemic insider threat issues and challenges, provides a basis for the development and recommendation of solutions to mitigate potential insider threats, and assists in identifying best practices from other Federal government insider threat programs.

The proposed modification to the system expands the population of covered individuals to include individuals with an active identification card, pass or credential from a DoD organization used to gain physical or logical access to a DoD facility, network, system or program. Modifications were made to the following sections of this system of records: System manager, purpose, categories of individuals, categories of records, and routine uses.

DATES: Comments will be accepted on or before April 22, 2019. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: Brad Millick, Director, DoD Insider Threat Program, Office of the Under Secretary of Defense for Intelligence, 5000 Defense Pentagon, Washington, DC 20301–5000 or by phone at (703) 692–3721.

SUPPLEMENTARY INFORMATION: E.O. 13587 directs the implementation of a Department-wide insider threat detection and prevention program. The DoD Insider Threat Program is decentralized to enable DoD Component Insider Threat Programs and the DITMAC to analyze, monitor, and audit insider threat information for detection and mitigation. The program deters insider activity endangering DoD and U.S. Government installations, facilities, personnel, missions, or resources.

Section 951 of the National Defense Authorization Act for Fiscal Year 2017 (NDAA for FY17) expanded the definition of an insider threat to anyone who has, or once had, authorized access to information, a facility, a network, a person, or a resource of the Department. In response to this expansion, DoD is taking a measured approach and expanding the ability of its Component Insider Threat Programs and the DITMAC to store insider threat related information. This modification to the system of records enables DoD to comply with NDAA for FY17 by expanding the population to include individuals with an active identification card, pass or credential by a DoD organization used as proof of identity to gain physical or logical access to a DoD facility, network, system or program, in addition to those eligible to access classified information or hold sensitive positions and persons with Common Access Cards (CACs). This expansion further fulfills the intent of E.O. 13587 and maintains a responsive posture to the NDAA for FY17.

This revision leverages existing federal laws, statutes, authorities, policies, programs, systems, architectures and resources in order to counter those insiders who may use their authorized access to compromise or degrade DoD operations. The DoD and its insider threat programs employ risk management principles, tailored to meet the distinct needs, mission, and systems of its agencies, and include appropriate protections for privacy, civil rights, and civil liberties.

The OSD notices for systems of records subject to the Privacy Act of 1974, as amended, are published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *http://dpcld.defense.gov/privacy*. The proposed systems reports, as required by the Privacy Act, as amended, were submitted on December 17, 2018, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: March 19, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER

Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System, DUSDI 01 DoD.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary location: Defense Security Service (DSS), 27130 Telegraph Rd., Quantico, VA 22134–2253. Secondary and Decentralized locations: Each of the DoD Components including the Departments of the Army, Air Force, and Navy and staffs, field operating agencies, major commands, installations, and activities. Official mailing addresses are published with each Component's compilation of systems of records notices.

SYSTEM MANAGER(S):

Program Manager, Department of Defense Insider Threat Management and Analysis Center, Defense Security Service, 27130 Telegraph Road, Quantico, VA 22134–2253; email: *dss.ncr.dss-ci.mbx.ditmac@mail.mil*; phone: (571) 357–6850. DoD Components including the Departments of the Army, Air Force, and Navy and staffs, field operating agencies, major commands, installations, and activities. Official mailing addresses are published as an appendix to each Service's compilation of systems of records notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 137, Under Secretary of Defense for Intelligence; 44 U.S.C. 3554, Federal agency responsibilities; 44 U.S.C. 3557, National security systems; Public Law 112–81, Section 922, National Defense Authorization Act for Fiscal Year 2012 (NDAA for FY12), Insider Threat Detection (10 U.S.C. 2224 note); Public Law 113–66, Section 907(c)(4)(H) (NDAA for FY14), Personnel security (10 U.S.C. 1564 note); Public Law 114–92, Section 1086 (NDAA for FY16), Reform and improvement of personnel security, insider threat detection and prevention, and physical security (10 U.S.C. 1564 note); Public Law 114–328, Section 951 (NDAA for FY17), Enhanced security programs for Department of Defense personnel and innovation initiatives (10 U.S.C. 1564 note); E.O. 12829, as amended, National Industrial Security Program; E.O. 12968, as amended, Access to Classified Information; E.O. 13467, Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information; E.O. 9397, as amended, Numbering System for Federal Accounts Relating to Individual Persons; E.O. 13587, Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information; Presidential Memorandum dated November 21, 2012, National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs; and DoD Directive 5205.16, The DoD Insider Threat Program; DoD Instruction 5205.83, DoD Insider Threat Management and Analysis Center (DITMAC), Directive-type Memorandum 09–012, Interim Policy Guidance for DoD Physical Access Control, as amended.

PURPOSE(S) OF THE SYSTEM:

The DITMAC was established by the Under Secretary of Defense for Intelligence to consolidate and analyze insider threat information reported by DoD Component insider threat programs. The DoD maintains this system of records to assist with managing DoD Component insider threat programs and the DITMAC in accordance with Executive Order (E.O.) 13587 and Section 951 of the National Defense Authorization Act for Fiscal Year 2017 (NDAA for FY17). E.O. 13587 requires Federal agencies to establish an insider threat detection and prevention program to ensure the security of classified networks and the responsible sharing and safeguarding of classified information consistent with appropriate protections for privacy and civil liberties. Section 951 of the NDAA for FY17 requires DoD insider threat programs collect, store, and retain information from various data sources, including personnel security, physical security, information security, law enforcement, counterintelligence, user activity monitoring, information assurance, and other appropriate data sources to detect and mitigate potential insider threats.

Insider threats including espionage, terrorism, the unauthorized disclosure of national security information

(including protected and sensitive information), and the loss or degradation of departmental resources or capabilities can damage the United States. The system will be used to analyze, monitor, and audit insider threat information for insider threat detection and mitigation within the DoD on persons eligible to access classified information and or hold a sensitive position. In addition, the system will monitor the insider threats from individuals with physical or logical access to a DoD installation or controlled information system via a Common Access Card (CAC) to DoD and U.S. Government installations, facilities, personnel, missions, or resources.

The system will support DoD Component insider threat programs, enable the identification of systemic insider threat issues and challenges and provide a basis for the development and recommendation of solutions to deter, detect, and/or mitigate potential insider threats. It will assist in identifying best practices among other Federal Government insider threat programs, through the use of existing DoD resources and functions and by leveraging existing authorities, policies, programs, systems, and architectures.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered: Individuals with or previously granted access to classified information or those currently or previously holding a sensitive position. These individuals include active and reserve component (including National Guard) military personnel; civilian employees (including non-appropriated fund employees); DoD contractor personnel, and officials or employees from Federal, state, local, tribal and private sector entities affiliated with or working with DoD and granted access to classified information by DoD or another authorized Federal agency based on an eligibility determination; individuals embedded with DoD units operating abroad eligible or previously eligible to access classified information or hold sensitive positions; active duty U.S. Coast Guard and mobilized retired military personnel, eligible or previously eligible for access to classified information or to hold sensitive positions (DoD and when operating with the military services or DoD Components) and limited access authorization grantees; individuals with an active DoD CAC for authenticating physical access to DoD installations or logical access to DoD controlled information systems; military family members and military retirees with active Uniformed Services ID cards; individuals with active DoD Civilian Retiree cards; individuals with an active identification card, pass or credential from a DoD organization used as proof of identification to gain physical or logical access to a DoD facility, network, system or program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records from DoD Components and the DITMAC, including: Responses to information requested by official questionnaires and applications (*e.g.,* SF 86 Questionnaire for National Security Positions, DD 1173, DD 1173–1, DD 2765, DD 1172–2 Application for Identification Card/DEERS Enrollment) including: Individual's full name, former names and aliases; date and place of birth; Social Security Number (SSN); height and weight; hair and eye color; gender; ethnicity and race; biometric data; mother's maiden name; DoD identification number (DoD ID Number); current and former home and work addresses, phone numbers, and email addresses; employment history; military record information; branch of service; selective service registration record; education history and completed degrees; names of associates and references and their contact information; citizenship information; passport information; driver's license information; identifying numbers from access control passes or identification cards; alien registration number; criminal history; civil court actions; prior personnel security eligibility, investigative, and adjudicative information, including information collected through continuous evaluation; mental health history; records related to drug and/or alcohol use; financial record information; credit reports; the name, date and place of birth, social security number, and citizenship information for spouse and/or cohabitant; the name and marriage information for current and former spouse(s); the citizenship, name, date and place of birth, and current address for relatives. Information on foreign contacts and activities; association records; information on loyalty to the United States; and other agency reports furnished to DoD or collected by DoD in connection with personnel security investigations, continuous evaluation for eligibility for access to classified information, and insider threat detection programs operated by DoD Components pursuant to Federal laws and Executive Orders and DoD regulations. These records can include, but are not limited to: Reports of personnel security investigations completed by investigative service providers (such as the Office of Personnel Management). Polygraph examination reports; nondisclosure agreements; document control registries; courier authorization requests; derivative classification unique identifiers; requests for access to sensitive compartmented information (SCI); facility access records; security violation files; travel records; foreign contact reports; briefing and debriefing statements for special programs, positions designated as sensitive, other information and documents required in connection with personnel security adjudications; and financial disclosure filings. DoD component information, summaries or reports, and full reports, about potential insider threats from: Payroll information, travel vouchers, benefits information, equal employment opportunity complaints, performance evaluations, disciplinary files (including information related to reports of misconduct or disciplinary actions and or considerations), information related to discharges, resignations, and retirements in lieu of court-martial for military members and information related to discharges, resignations, and retirements in lieu of disciplinary action for civilians, information related to disciplinary and administrative negotiations and settlements, training records, substance abuse and mental health records of individuals undergoing law enforcement action or presenting an identifiable imminent threat, counseling statements, outside work and activities requests, and personal contact records.

Particularly sensitive or protected information, including information held by special access programs, law enforcement, inspector general, or other investigative sources or programs. Access to such information may require additional approval by the senior DoD official responsible for managing and overseeing the program. Reports of investigation regarding security violations, including but not limited to: Statements, declarations, affidavits and correspondence; incident reports; investigative records of a criminal, civil or administrative nature; letters, emails, memoranda, and reports; exhibits and evidence; and, recommended remedial or corrective actions for security violations. Information, data (transiting or stored) and activity, in part or in combination collected through network monitoring, cyber defense, information security or any related activity conducted for network protection on DoD owned or operated systems, networks, endpoints, cloud

infrastructure, or devices. Information containing personnel user names and aliases, levels of network access, audit data, information regarding misuse of a DoD device, information regarding unauthorized use of removable media, and logs of printer, copier, and facsimile machine use; information collected through user activity monitoring, which is the technical capability to observe and record the actions and activities of all users, at any time, on a computer network controlled by DoD or a component thereof in order to deter, detect, and/or mitigate insider threats as well as to support authorized investigations. Such information may include key strokes, screen captures, and content transmitted via email, chat, or data import or export. DoD component summaries of reports, and full reports, about potential insider threats from records of government telephone system usage, including the telephone number initiating and receiving the call, and the date and time of the call; Information obtained from other Federal Government sources, such as information regarding U.S. border crossings and financial information obtained from the Financial Crimes Enforcement Network; Information specific to the management and operation of each DoD Component insider threat program, including information related to investigative or analytical efforts by DoD insider threat program personnel to identify threats to DoD personnel, property, facilities, and information, and information obtained from Intelligence Community members, the Federal Bureau of Investigation, or from other agencies or organizations about individuals known or suspected of engaging in conduct constituting, preparing for, aiding, or relating to an insider threat including, but not limited to espionage or unauthorized disclosure of classified national security information. Publicly available information, such as information regarding: Arrests and detentions; real property; bankruptcy; liens or holds on property; vehicles; licensure (including professional and pilot's licenses, firearms and explosive permits); business licenses and filings; Publicly available social media information, including electronic social media information published or broadcast for public consumption, available on request to the public, accessible online to the public, available to the public by subscription or purchase, or is otherwise lawfully accessible to the public. It includes social media information generally available to persons in a military community even though the military community is not open to the civilian general public. Publicly available social media information does not include information only accessible by logging into a private account of the individual about whom the record pertains or by requiring the individual to provide a password to social media information that is not publicly available. Workplace performance information, including performance management and appraisal reviews and other performance based measures. Information collected from the DoD Defense Performance Management and Appraisal Program, and information related to reports regarding harassment, discrimination, and drug testing violations or results, including but not limited to: Statements, declarations, affidavits and correspondence; incident reports; investigative records of a criminal, civil or administrative nature; letters, emails, memoranda, and reports; exhibits and evidence; and, recommended remedial or corrective actions. Information generated from Prevention, Assistance, and Response elements operating at DoD Installations: Information held by DoD operated education institutions, such as dean of students records, housing records, financial information, and other information maintained by an DoD educational institution. Information contained in, or developed from, the Department of Defense Identity Matching Engine for Security and Analysis. Information contained in physical access logs, to include visitor logs, at all DoD Facilities, information contained in a installations Carrier Appointment System, and information contained in, or developed from DoD Electronic Physical Access Control System.

RECORD SOURCE CATEGORIES:

Individuals; DoD Component program offices including DoD contractor databases, internal and external sources including counterintelligence and security databases and files, personnel security databases and files, DoD component human resources databases and files, Office of the Chief Information Officer and information assurance databases and files, information collected through user activity monitoring, DoD telephone usage records, Federal, state, tribal, territorial, and local law enforcement and investigatory records, Inspector General records, available U.S. Government intelligence and counterintelligence reporting information and analytic products pertaining to adversarial threats, other Federal agencies, and publicly available information, including commercially available subscription databases containing public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to disclosures permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may be disclosed outside DoD as a routine use pursuant to 5 U.S.C. 552(b)(3) as follows:

a. To an appropriate federal, state, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, delegation or designation of authority, or other benefit, or if the information is relevant and necessary to a DoD decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, delegation or designation of authority, or other benefit and disclosure is appropriate to the proper performance of the official duties of the person making the request.

b. To appropriate contractors, grantees, experts, consultants, companies, corporations and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, if the information is relevant and necessary to the entities' decision concerning the suitability, the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, delegation or designation of authority, or other benefit, or if the information is relevant and necessary to a DoD decision concerning the suitability, the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, delegation or designation of authority, or other benefit and disclosure is appropriate to the proper performance of the official duties of the person or entity making the request, determination, decision or judgment.

c. A record consisting of, or relating to, terrorism information, homeland security information, counterintelligence, or law enforcement information may be disclosed to a Federal, state, local, tribal, territorial, foreign government, multinational agency, and to a private sector agent

either in response to its request, or upon the initiative of the DoD Component, for purposes of sharing such information as is necessary and relevant to the agency's investigations and inquiries related to the detection, prevention, disruption, preemption, and mitigation of the effects of terrorist activities against the territory, people, and interests of the United States of America as contemplated by the Intelligence Reform and Terrorism Protection Act of 2004.

d. To any person, organization or governmental entity (*e.g.,* local governments, first responders, American Red Cross, etc.), in order to notify them of or respond to a serious and imminent terrorist or homeland security threat or natural or manmade disaster as is necessary and relevant for the purpose of guarding against or responding to such threat or disaster.

e. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

f. To officials and agencies of the Executive Branch of government, federal contractors and grantees, for purposes of conducting studies, research and analyses of insider threat programs or issues.

g. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government when necessary to accomplish an agency function related to this system of records.

h. To designated officers and employees of Federal, State, local, territorial, tribal, international, or foreign agencies maintaining civil, criminal, enforcement, or other pertinent information, such as current licenses, if necessary to obtain information relevant and necessary to a DoD Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

i. To foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements, including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

j. To any agency, organization, or individual for the purposes of performing audit or oversight of the DoD Insider Threat Program as authorized by law and as necessary and relevant to such audit or oversight functions.

k. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

l. To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the individual making the disclosure.

m. To a Federal agency or entity with possible information relevant to an allegation or investigation or was consulted regarding an insider threat for purposes of obtaining guidance, additional information, or advice from such Federal agency or entity regarding the handling of an insider threat matter.

n. To the news media or the general public, where the disclosure of factual information would be in the public interest and which would not constitute an unwarranted invasion of personal privacy.

o. To a Federal, state, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947, as amended, the Central Intelligence Act of 1949, as amended, E.O. 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders or directives.

p. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

q. To the Department of Justice for the purpose of representing the Department of Defense, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

r. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

s. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

t. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

u. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

v. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in paper and electronic storage media, in accordance with the safeguards mentioned below.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information in this system may be retrieved by name, SSN, and/or DoD ID number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

System records are retained and disposed of according to DoD records maintenance and disposition schedules and the requirements of the National Archives and Records Administration (General Records Schedule 5.6: Security Records Transmittal No. 28 July 2017, item 210–240).

ADMINISTRATIVE, PHYSICAL, AND TECHNICAL SAFEGUARDS:

Military personnel, civilian employees, or contract security personnel guards protect information technology systems. Physical access to rooms maintaining information

technology systems is controlled by combination lock and by identification badges only issued to authorized individuals. Electronic authorization and authentication of users is provided on a need-to-know basis and is required at all points prior to accessing system information. All data transfers and information retrievals using remote communication facilities require encryption. Paper records are maintained in safes and filing cabinets located in a secure area and only accessible by authorized personnel.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in the DITMAC system of record should address written inquires to the Defense Security Service, Office of FOIA and Privacy, 27130 Telegraph Road, Quantico, VA 22134–2253. Individuals seeking information about themselves contained in any specific DoD Component's insider threat program system of records should address written inquiries to the official mailing address for that Component, which is published with each Component's compilation of systems of records notices. DoD Component addresses are also listed at: *http://dpcld.defense.gov/Privacy/Privacy-Contacts/.* Individuals seeking information about themselves contained in the DITMAC system of records originating in another DoD Component may be directed to the originating DoD Component maintaining the records. Individuals should provide their full name (and any alias and/or alternate name), SSN, and date and place of birth, and the address where the records are to be returned. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside of the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths:

''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records and for contesting or appealing agency determinations are published in DoD Regulation 5400.11; 32 CFR 310; or may be obtained from the Defense Privacy, Civil Liberties, and Transparency Division, 4800 Mark Center Drive; ATTN: DPCLTD, Mailbox #24; Alexandria, VA 22350–1700.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in the DITMAC system of records should address written inquires to the Defense Security Service, Office of FOIA and Privacy, 27130 Telegraph Road, Quantico, VA 22134–2253. Individuals seeking to determine whether information about themselves is contained in any specific DoD Component's insider threat program system of records should address written inquiries to the official mailing address for that Component, which is published with each Component's compilation of systems of records notices. DoD Component addresses are also listed at: *http://dpcld.defense.gov/Privacy/Privacy-Contacts/.* Signed, written requests must contain the full name (and any alias and/or alternate names used), SSN, and date and place of birth. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside of the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The DoD has exempted records maintained in DUSDI 01-DoD, the ''Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System,'' from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(1), (2), (4), (5), (6), (7). In addition, exempt records received from other systems of records in the course of DITMAC or Component record checks may, in turn, become part of the case records in this system. When records are exempt from disclosure in systems of records for record sources accessed by this system, DoD also claims the same exemptions for any copies of such records received by and stored in this system.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 310. For additional information contact the system manager.

HISTORY:

March 21, 2018, 83 FR 12345; September 23, 2016, 81 FR 65631; May 19, 2016, 81 FR 31614.

[FR Doc. 2019–05540 Filed 3–21–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

[FE Docket No. 15–96–LNG]

Port Arthur LNG, LLC: Application To Amend Application for Long-Term, Multi-Contract Authorization To Export Liquefied Natural Gas To Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of amendment.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application for amendment (Amendment), filed on October 18, 2018, by Port Arthur LNG, LLC (Port Arthur LNG) of its pending application in this proceeding. Previously, on June 15, 2015, Port Arthur LNG filed an application (Application) requesting authorization to export domestically produced liquefied natural gas (LNG) from a proposed natural gas processing, liquefaction, and export project it intends to construct, own, and operate in Port Arthur, Texas (Project), to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries). The Amendment requests a ''design increase,'' *i.e.,* to increase the export volume requested in the Application by 181 billion cubic feet per year (Bcf/yr) of natural gas, to a total requested volume of 698 Bcf/yr (1.91 billion cubic feet per day (Bcf/d)). This proposed increase will align Port Arthur LNG's requested non-FTA export volume with the requested liquefaction capacity for the Project in an application filed with the Federal Energy Regulatory Commission (FERC).

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, April 11, 2019.

ADDRESSES: *Electronic Filing by email: fergas@hq.doe.gov.*

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478; (202) 586–2627

Cassandra Bernstein or Shawn Flynn, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793; (202) 586–5359

SUPPLEMENTARY INFORMATION: In its pending non-FTA Application, Port Arthur LNG sought authorization to export LNG in a volume equivalent to approximately 517 Bcf/yr of natural gas (1.42 Bcf/d). However, on November 29, 2016, Port Arthur LNG and its affiliate, PALNG Common Facilities Company, LLC, filed an application at FERC (FERC Docket No. CP17–20–000) requesting authorization to site, construct, and operate the Project with a proposed maximum capacity equivalent to 698 Bcf/yr of natural gas. In this Amendment, Port Arthur LNG states that it is seeking to align its requested non-FTA export volume with the requested liquefaction capacity for the Project in its pending FERC application, which reflects the Project's maximum capacity at optimal conditions.

Additional details can be found in Port Arthur LNG's Amendment, posted on the DOE/FE website at: *https://www.energy.gov/sites/prod/files/2018/10/f57/15-96-LNG%20Amendment.pdf.*

DOE/FE Evaluation

The Amendment will be reviewed in conjunction with DOE/FE's review of Port Arthur LNG's pending Application pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a).[1] DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[2] and DOE/FE's response to public comments received on that Study.[3]

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014);[4] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States,* 79 FR 32260 (June 4, 2014).[5]

Parties that may oppose this Amendment should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Amendment.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested persons will be provided 20 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention. Because the public previously was given an opportunity to intervene in, protest, and comment on Port Arthur LNG's pending Application, DOE/FE may disregard comments or protests that do not bear directly on the Amendment—specifically, Port Arthur LNG's proposed increase of its requested non-FTA export volume.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 15–96–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 15–96–LNG. *Please Note:* If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

[1] In a separate docket proceeding, Port Arthur LNG requested—and DOE/FE granted—the same increase to Port Arthur LNG's approved export volume to FTA countries. *See Port Arthur LNG, LLC,* DOE/FE Order No. 3698–A, FE Docket Nos. 15–53–LNG and 18–162–LNG, Order Amending Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Port Arthur LNG Project in Port Arthur, Texas, to Free Trade Agreement Nations (Nov. 20, 2018).

[2] NERA Economic Consulting, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (June 7, 2018), *available at: https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf;see also* U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports; Notice of Availability of the 2018 LNG Export Study and Request for Comments, 83 FR 27314 (June 12, 2018).

[3] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[4] The Addendum and related documents are available at: *https://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf.*

[5] The Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on March 18, 2019.

Amy Sweeney,

Director, Division of Natural Gas Regulation.

[FR Doc. 2019–05478 Filed 3–21–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During February 2019

	FE Docket Nos.
Flint Hills Resources, LP ...	15–168–LNG
Centra Gas Manitoba Inc ..	19–06–NG
TAQA North Ltd	18–132–NG
Vitol Inc	19–10–NG; 18–80–NG
Gazprom Marketing & Trading USA Inc.	19–11–NG
Gulf LNG Energy, L.L.C	19–09–LNG
CNOOC Marketing U.S.A. Inc.	19–07–NG; 18–60–NG
Edgemarc Energy Ohio, LLC.	19–08–NG; 18–92–NG
CFE International LLC	19–12–NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during February 2019, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), and vacating prior authorization. These orders are summarized in the attached appendix and may be found on the FE website at *https://www.energy.gov/fe/listing-doefe-authorizationsorders-issued-2019.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 18, 2019.

Amy Sweeney,

Director, Division of Natural Gas Regulation.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

3809–A; 3829–A	02/05/19	15–168–LNG	Flint Hills Resources, LP ..	Order 3809–A and Order 3829–A granting request to vacate Long-Term, Multi-Contract authorities to export LNG in ISO Containers or in Bulk Loaded at the Stabilis LNG Eagle Ford Facility in George West, Texas, and exported by vessel to Free Trade Agreement Nations and to Non-Free Trade Agreement Nations.
4339	02/05/19	19–06–NG	Centra Gas Manitoba Inc	Order 4339 granting blanket authority to import/export natural gas from/to Canada.
4275–A	02/05/19	18–132–NG	TAQA North Ltd	Order 4275–A vacating authority to import natural gas from Canada.
4340; 4215–A ...	02/13/19	19–10–NG; 18–80–NG	Vitol Inc	Order 4340 granting blanket authority to import/export natural gas from/to Canada/Mexico, and Order 4215–A vacating prior authority.
4341	02/13/19	19–11–NG	Gazprom Marketing & Trading USA Inc.	Order 4341 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4342	02/13/NG	19–09–LNG	Gulf LNG Energy, L.L.C ...	Order 4342 granting blanket authority to import LNG from various international sources by vessel.
4343; 4193–A ...	02/13/19	19–07–NG; 18–60–NG	CNOOC Marketing U.S.A. Inc.	Order 4343 granting blanket authority to import/export natural gas from/to Canada/Mexico, and Order 4193–A vacating prior authority.
4344; 4226–A ...	02/13/19	19–08–NG; 18–92–NG	Edgemarc Energy Ohio, LLC.	Order 4344 granting blanket authority to export natural gas to Canada, and Order 4226–A vacating prior authority.
4345	02/13/19	19–12–NG	CFE International LLC	Order 4345 granting blanket authority to import/export natural gas from/to Mexico.

[FR Doc. 2019–05479 Filed 3–21–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–78–000]

PennEast Pipeline Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed PennEast Pipeline Project Amendment, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the PennEast Pipeline Project Amendment involving construction and operation of facilities by PennEast Pipeline Company, LLC (PennEast) in Luzerne, Carbon, Monroe, and Northampton counties, Pennsylvania. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on April 15, 2019.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on February 1, 2019, you will need to file those comments in Docket No. CP19–78–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

PennEast provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.*

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP19–78–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

PennEast proposes to amend their Certificate Order that was issued on January 19, 2018 under docket CP15–558–000. Four modifications that are outside the certificated route have been proposed and/or are not able to be approved as variances under CP15–558–000. The modifications were designed to optimize the design of the PennEast Pipeline Project and respond to agency requests.

The PennEast Pipeline Project Amendment would consist of the following four amendments, all in Pennsylvania:

- Saylor Avenue (Ave.) Realignment, Plains Township (Twp.), Luzerne County;
- Interstate 81 Workspace Adjustment, Plains Twp., Luzerne County;
- Appalachian Trail PPL Electric Utilities Crossing Realignment, Lower Towamensing Twp. Carbon County, Eldred Twp. Monroe County, and Moore Twp. Northampton County; and
- Freemansburg Ave. Realignment, Bethlehem Twp., Northampton County.

The general location of the project facilities is shown in appendix 1.[1]

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this

Continued

Land Requirements for Construction

Construction of the proposed facilities would disturb about 106 acres of land for the aboveground facilities and the pipeline. Following construction, PennEast would maintain about 39.7 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 39 percent of the proposed pipeline route would parallel existing pipeline, utility, or road rights-of-way.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary [2] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Native American tribes, and the public on the project's potential effects on historic properties.[4] The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

Commission staff have already identified several issues that deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by PennEast. This preliminary list of issues may be changed based on your comments and our analysis.

- Safety;
- threatened and endangered species;
- water resources and wetlands;
- Appalachian National Scenic Trail crossing;
- preserved lands; and
- arsenic and geologic resources.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP19–78). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: March 15, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–05495 Filed 3–21–19; 8:45 am]

BILLING CODE 6717–01–P

notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2195–161]

Portland General Electric Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application

submitted by Portland General Electric Company (licensee) to demolish and reconstruct the Faraday powerhouse. The project is located on the Oak Grove Fork of the Clackamas River and the mainstem of the Clackamas River in Clackamas County, Oregon. The project occupies federal lands within the Mt. Hood National Forest, under the jurisdiction of the U.S. Forest Service, and a reservation of the U.S. Department of Interior's Bureau of Land Management.

An environmental assessment (EA) has been prepared as part of staff's review of the proposal. In the application the licensee proposes to improve the Faraday development by demolishing the existing powerhouse and constructing a new powerhouse to increase its seismic stability, installing flood protection structures to prevent flooding during high flow events, and replacing the five old turbines with two modern units, without any change to the authorized installed or hydraulic capacities of the Project.

The EA contains Commission staff's analysis of the probable environmental effects of the proposed action and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

The EA is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–2195) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–865.

Dated: March 15, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–05497 Filed 3–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–14–000]

Mountain Valley Pipeline, LLC; Notice of Schedule for Environmental Review of The MVP Southgate Project

On November 6, 2018, Mountain Valley Pipeline, LLC (Mountain Valley) filed an application in Docket No. CP19–14–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct, operate, and maintain certain natural gas pipeline facilities. The proposed project is known as the MVP Southgate Project (Project) and is intended to diversify the supply and provide additional capacity of natural gas to the southeast United States by providing North Carolina and Virginia with access to natural gas supplies from the Marcellus and Utica gas regions.

On November 19, 2018, the Federal Energy Regulatory Commission (FERC or Commission) issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final Environmental Impact Statement (EIS) for the Project. This instant notice identifies the FERC staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in July 2019.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS December 19, 2019
90-day Federal Authorization Decision Deadline March 18, 2020

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Mountain Valley proposes to construct: (i) About 73 miles of new 24-inch- and 16-inch-diameter pipeline in Pittsylvania County, Virginia; and Rockingham and Alamance Counties, North Carolina; (ii) the 28,915 horsepower Lambert Compressor Station in Pittsylvania County, Virginia; and (iii) associated valves, piping, pig launching and receiving facilities, and appurtenant facilities. The proposed Project facilities commence near the City of Chatham, in Pittsylvania County and terminate at a delivery point with Public Service Company of North Carolina, Inc. near the City of Graham in Alamance County. The Project is designed to transport 375 million cubic feet per day.

Background

On May 15, 2018, the Commission staff granted Mountain Valley's request to use the FERC's pre-filing environmental review process and assigned the Project Docket No. PF18–4–000. On August 9, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned MVP Southgate Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Sessions* (NOI).

The NOI was issued during the pre-filing review of the Project and was sent to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Native American tribes and regional organizations; commentors and other interested parties; and local libraries and newspapers. Major issues raised during scoping include project need, water quality degradation, environmental impacts, and private property rights and valuation. All substantive comments will be addressed in the EIS. The U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP19–14), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: March 15, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–05499 Filed 3–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–832–000.
Applicants: Golden Pass Pipeline LLC.
Description: Compliance filing Golden Pass Pipeline Revised Tariff Records Re: Order 587–Y to be effective 8/1/2019.
Filed Date: 3/14/19.
Accession Number: 20190314–5075.
Comments Due: 5 p.m. ET 3/26/19.

Docket Numbers: RP19–833–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing Texas Industrial Market Expansion Project Compliance Filing CP18–10–000 to be effective 5/10/2019.
Filed Date: 3/14/19.
Accession Number: 20190314–5116.
Comments Due: 5 p.m. ET 3/26/19.

Docket Numbers: RP19–834–000.
Applicants: Empire Pipeline, Inc.
Description: Compliance filing Empire-NAESB v. 3.1 (Order No. 587–Y) to be effective 8/1/2019.
Filed Date: 3/14/19.
Accession Number: 20190314–5138.
Comments Due: 5 p.m. ET 3/26/19.

Docket Numbers: RP19–419–001.
Applicants: Tuscarora Gas Transmission Company.
Description: Compliance filing Tuscarora Interim Rates Filing to be effective 2/1/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5158.
Comments Due: 5 p.m. ET 3/27/19.

Docket Numbers: RP19–73–001.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Compliance filing Offer of Settlement for Docket No. RP19–73–000 to be effective 1/1/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5148.
Comments Due: 5 p.m. ET 3/25/19.

Docket Numbers: RP19–835–000.
Applicants: National Fuel Gas Supply Corporation.
Description: Compliance filing NAESB Version 3.1 (Order 587–Y) Supply to be effective 8/1/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5017.
Comments Due: 5 p.m. ET 3/27/19.

Docket Numbers: RP19–836–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Housekeeping Filing on 3–15–19 to be effective 4/15/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5042.
Comments Due: 5 p.m. ET 3/27/19.

Docket Numbers: RP19–837–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TCO Kaiser Amendments to be effective 3/15/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5045.
Comments Due: 5 p.m. ET 3/27/19.

Docket Numbers: RP19–838–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: § 4(d) Rate Filing: Housekeeping on 3–15–19 to be effective 4/15/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5056.
Comments Due: 5 p.m. ET 3/27/19.

Docket Numbers: RP19–839–000.
Applicants: Vector Pipeline L.P.
Description: Compliance filing NAESB 3.1 Compliance Filing to be effective 8/1/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5057.
Comments Due: 5 p.m. ET 3/27/19.

Docket Numbers: RP19–840–000.
Applicants: Leaf River Energy Center LLC.
Description: § 4(d) Rate Filing: Revised Tariff Record Section 2—Preliminary Statement to be effective 4/1/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5146.
Comments Due: 5 p.m. ET 3/27/19.

Docket Numbers: RP19–841–000.
Applicants: Spire Storage West LLC.
Description: § 4(d) Rate Filing: Spire Storage West LLC—Proposed Tariff Changes to be effective 4/15/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5157.
Comments Due: 5 p.m. ET 3/27/19.

Docket Numbers: RP19–842–000.
Applicants: Vector Pipeline L.P.
Description: Annual Fuel Use Report for 2018 of Vector Pipeline L.P. RP19–842.
Filed Date: 3/15/19.
Accession Number: 20190315–5168.
Comments Due: 5 p.m. ET 3/27/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–05485 Filed 3–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–72–000.
Applicants: Endeavor Wind I, LLC
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Endeavor Wind I, LLC.
Filed Date: 3/14/19.
Accession Number: 20190314–5159.
Comments Due: 5 p.m. ET 4/4/19.

Docket Numbers: EG19–73–000.
Applicants: Endeavor Wind II, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Endeavor Wind II, LLC.
Filed Date: 3/14/19.
Accession Number: 20190314–5162.
Comments Due: 5 p.m. ET 4/4/19.

Docket Numbers: EG19–74–000.
Applicants: AES Lawa'i Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of AES Lawa'i Solar, LLC.
Filed Date: 3/15/19.
Accession Number: 20190315–5099.
Comments Due: 5 p.m. ET 4/5/19.

Docket Numbers: EG19–75–000.
Applicants: Avangrid Renewables, LLC.
Description: Avangrid Renewables, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/15/19.
Accession Number: 20190315–5182.
Comments Due: 5 p.m. ET 4/5/19.

Docket Numbers: EG19–76–000.
Applicants: Avangrid Renewables, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Avangrid Renewables, LLC.
Filed Date: 3/15/19.
Accession Number: 20190315–5202.
Comments Due: 5 p.m. ET 4/5/19.
Docket Numbers: EG19–77–000.
Applicants: Avangrid Renewables, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Avangrid Renewables, LLC.
Filed Date: 3/15/19.
Accession Number: 20190315–5207.
Comments Due: 5 p.m. ET 4/5/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–164–019.
Applicants: Bishop Hill Energy III LLC.
Description: Supplement to July 16, 2018 Notification of Change in Facts under Market-Based Rate Authority of Bishop Hill Energy III LLC.
Filed Date: 3/14/19.
Accession Number: 20190314–5195.
Comments Due: 5 p.m. ET 4/4/19.
Docket Numbers: ER12–673–012; ER10–1533–020; ER10–3230–010; ER10–3231–007; ER10–3232–010; ER10–3233–007; ER10–3237–010; ER10–3239–010; ER10–3240–010; ER10–3253–010; ER12–670–011; ER12–672–012; ER12–674–011; ER13–1485–010; ER14–1777–009; ER15–2722–006; ER18–1310–001; ER18–2264–003; ER18–552–001; ER19–289–003; ER19–461–001.
Applicants: Brea Generation LLC, Brea Power II, LLC, Clean Energy Future—Lordstown, LLC, Cleco Cajun LLC, Macquarie Energy LLC, Macquarie Energy Trading LLC, Rhode Island Engine Genco, LLC, Rhode Island LFG Genco, LLC, Wheelabrator Baltimore, L.P., Wheelabrator Bridgeport, L.P., Wheelabrator Concord Company, L.P., Wheelabrator Falls Inc., Wheelabrator Frackville Energy Company Inc., Wheelabrator Millbury Inc., Wheelabrator North Andover Inc., Wheelabrator Portsmouth Inc., Wheelabrator Ridge Energy Inc., Wheelabrator Saugus Inc., Wheelabrator Shasta Energy Company Inc., Wheelabrator South Broward Inc., Wheelabrator Westchester, L.P.
Description: Notice of Non-Material Change in Status of Brea Generation LLC, *et al.*
Filed Date: 3/14/19.
Accession Number: 20190314–5191.
Comments Due: 5 p.m. ET 4/4/19.
Docket Numbers: ER19–1251–000.
Applicants: PSEG Energy Resources & Trade LLC, PSEG Nuclear LLC.
Description: Request for Waiver of PSEG Energy Resources & Trade LLC on behalf of its affiliate, PSEG Nuclear LLC.
Filed Date: 3/12/19.
Accession Number: 20190312–5074.
Comments Due: 5 p.m. ET 3/22/19.
Docket Numbers: ER19–1301–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to Sch. 12-Appx A: Feb 2019 RTEP, 30-day Comments due April 13, 2019 to be effective 6/12/2019.
Filed Date: 3/14/19.
Accession Number: 20190314–5135.
Comments Due: 5 p.m. ET 4/4/19.
Docket Numbers: ER19–1302–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5300; Queue No. AB2–093 to be effective 2/12/2019.
Filed Date: 3/14/19.
Accession Number: 20190314–5137.
Comments Due: 5 p.m. ET 4/4/19.
Docket Numbers: ER19–1303–000.
Applicants: Westar Energy, Inc.
Description: Tariff Cancellation: Notice of Cancellation of Vol. No. 8, Mid-Kansas Electric Company to be effective 1/4/2019.
Filed Date: 3/14/19.
Accession Number: 20190314–5139.
Comments Due: 5 p.m. ET 4/4/19.
Docket Numbers: ER19–1308–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Monte Alto Windpower PDA to be effective 3/1/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5041.
Comments Due: 5 p.m. ET 4/5/19.
Docket Numbers: ER19–1312–000.
Applicants: Duke Energy Progress, LLC.
Description: Tariff Cancellation: DEP–VEPCO Facilities Agreement (RS No. 203) Cancellation to be effective 5/15/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5044.
Comments Due: 5 p.m. ET 4/5/19.
Docket Numbers: ER19–1313–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–03–15_Tariff clean-up on Post Reserve Deployment Constraints to be effective 5/15/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5046.
Comments Due: 5 p.m. ET 4/5/19.
Docket Numbers: ER19–1314–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–03–15_SA 3266 Jasper White Wind—NIPSCO GIA (J740) to be effective 3/4/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5058.
Comments Due: 5 p.m. ET 4/5/19.
Docket Numbers: ER19–1315–000.
Applicants: Louisville Gas and Electric Company.
Description: Tariff Cancellation: KyMEA NITSA Notice of Cancellation Svc Agmt 18 to be effective 5/1/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5064.
Comments Due: 5 p.m. ET 4/5/19.
Docket Numbers: ER19–1316–000.
Applicants: Louisville Gas and Electric Company.
Description: § 205(d) Rate Filing: KyMEA Wholesale Distribution Service Agreement to be effective 5/1/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5072.
Comments Due: 5 p.m. ET 4/5/19.
Docket Numbers: ER19–1332–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205 filing re: Real-Time Market Settlements to be effective 5/15/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5123.
Comments Due: 5 p.m. ET 4/5/19.
Docket Numbers: ER19–1333–000.
Applicants: Mirabito Power & Gas, LLC.
Description: Baseline eTariff Filing: MPG_MBR_initial_tariff to be effective 3/31/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5149.
Comments Due: 5 p.m. ET 4/5/19.
Docket Numbers: ER19–1337–000
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA SA No. 5314; Queue No. AE1–081 to be effective 2/17/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5166.
Comments Due: 5 p.m. ET 4/5/19.
Docket Numbers: ER19–1338–000.
Applicants: DATC SLTP, LLC
Description: Baseline eTariff Filing: Initial SLTP Rate Schedule Filing to be effective 5/15/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5178.
Comments Due: 5 p.m. ET 4/5/19.
Docket Numbers: ER19–1339–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: Revisions to Joint OATT Formula Rates—Recovery of DEP 2018 Storm Costs to be effective 5/15/2019.
Filed Date: 3/15/19.
Accession Number: 20190315–5179.

Comments Due: 5 p.m. ET 4/5/19.

Docket Numbers: ER19–1340–000.

Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation.

Description: § 205(d) Rate Filing: 2019 Interchange Agreement Annual Filing to be effective 1/1/2019.

Filed Date: 3/15/19.

Accession Number: 20190315–5197.

Comments Due: 5 p.m. ET 4/5/19.

Docket Numbers: ER19–1341–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of ICSA SA No. 4037; Queue No. X2–025/X4–019/Z1–090 to be effective 2/6/2019.

Filed Date: 3/15/19.

Accession Number: 20190315–5212.

Comments Due: 5 p.m. ET 4/5/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 15, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–05483 Filed 3–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–78–000.

Applicants: Avangrid Renewables, LLC.

Description: Montague Wind Power Facility, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/15/19.

Accession Number: 20190315–5236.

Comments Due: 5 p.m. ET 4/5/19.

Docket Numbers: EG19–79–000.

Applicants: Otter Creek Wind Farm LLC.

Description: Otter Creek Wind Farm LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/15/19.

Accession Number: 20190315–5237.

Comments Due: 5 p.m. ET 4/5/19.

Docket Numbers: EG19–80–000.

Applicants: La Joya Wind, LLC.

Description: La Joya Wind, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/15/19.

Accession Number: 20190315–5238.

Comments Due: 5 p.m. ET 4/5/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–2708–005.

Applicants: Potomac-Appalachian Highline Transmission, LLC, PJM Interconnection, L.L.C.

Description: Report Filing: PATH submits refund report of the PATH Companies in ER09–1256 and ER12–2708 to be effective N/A.

Filed Date: 3/18/19.

Accession Number: 20190318–5034.

Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: ER19–256–003.

Applicants: Wisconsin Power and Light Company.

Description: Tariff Amendment: Amendment to WPL Wholesale Formula Rate Application to be effective 12/31/2018.

Filed Date: 3/15/19.

Accession Number: 20190315–5219.

Comments Due: 5 p.m. ET 3/25/19.

Docket Numbers: ER19–257–003.

Applicants: Interstate Power and Light Company.

Description: Tariff Amendment: Amendment to IPL Wholesale Formula Rate Application to be effective 12/31/2018.

Filed Date: 3/15/19.

Accession Number: 20190315–5220.

Comments Due: 5 p.m. ET 3/25/19.

Docket Numbers: ER19–650–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2019–03–18_Compliance to Resource Availability and Need LMR Availability Filing to be effective 2/20/2019.

Filed Date: 3/18/19.

Accession Number: 20190318–5054.

Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: ER19–850–000

Applicants: Plymouth Rock Energy, LLC.

Description: Supplement to January 22, 2019 Plymouth Rock Energy, LLC tariff filing (Notice of Non-Material Changed in Status).

Filed Date: 3/15/19.

Accession Number: 20190315–5245.

Comments Due: 5 p.m. ET 4/5/19.

Docket Numbers: ER19–1342–000.

Applicants: NMRD Data Center III, LLC.

Description: Baseline eTariff Filing: NMRD Data Center III Market-Based Rate Tariff to be effective 5/15/2019.

Filed Date: 3/18/19.

Accession Number: 20190318–5000.

Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: ER19–1343–000

Applicants: NMRD Data Center II, LLC.

Description: Baseline eTariff Filing: NMRD Data Center II Market-Based Rate Tariff to be effective 5/15/2019.

Filed Date: 3/18/19.

Accession Number: 20190318–5001.

Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: ER19–1359–000.

Applicants: The United Illuminating Company.

Description: Application of The United Illuminating Company for Transmission Rate Incentives.

Filed Date: 3/15/19.

Accession Number: 20190315–5249.

Comments Due: 5 p.m. ET 4/5/19.

Docket Numbers: ER19–1364–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–03–18_SA 3267_Astoria Substation MPFCA (J493 J510) OTP to be effective 3/19/2019.

Filed Date: 3/18/19.

Accession Number: 20190318–5037.

Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: ER19–1365–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–03–18_SA 3268_Astoria Substation BSSB In Out MPFCA (J493 J510) OTP NSP to be effective 3/19/2019.

Filed Date: 3/18/19.

Accession Number: 20190318–5061.

Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: ER19–1366–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ICSA, SA No. 5307; Queue No. AC1–068 to be effective 2/15/2019.

Filed Date: 3/18/19.

Accession Number: 20190318–5076.

Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: ER19–1367–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–03–18_SA 3270 Johnson Junction-

Ortonville Line MPFCA (J493 J526) OTP to be effective 3/19/2019.

Filed Date: 3/18/19.

Accession Number: 20190318–5074.

Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: ER19–1368–000.

Applicants: Manitowoc Public Utilities.

Description: § 205(d) Rate Filing: Normal filing 2019 to be effective 4/1/2019.

Filed Date: 3/18/19.

Accession Number: 20190318–5077.

Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: ER19–1369–000.

Applicants: PacifiCorp.

Description: Tariff Cancellation: Termination of Invenergy Wind E&P Agreements to be effective 5/20/2019.

Filed Date: 3/18/19.

Accession Number: 20190318–5079.

Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: ER19–1370–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ICSA, SA No. 5308; Queue No. AC1–069 to be effective 2/15/2019.

Filed Date: 3/18/19.

Accession Number: 20190318–5080.

Comments Due: 5 p.m. ET 4/8/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 18, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–05484 Filed 3–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7563–027]

South Fork II Associates Limited Partnership; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On October 4, 2018, South Fork II Associates Limited Partnership (licensee/transferor/transferee) filed an application for the transfer of license for the Weeks Falls Hydroelectric Project No. 7563, located on the South Fork Snoqualmie River in King County, Washington.

The licensee states that it inadvertently dissolved the partnership in the state of Washington on September 28, 2011, in connection with corporate changes to one of the licensee's partners. The licensee states that it realized its mistake on November 18, 2011 and filed a new limited partnership certificate with the Office of the Secretary of State in the state of Washington, in the same name, *i.e.*, South Fork II Associates Limited Partnership. In response to the transfer application filed, the licensee seeks an after-the-fact approval of the transfer of license.

Applicant's Contact: For transferor/transferee: Mr. Seth T. Lucia, Bracewell LLP, 2001 M Street NW, Washington, DC 20036, Phone: 202–828–5833, Email: *seth.lucia@bracewell.com,* and Ms. Sheila Tralins, Vice President, Deputy General Counsel and Assistant Secretary, Covanta Energy, LLC, 445 South Street, Morristown, NJ 07960, Phone: 862–345–5311, Email: *stralins@covanta.com.*

FERC Contact: Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–7563–027.

Dated: March 18, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–05501 Filed 3–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR14–6–002]

BP Pipelines (Alaska) Inc., ConocoPhillips Transportation Alaska, Inc., and ExxonMobil Pipeline Company; Notice Affording the Parties an Opportunity To File Pleadings

1. On April 20, 2018, Petro Star, Inc. filed with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) a petition for review of the Commission's order in *BP Pipelines (Alaska) Inc., ConocoPhillips Transportation Alaska, Inc., and ExxonMobil Pipeline Company,* 162 FERC ¶ 61,147 (2018). On March 6, 2019, the Commission filed an unopposed motion for voluntary remand of the above-captioned proceeding.[1] The Voluntary Remand Motion stated: ''To help inform the Commission's decision on remand, the parties may file with the Commission, within 60 days of a Court order granting this motion, pleadings setting forth the parties' respective positions concerning (1) the scope of issues properly before the agency on voluntary remand, and (2) the procedures to be employed by the agency in addressing those issues. The Commission will also permit the parties to file responsive pleadings within 30 days after the initial pleadings.'' [2] The D.C. Circuit granted the Voluntary Remand Motion on March 7, 2019.[3]

2. Accordingly, the parties are hereby afforded the opportunity to file initial pleadings with the Commission by May 6, 2019. The parties may file responsive

[1] *PetroStar, Inc.* v. *FERC,* Unopposed Motion of Respondent Federal Energy Regulatory Commission for Voluntary Remand, No. 18–1104 (filed Mar. 6, 2019) (Voluntary Remand Motion).

[2] *Id.* at 2–3.

[3] *PetroStar, Inc.* v. *FERC,* No. 18–1104, Order (issued Mar. 7, 2019).

pleadings with the Commission by June 5, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–05505 Filed 3–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–116–000]

Texas LNG Brownsville, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Texas LNG Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Texas LNG Project, proposed by Texas LNG Brownsville, LLC (Texas LNG) in the above-referenced docket. Texas LNG requests authorization to site, construct, modify, and operate liquefied natural gas (LNG) export facilities on the Brownsville Ship Channel in Cameron County, Texas. The Texas LNG Project would include a new LNG export terminal capable of producing up to 4 million tonnes per annum of LNG for export. The terminal would receive natural gas to the export facilities from a third-party intrastate pipeline.

The final EIS assesses the potential environmental effects of the construction and operation of the Texas LNG Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the Texas LNG Project would result in adverse environmental impacts. However, with the mitigation measures recommended in the EIS, impacts in the project area would be avoided or minimized and would not be significant, with the exception of visual resources when viewed from the Laguna Atascosa National Wildlife Refuge. In addition, the Texas LNG Project, combined with other projects in the geographic scope, including the Rio Grande LNG and Annova LNG Projects, would result in significant cumulative impacts from sediment/turbidity and shoreline erosion within the Brownsville Ship Channel during operations from vessel transits; on the federally listed ocelot and jaguarundi from habitat loss and potential for increased vehicular strikes during construction; on the federally listed aplomado falcon from habitat loss; and on visual resources from the presence of aboveground structures. Construction and operation of the Texas LNG Project would result in mostly temporary or short-term environmental impacts; however, some long-term and permanent environmental impacts would occur.

The U.S. Department of Energy, U.S. Coast Guard, U.S. Army Corps of Engineers, U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration and Federal Aviation Administration, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, National Park Service, and National Oceanic and Atmospheric Administration's National Marine Fisheries Service participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although the cooperating agencies provided input to the conclusions and recommendations presented in the EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the project.

The final EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- Gas gate station and interconnect facility;
- pretreatment facility to remove water, carbon dioxide, hydrogen sulfide, mercury, and heavier (pentane and above) hydrocarbons;
- a liquefaction facility consisting of two liquefaction trains utilizing Air Products and Chemicals, Inc. (APCI) C3MR technology and ancillary support facilities;
- two approximately 210,000 cubic meter (m^3) aboveground full containment LNG storage tanks with cryogenic pipeline connections to the liquefaction facility and berthing dock;
- LNG carrier berthing dock capable of receiving LNG carriers between approximately 130,000 m^3 and 180,000 m^3 capacity;
- a permanent material offloading facility to allow waterborne deliveries of equipment and materials during construction and mooring of tug boats while an LNG carrier is at berth;
- thermal oxidizer, warm wet flare, cold dry flare, spare flare, acid gas flare, and marine flare; and
- administration, control, maintenance, and warehouse buildings and related parking lots; electrical transmission line and substation, water pipeline, septic system, and stormwater facilities/outfalls.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The final EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the Environmental Documents page (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the final EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.* CP16–116). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: March 15, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–05500 Filed 3–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC19–75–000]

Duke Energy Corporation; Notice of Filing

Take notice that on March 13, 2019, Duke Energy Corporation filed a request for approval to treat its Cybersecurity Informational Technology-Operational Technology Program as a single project for purposes of in service and accrual of Allowance for Funds Used During Construction.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on April 2, 2019.

Dated: March 15, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–05482 Filed 3–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2331–083]

Duke Energy Carolinas; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application submitted by Duke Energy Carolinas (licensee) to allow Thomas Sand Company, in Cherokee County, South Carolina, the use of Ninety-Nine Islands Hydroelectric (FERC No. 2331) project lands and waters to conduct hydraulic sand mining. The project is located on the mainstem of the Broad River between the upstream Cherokee Falls Project (FERC No. 2880) and downstream Lockhart Project (FERC No. 2620) in Cherokee County, South Carolina. The reservoir is approximately 4 miles long, with approximately 1 mile of transitional flowing habitat upstream of the impounded reach. The project does not occupy federal lands.

An Environmental Assessment (EA) has been prepared as part of Commission staff's review of the proposal. In the application, Thomas Sand anticipates removing 42,000 tons of sand each year from a 33 acre area of the project reservoir. The dredge would pump sand to an upland processing area outside of the project area. This EA contains Commission staff's analysis of the probable environmental impacts of the proposed action and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment with implementation of the staff recommendations.

The EA is available for electronic review and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–2331) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372 or for TTY, (202) 502–8659.

For further information, contact Michael Calloway at (202) 502–8041 or by email at *michael.calloway@ferc.gov.*

Dated: March 18, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–05493 Filed 3–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–1333–000]

Mirabito Power & Gas, LLC; Supplemental Notice That initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Mirabito Power & Gas, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 8, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for

electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–05486 Filed 3–21–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–18–000]

Commission Information Collection Activities (Ferc–740); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–740 (Availability of E-Tag Information to Commission Staff).

DATES: Comments on the collection of information are due by May 21, 2019.

ADDRESSES: You may submit comments (identified by Docket No. IC19–18–000) by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–740, Availability of E-Tag Information to Commission Staff.

OMB Control No.: 1902–0254.

Type of Request: Three-year extension of the FERC–740 information collection requirements with no changes to the current reporting requirements.

Abstract: In Order 771,[1] the FERC–740 information collection (providing Commission staff access to e-Tag data) was implemented to provide the Commission, Market Monitoring Units, Regional Transmission Organizations, and Independent System Operators with information that allows them to perform market surveillance and analysis more effectively. The e-Tag information is necessary to understand the use of the interconnected electricity grid, particularly transactions occurring at interchanges. Due to the nature of the electric grid, an individual transaction's impact on an interchange cannot be assessed adequately in all cases without information from all connected systems, which is included in the e-Tags. The details of the physical path of a transaction included in the e-Tags helps the Commission to monitor, in particular, interchange transactions more effectively, detect and prevent price manipulation over interchanges, and improve the efficient and orderly use of the transmission grid. For example, the e-Tag data allows the Commission to identify transmission reservations as they go from one market to another and link the market participants involved in that transaction.

Order No. 771 provided the Commission access to e-Tags by requiring that Purchasing-Selling Entities [2] (PSEs) and Balancing Authorities (BAs), list the Commission on the ''CC'' list of e-Tags so that the Commission can receive a copy of the e-Tags (the '''CC' list requirement''). The Commission accesses the e-Tags by contracting with a commercial vendor, OATI.

In early 2014, the North American Energy Standards Board (NAESB) incorporated the ''CC'' list requirement on e-Tags as part of the tagging process.[3] Even before NAESB added the FERC requirement to the tagging standards, the ''CC'' list requirement had already been programmed into the industry standard tagging software so as to make the inclusion of FERC in the ''CC'' list automatic, where appropriate.

The Commission expects that PSEs and BAs will continue to use existing, automated procedures to create and validate the e-Tags in a way that provides the Commission with access to them. In the rare event that a new BA would need to alert e-Tag administrators that certain tags it generates qualify for exemption under the Commission's regulations (*e.g.,* transmissions from a new non-U.S. BA into another non-U.S. BA using a path that does not go through a U.S. BA), this administrative function would be expected to require less than an hour of effort total from both the BA and an e-Tag administrator to include the BA on the exemption list. New exempt BAs occur less frequently than every year, but for the purpose of estimation we will conservatively assume one appears each year creating an additional burden and cost associated with the Commission's FERC–740 of one hour and $65.68.[4]

Type of Respondents: Purchasing-Selling Entities and Balancing Authorities.

Estimate of Annual Burden: [5] The Commission estimates the burden and cost for FERC–740 as follows based on the distinct e-Tags submitted to the Commission in 2017 (the most recent full year available).

[1] Order 771 was issued in Docket No. RM11–12 (77 FR 76367, 12/28/2012).

[2] A Purchasing-Selling Entity is the entity that purchases or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-Selling Entities may be affiliated or unaffiliated merchants and may or may not own generating facilities. Purchasing-Selling Entities are typically E-Tag Authors.

[3] *NAESB Electronic Tagging Functional Specifications, Version 1.8.2.*

[4] The estimated hourly cost (wages plus benefits) provided in this section is based on the figures for May 2017 posted by the Bureau of Labor Statistics for the Utilities sector (available at *https://www.bls.gov/oes/current/naics2_22.htm*), assuming:

15 minutes legal (code 23–0000), at $143.68/hour

45 minutes information and record clerk (code 43–4199), at $39.68/hour.

[5] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations Part 1320.

FERC–740	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Purchasing-Selling Entities (e-Tag Authors).	355	4,482 (rounded)	1,591,208	Automatic, so 0 burden and cost.	Automatic, so 0 burden and cost.	Automatic, so 0 burden and cost.
Balancing Authorities	81	19,645 (rounded) ..	1,591,208	Automatic, so 0 burden and cost.	Automatic, so 0 burden and cost.	Automatic, so 0 burden and cost.
New Balancing Authority [as noted above].	1	1	1	1 hr.; $65.68	1 hr.; $65.68	$65.68.
Total	.....	.....	.....	.....	1 hr.; $65.68	$65.68.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 18, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–05494 Filed 3–21–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1121; FRL–9988–33–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Diesel Fuel Regulations (40 CFR Part 80, Subpart I) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Diesel Fuel Regulations (EPA ICR Number 1718.11, OMB Control Number 2060–0308), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2019. Public comments were previously requested via the **Federal Register** on September 4, 2018 during a 60-day comment period. 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: Additional comments may be submitted on or before April 22, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–1121, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Compliance Division, Office of Transportation and Air Quality, 6405A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–343–9303; fax number: 202–343–2802; email address: *caldwell.jim@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: This ICR renewal is related to EPA's diesel fuel regulations under 40 CFR part 80, subpart I, applicable to highway (motor vehicle) diesel fuel and non-road, locomotive and marine diesel fuel (NRLM), Emission Control Area (ECA) marine fuel, and heating oil. Most of the information collected under this ICR is used to evaluate compliance with the requirements of the regulations. Motor vehicle diesel fuel and just about all NRLM diesel fuel now meet a 15 part per million sulfur standard. The activities associated with this ICR include: Registration (new refiners and importers, updates to existing registrations); submission of corrections to prior compliance reports; granting of research and development exemptions; generation and retention of quality assurance records; general recordkeeping; batch testing for sulfur content; and the production of product transfer documents and pump labels.

Form Numbers:

DSF0100 Form: Diesel Fuel Sulfur Credit Banking & Generation Report
DSF0200 Form: Diesel Fuel Sulfur Credit Transfer Report
ECA0300 Form: ECA Marine Fuel Sulfur Precision Demonstration
DSF0302 Form: Diesel Fuel Sulfur Facility Summary Report
DSF0401 Form: Diesel Fuel Sulfur Batch Report
DSF0504 Form: Designate & Track Handoff Report
DSF0601 Form: Designate & Track Total Volume Report
DSF0700 Form: Designate & Track Facility Compliance Calculation Report
DSE0700 Form: Designate & Track Entity Compliance Calculation Report
DSE0900 Form: Motor Vehicle Diesel Fuel Sulfur Pre-Compliance Report
DSF0951 Form: NRLM Diesel Fuel Sulfur Pre-Compliance Report

Respondents/affected entities: Parties involved with diesel fuels.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 7,900 (total).

Frequency of response: On occasion.

Total estimated burden: 28,450 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $3,300,200 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is an increase of 17,372 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to burdens that were not addressed in the current ICR, such as product transfer documents, the testing of each batch of diesel fuel for sulfur content, and labels on pumps that dispense hearing oil and certain offroad diesel fuels.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–05513 Filed 3–21–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9043–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/*.

Weekly receipt of Environmental Impact StatementsFiled 03/11/2019 Through 03/15/2019Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPAmake public its comments on EISs issued by other Federalagencies. EPA's comment letters on EISs are available at:*https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

*EIS No. 20190033, Final, BLM, AZ,*Sonoran Valley Parkway Project,*Review Period Ends:* 04/22/2019,*Contact:* Ben Parsons 623–580–5681.

*EIS No. 20190034, Final, FERC, TX,*Texas LNG Project-Texas LNG Brownsville LLC,*Review Period Ends:* 04/22/2019,*Contact:* Office of External Affairs 866–208–3372.

*EIS No. 20190035, Draft, USACE, FL,*Loxahatchee River Watershed Restoration Plan Draft IntegratedProject Implementation Report and Environmental Impact Statement,*Comment Period Ends:* 05/06/2019,*Contact:* Dr. Ann B. Hodgson 904–232–3691.

Amended Notice

*EIS No. 20180336, Draft, FHWA, NY,*Van Wyck Expressway Capacity and Access Improvements to JFKAirport,*Comment Period Ends:* 04/01/2019,*Contact:* Hans Anker 518–431–8896,Revision to FR Notice Published 02/01/2019; Extending the CommentPeriod from 03/18/2019 to 04/01/2019.

*EIS No. 20190011, Draft, BLM, NV,*Gemfield Mine Project,*Comment Period Ends:* 04/22/2019,*Contact:* Kevin Hurrell 775–635–4000,Revision to FR Notice Published 02/15/2019; Extending the CommentPeriod from 04/10/2019 to 04/22/2019.

Dated: March 18, 2019.

Robert Tomiak,

Director,Office of Federal Activities.

[FR Doc. 2019–05417 Filed 3–21–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2011–0443; FRL–9990–61–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Public Water System Supervision Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has submitted an Information Collection Request (ICR) for the Public Water System Supervision Program (EPA ICR No. 0270.47, OMB Control No. 2040–0090) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed renewal of the ICR, which is currently approved through March 31, 2019. Public comments were previously requested via the **Federal Register** on September 11, 2018, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is provided in this renewal notice, 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: Additional comments may be submitted on or before April 22, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2011–0443, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov* or by mail to EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Kevin Roland, Drinking Water Protection Division, Office of Ground Water and Drinking Water, (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–4588: fax number: 202–564–3755; email address: *roland.kevin@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 the EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The Public Water System Supervision (PWSS) Program ICR examines public water system, primacy agency (*e.g.,* states and tribes with primary enforcement authority) and tribal operator certification provider burden, and costs for ''cross-cutting'' recordkeeping and reporting requirements (*i.e.,* the burden and costs for complying with drinking water information requirements that are not associated with contaminant-specific rulemakings). The following activities have recordkeeping and reporting requirements that are mandatory for compliance with the *Code of Federal Regulations* (CFR) at 40 CFR parts 141 and 142: The Consumer Confidence Report Rule (CCR), the Variance and Exemption Rule (V/E Rule), General State Primacy Activities, the Public Notification (PN) Rule and Proficiency Testing Studies for Drinking Water Laboratories. The information collection activities for both the Operator Certification and the Capacity Development Program are driven by the grant withholding and reporting provisions under sections 1419 and

1420, respectively, of the Safe Drinking Water Act. The information collection for the Tribal Operator Certification Program is driven by grant eligibility requirements outlined in the Drinking Water Infrastructure Grant Tribal Set-Aside Program Final Guidelines and the Tribal Drinking Water Operator Certification Program Guidelines.

Form numbers: None.

Respondents/affected entities: Entities potentially affected by this action are new and existing public water systems and primacy agencies.

Respondent's obligation to respond: Mandatory for compliance with 40 CFR parts 141 and 142.

Estimated number of respondents: 148,674 (total).

Frequency of response: Varies by requirement (*i.e.,* on occasion, monthly, quarterly, semi-annually, and annually).

Total estimated burden: 3,643,372 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $192,654,000 (per year), includes $38,121,000 in operation and maintenance costs.

Changes in the estimates: There is a decrease of 125,841 hours in the total estimated annual respondent burden compared with the ICR currently approved by OMB. This decrease is a result of: Updating relevant baseline information for each rule with the most current and accurate information available (*e.g.,* public water system inventory); and, updating burden to include expected reductions associated with use of a cloud-based reporting database. Where appropriate and available, estimated violation and other associated rates have also been updated to reflect current information on rule compliance.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–05515 Filed 3–21–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0501; FRL–9989–10–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Green Power Partnership and Combined Heat and Power Partnership (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Green Power Partnership and Combined Heat and Power Partnership (EPA ICR Number 2173.07, OMB Control Number 2060–0578) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2019. Public comments were previously requested via the **Federal Register** on September 14, 2018 during a 60-day comment period. 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: Additional comments may be submitted on or before April 22, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number Docket ID No. EPA–HQ –OAR–2004–0501, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Christopher Kent, Climate Protection Partnerships Division, Office of Atmospheric Programs, MC 6202A Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–343–9046; fax number: 202–343–2208; email address: *kent.christopher@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: In 2002, EPA's Energy Supply and Industry Branch (ESIB) launched two partnership programs with industry and other stakeholders: The Green Power Partnership (GPP) and the Combined Heat and Power Partnership (CHPP). These voluntary partnership programs, along with others in the ESIB, encourage organizations to invest in clean, efficient energy technologies, including renewable energy and combined heat and power. To continue to be successful, it is critical that EPA collect information from these program stakeholders to ensure these organizations are meeting their clean energy goals and to assure the credibility of these voluntary non-regulatory programs.

EPA has developed this ICR to obtain authorization to collect information from organizations participating in the GPP and CHPP, and other ESIB voluntary programs. Organizations that join these programs voluntarily agree to the following respective actions: (1) Designating a Green Power or CHP liaison and filling out a Partnership Agreement or Letter of Intent (LOI) respectively, (2) for the GPP, reporting to EPA, on an annual basis, their progress toward their green power commitment via a 3-page reporting form; (3) for the CHP Partnership, reporting to EPA information on their existing CHP projects, new project development, and other CHP-related activities via a one-page reporting form (for projects) or via an informal email or phone call (for other CHP-related activities). In addition to these actions, organizations may voluntarily apply for recognition to the programs' established annual recognition events, which require submitting additional information. EPA uses the data obtained from its Partners to assess the success of these programs in achieving their national energy and greenhouse gas (GHG) reduction goals. Partners are organizational entities that have volunteered to participate in either Partnership program.

Form numbers: EPA–430–K–013, EPA–430–F–05–034; EPA–5900–353.

Respondents/affected entities: Company, institutional, and public-sector organizations that voluntarily participate in the EPA's Green Power Partnership (GPP) or Combined Heat and Power Partnership (CHPP). These include both service and goods providing industries, educational institutions and non-governmental organizations, commercial and

industrial organizations, and local, state, or federal government agencies.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 6,871 (total).

Frequency of response: Annually, on occasion, one time.

Total estimated burden: 6,598 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $731,382 (per year), which includes no annualized capital or operation & maintenance costs.

Changes in the estimates: There is minimal decrease in hours in the total estimated respondent burden compared with the ICR currently approved by OMB. Since the last ICR renewal, both the GPP and CHPP have introduced program efficiencies to reduce program burden and simplified collection forms into pre-populated spreadsheets or documents. As a result of these changes, the average number of hours per Partner has decreased from 3.2 hours to 2.87 hours, even though the total hour burden for Partners increased due to an increase in the number of Partners.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–05514 Filed 3–21–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2003–0026; FRL–FRL–9989–52–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; National Water Quality Inventory Reports (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), National Water Quality Inventory Reports (EPA ICR Number 1560.12, OMB Control Number 2040–0071) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2019. Public comments were previously requested via the **Federal Register** on August 30, 2018 during a 60-day comment period. 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: Additional comments may be submitted on or before April 22, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2003–0026, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Cynthia N. Johnson, Watershed Restoration, Assessment and Protection Division (WRAPD), Office of Water, Mail Code: 4503T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–1679; fax number: 202–566–1336; email address: *Johnson.CynthiaN@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: The Clean Water Act Section 305(b) reports contain information on whether waters assessed by a state meet the state's water quality standards, and when waters are impaired, the pollutants and potential sources affecting water quality. This information helps States and the public track progress in addressing water pollution. Section 303(d) of the Clean Water Act requires States to identify and rank waters that cannot meet water quality standards (WQS) following the implementation of technology-based controls. Under Section 303(d), States are also required to establish total maximum daily loads (TMDLs) for listed waters not meeting standards because of pollutant discharges. In developing the Section 303(d) lists, States are required to consider various sources of water quality related data and information, including the Section 305(b) State water quality reports. Section 106(e) requires that states annually update monitoring data and use it in their Section 305(b) report. Section 314(a) requires states to report on the condition of their publicly owned lakes within the Section 305(b) report.

During the period covered by this ICR renewal, respondents will: Complete their 2020 Section 305(b) reports and 2020 Section 303(d) lists; complete their 2022 Section 305(b) reports and 2022 Section 303(d) lists; transmit annual electronic updates of ambient monitoring data via the Water Quality Exchange; and continue to develop TMDLs according to their established schedules. EPA will prepare biennial updates on assessed and impaired waters for Congress and the public for the 2020 reporting cycle and for the 2022 cycle, and EPA will review 303(d) list and TMDL submissions from respondents.

Form numbers: None.

Respondents/affected entities: Entities potentially affected by this action are States, Territories and Tribes with Clean Water Act (CWA) responsibilities.

Respondent's obligation to respond: Mandatory: Integrated Water Quality Inventory Reports (Clean Water Act Sections 305(b), 303(d), 314(a), and 106(e)).

Estimated number of respondents: 59 (total).

Frequency of response: Biennial.

Total estimated burden: 3,718,130 (per year) hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $211,716,534 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is an estimated decrease of 21,887 of total burden hours per year. EPA has completed phase 1 of the Water Quality Framework, which is a new way of integrating EPA's data and information systems to more effectively support reporting and tracking water quality protection and restoration actions. Phase 1 streamlined water quality assessment and reporting by reducing transactions associated with paper copy reviews and increasing electronic data exchange. The system to support this

new electronic reporting was released to support the 2018 reporting cycle in April of 2018. EPA estimates a reduction of 10–50% on specific agency and respondent activities aimed to be improved from this new reporting system, and these reductions are explained within the supporting statement.

Courtney Kerwin,

Director of Regulatory Support Division.

[FR Doc. 2019–05512 Filed 3–21–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0025; FRL–9989–42–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Asbestos (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Asbestos, Subpart M) (Renewal)'' (EPA ICR No. 0111.15, OMB Control No. 2060–0101), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2019. Public comments were previously requested, via the **Federal Register** (82 FR 29552) on June 29, 2017 during a 60-day comment period, and through a second announcement published (83 FR 48612) on September 26, 2018 to account for changes in reporting and recordkeeping resulting from a recent action on an alternative work practice, and a planned change to allow electronic reporting for notifications. 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 neither 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: Additional comments may be submitted on or before *April 22, 2019.*

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0025, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit: *www.epa.gov/dockets.*

Abstract: For the Asbestos NESHAP ICR, owners and operators of affected facilities are required to comply with reporting and recordkeeping requirements for the General Provisions (40 CFR part 61, subpart M), as well as for the applicable specific standards. This includes submitting initial notifications, performance tests, and periodic reports and results, maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by the EPA to determine compliance with these standards.

Form numbers: None.

Respondents/affected entities: Demolition and renovation facilities; disposal of asbestos wastes; asbestos milling, manufacturing and fabricating; use of asbestos on roadways; asbestos waste conversion facilities; and the use of asbestos insulation and spray-on materials.

Respondent's obligation to respond: Mandatory (40 CFR part 61, subpart M).

Estimated number of respondents: 9,687 (total).

Frequency of response: Initially, occasionally, quarterly and semiannually.

Total estimated burden: 287,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $32,700,000 (per year), which includes $0 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is a decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. The change is due to the addition of electronic reporting. The result is a reduction in burden by 5,050 hours per year. We expect there to be an initial burden for respondents to learn the new electronic reporting system, and a reduced burden over time to submit notifications electronically (as compared to submitting them through the U.S. mail, the currently required process). We expect the regulated community and states in Region 3 to adopt electronic submission of 40 CFR 61.145(b) notifications gradually, with other Regions and their regulated community to follow. Therefore, although we have conservatively estimated that approximately 10 percent of the respondents use electronic reporting in this renewal, we expect the number of respondents using electronic reporting to increase in the coming years, which will result in additional burden reductions over time.

We have updated the respondent and Agency burdens to include an AWP for ACPRPs. Burden associated with the CTPS AWP is due to the collection and retention of samples and the requirement to report malfunctions. Other changes, such as recordkeeping and notations to the utility records (in the case of ACPRP using the AWP) or notation to the deed are unchanged. Industry sources estimated ''there would eventually be 100 (pipe replacement) companies that would use the close tolerance horizontal directional drilling method over the years with the majority of the (A/C pipe) footage being installed by 25 companies.''

Finally, we have updated the number of respondents to accurately reflect industry growth from the prior renewal, and updated the respondent and Agency labor rates, which are referenced from the Bureau of Labor Statistics and OPM, respectively. The overall result is a decrease in burden; however, the revised labor rates and industry growth

result in an increase in respondent labor costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–05511 Filed 3–21–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 19, 2019.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or *Comments.applications@rich.frb.org:*

1. *CCF Holding Company, Jonesboro, Georgia; to acquire Heritage Bancorporation, Inc., and thereby indirectly acquire Heritage Bank, both of Hinesville, Georgia.*

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Chemical Financial Corporation, Detroit, Michigan;* to merge with TCF Financial Corporation, Wayzata, Minnesota and thereby indirectly acquire TCF National Bank, Sioux Falls, South Dakota.

2. *Richmond Mutual Bancorporation, Richmond, Indiana;* to become a bank holding company by acquiring First Bank Richmond, Richmond, Indiana.

In connection with this application, First Mutual of Richmond, a mutual holding company will convert to stock form and merge mid-tier holding company Richmond Mutual Bancorporation, Inc., both of Richmond, Indiana.

Board of Governors of the Federal Reserve System, March 19, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–05539 Filed 3–21–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 8, 2019.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Brian Libel, Brandon Libel, and Brice Libel, all of Wathena, Kansas;* to retain voting shares of Wathena Bancshares, Inc., and thereby indirectly retain shares of Farmers State Bank, both of Wathena, Kansas.

Board of Governors of the Federal Reserve System, March 19, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–05538 Filed 3–21–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0097; Docket No. 2019–0003; Sequence No. 16]

Information Collection; Federal Acquisition Regulation Part 4 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the FAR Council invites the public to comment upon a renewal concerning FAR part 4 requirements.

DATES: Submit comments on or before May 21, 2019.

ADDRESSES: The FAR Council invites interested persons to submit comments on this collection by either of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0097 Federal Acquisition Regulation Part 4 Requirements.

Instructions: All items submitted must cite Information Collection 9000–0097 Federal Acquisition Regulation Part 4 Requirements. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail). This information collection is pending at the FAR Council. The Council will submit it to OMB within 60 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Mahruba Uddowla, Procurement

Analyst, at telephone 703–605–2868, or email *mahruba.uddowla@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Overview of Information Collection

Description of the Information Collection

1. *Type of Information Collection:* Revision/Renewal of a currently approved collection.

2. *Title of the Collection*—Federal Acquisition Regulation Part 4 Requirements.

3. *Agency form number, if any:*—*None.*

Solicitation of Public Comment

Written comments and suggestions from the public should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

B. Purpose

This information collection requirement, OMB Control No. 9000–0097, currently titled ''Taxpayer Identification Number Information,'' is proposed to be retitled ''Federal Acquisition Regulation Part 4 Requirements'' due to consolidation with currently approved information collection requirements OMB Control No. 9000–0159, System for Award Management (SAM) Registration; 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification; and 9000–0179, Service Contractor Reporting Requirement.

This information collection requirement pertains to information that a contractor must submit in response to a number of requirements from FAR Part 4, which are as follows:

1. Taxpayer Identification Number Information. FAR Subpart 4.9, Taxpayer Identification Number Information, and the provision at 52.204–3, Taxpayer Identification, implement statutory and regulatory requirements pertaining to taxpayer identification and reporting.

2. SAM Registration and Maintenance. FAR Subpart 4.11 prescribes policies and procedures for requiring contractor registration in the System for Award Management (SAM) database to: (1) Increase visibility of vendor sources (including their geographical locations) for specific supplies and services; and (2) establish a common source of vendor data for the Government. FAR provision 52.204–7, System for Award Management, implements the requirement for offerors on Federal contracts. The clause requires prospective contractors to be registered in the SAM database prior to award of a contract or agreement, except in certain limited cases. Offerors are required to provide certain business information, including their Taxpayer Identification Number (TINs) and Electronic Funds Transfer (EFT) information only once into a common Governmentwide data source. FAR clause 52.204–13, System for Award Management Maintenance, requires contractors to make sure their SAM data is kept current, accurate, and complete throughout contract performance and final payment; this maintenance is, at a minimum, to be done through an annual review and update of the contractor's SAM registration. FAR provision 52.212–1 and clause 52.212–4 contains the equivalent of 52.204–7 and 52.204–13 respectively, for commercial acquisitions.

3. Use of Unique Entity Identifier as Primary Contractor Identification (formerly known as Data Universal Numbering System (DUNS)). The DUNS number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment. The Government uses the DUNS number to identify contractors in reporting to the Federal Procurement Data System (FPDS). The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data on all contracts in excess of $3,500 to FPDS. In 2016, the FAR was amended to redesignate the terminology for unique identification of entities receiving Federal awards; the proprietary term ''DUNS number'' was replaced by the term ''unique entity identifier.'' Contracting officers insert the FAR provision 52.204–6, Unique Entity Identifier, in solicitations they expect will result in contracts in excess of $3,500. This provision requires offerors to submit their unique entity identifier, which for now is the DUNS number, with their offer. If the offeror does not have a DUNS number, the provision provides instructions on obtaining one. Contracting officer also insert FAR clause 52.204–12, Unique Entity Identifier Maintenance, in all solicitations and resulting contracts containing provision 52.204–6. The clause requires contractors to maintain their unique entity identifier with whatever organization issues such identifiers, for the life of the contract; clause also requires contractors to notify contracting officers of any changes to the unique entity identifier.

4. Service Contractor Reporting Requirement. Section 743(a) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117) requires executive agencies covered by the Federal Activities Inventory Reform (FAIR) Act (Pub. L. 105–270), except DoD, to submit to the Office of Management and Budget (OMB) annually an inventory of activities performed by service contractors. DoD is exempt from this reporting requirement because 10 U.S.C 2462 and 10 U.S.C. 2330a(c) already require DoD to develop an annual service contract inventory. This information collection covers the burden hours related to the requirement at FAR subpart 4.17, Service Contracts Inventory, and its associated clauses, 52.204–14 and 52.204–15.

C. Annual Reporting Burden

1. Taxpayer Identification Number Information.
Respondents: 72,785.
Responses per Respondent: 3.
Total Annual Responses: 218,355.
Hours per Response: 0.1.
Total Burden Hours: 21,835.5.

2. SAM Registration and Maintenance.
Respondents: 59,738.
Responses per Respondent: 1.
Total Annual Responses: 59,738.
Hours per Response: 2.6.
Total Burden Hours: 155,408.

3. Unique Entity Identifier.
Respondents: 83,703.
Responses per Respondent: 2.74.
Total Annual Responses: 229,273.
Hours per Response: 0.02.
Total Burden Hours: 5,240.54.

4. Service Contractor Reporting Requirement.
Respondents: 79,825.
Responses per Respondent: 1.
Total Annual Responses: 79,825.
Hours per Response: 2.
Total Burden Hours: 159,650.

5. Summary.
Respondents: 296,051.
Total Annual Responses: 587,191.
Total Burden Hours: 198,629.04.
Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: Variable, depending on the collection.

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. 9000–0097 Federal Acquisition Regulation Part 4 Requirements, in all correspondence.

Dated: March 19, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–05498 Filed 3–21–19; 8:45 a.m.]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0082: Docket No. 2019–0003; Sequence No. 2]

Information Collection; Economic Purchase Quantity—Supplies

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for public comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Economic Purchase Quantity—Supplies.

DATES: Submit comments on or before May 21, 2019.

ADDRESSES: The FAR Council invites interested persons to submit comments on this collection by either of the following methods:

Federal eRulemaking Portal: This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.

Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0082, Economic Purchase Quantity—Supplies.

Instructions: All items submitted must cite Information Collection 9000–0082, Economic Purchase Quantity—Supplies. 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). This information collection is pending at the FAR Council. The Council will submit it to OMB within 60 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–208–4949 or email at *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Solicitation of Public Comment

Written comments and suggestions from the public should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

B. Purpose

The provision at 52.207–4, Economic Purchase Quantity—Supplies, invites offerors to state an opinion on whether the quantity of supplies on which bids, proposals, or quotes are requested in solicitations is economically advantageous to the Government. Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to (1) recommend an economic purchase quantity, showing a recommended unit and total price, and (2) identify the different quantity points where significant price breaks occur. This information is required by Public Law 98–577 and Public Law 98–525.

C. Annual Reporting Burden

Respondents: 3,000.
Responses per Respondent: 25.
Annual Responses: 75,000.
Hours per Response: 1.
Total Burden Hours: 75,000.
Affected Public: Business or other for-profit entities.
Respondent's Obligation: Voluntary.
Type of Request: Extension of a currently approved collection.
Reporting Frequency: On occasion.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0082, Economic Purchase Quantity—Supplies, in all correspondence.

Dated: March 18, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–05474 Filed 3–21–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; National Directory of New Hires

AGENCY: Office of Child Support Enforcement; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement, Administration for Children and Families (ACF) is requesting a three-year extension of the National Directory of New Hires (OMB #0970–0166, expiration 7/31/2019). The NDNH Guide for Data Submission/Record Specifications and the Multistate Employer Registration form underwent minor revisions.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The federal Office of Child Support Enforcement operates the National Directory of New Hires (NDNH), which is a centralized directory of employment and wage information. The information maintained in the NDNH is collected electronically and helps child support agencies locate parents and enforce child support orders. NDNH information is also used for authorized purposes by specific state and federal agencies to help administer certain programs authorized under 42 U.S.C. 653(i)(1).

Respondents: Employers, State Child Support Agencies, and State Workforce Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Rounded number of responses per respondent	Average burden hours per response	Total
New Hire: Employers Reporting Manually	5,265,682	1.53	.025 hours (1.5 minutes)	201,412.34
New Hire: Employers Reporting Electronically	635,049	92.84	.00028 hours (1 second)	16,508.23
New Hire: States	54	148,888.89	.017 hours (1 minute)	136,680.00
Quarterly Wage (QW) & Unemployment Insurance (UI).	53	26.00	.00028 hours (1 second)	0.39
Multistate Employer Registration Form	3,791	1.00	.050 hours (3 minutes)	189.55

Estimated Total Annual Burden Hours: 354,791.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 653A(b)(1)(A) and (B); 42 U.S.C. 653A(g)(2)(A); 26 U.S.C. 3304(a)(16)(B); 42 U.S.C. 503(h)(1)(A); and, 42 U.S.C. 653A(g)(2)(B).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–05480 Filed 3–21–19; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

The Science of Interoception and Its Roles in Nervous System Disorders

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The objectives of this workshop are to identify gaps in research related to the science of interoception, its role(s) in nervous system disorders, and to develop strategies and recommendations to facilitate the advancement of this area of research. The workshop will bring together expertise from diverse fields including basic neuroscience, psychology, physiology, and clinical research to deliberate two important dynamic connections—the connections between brain and body and the connections between basic research and human/clinical research. The primary focus areas for the workshop include: the neural circuitry underlying the dynamic interactions between the central and peripheral nervous systems; interoceptive processes in associated diseases and disorders; effect of modulating interoceptive processes for potential interventions/therapies; and development of technologies and methodologies to enhance interoceptive research.

DATES: The Meeting will be held on April 16–17, 2019, from 8:30 a.m. to 5:00 p.m. (ET).

ADDRESSES: Lister Hill Auditorium, NLM (Building 38A), NIH Main Campus, 8600 Rockville Pike, Bethesda, MD. This workshop will also be videocast.

FOR FURTHER INFORMATION CONTACT: For information concerning this meeting, see *www.scgcorp.com/blueprintinteroc2019* or contact Dr. Wen Chen, Branch Chief and Program Director, Basic and Mechanistic Research, Division of Extramural Research, National Center for Complementary and Integrative Health, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, telephone: 301–451–3989; email: *when.chen2@nih.gov.*

SUPPLEMENTARY INFORMATION: This workshop is sponsored by the NIH Blueprint for Neuroscience Research. It is led by the National Center for Complementary and Integrative Health (NCCIH) and the NIH Office of Behavioral and Social Sciences Research (OBSSR) in collaboration with the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institute of Dental and Craniofacial Research (NIDCR), National Institute of Neurological Disorders and Stroke (NINDS), National Institute of Mental Health (NIMH), National Institute on Aging (NIA), National Institute on Drug Abuse (NIDA), National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Cancer Institute (NCI), and Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD). The workshop is free and open to the public. If you are interested in interacting with participants and engaging in discussions during the meeting, you are welcome to join us in person. Alternatively, the workshop will be livestreamed, and the video will be archived. You can register for this meeting at *www.scgcorp.com/blueprintinteroc2019.*

Dated: March 18, 2019.

Helene Langevin,

Director, National Center for Complementary and Integrative Health, National Institutes of Health.

[FR Doc. 2019–05492 Filed 3–21–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket ID DHS–2018–0072]

The President's National Security Telecommunications Advisory Committee

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting (FACA).

SUMMARY: The Department of Homeland Security (DHS) is publishing this notice to announce the following President's National Security Telecommunications Advisory Committee (NSTAC) meeting. This meeting is open to the public.

DATES: The NSTAC will meet on Tuesday, April 2, 2019, from 1:00 p.m. to 2:00 p.m. Eastern Time (ET). Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance to participate, please email *NSTAC@hq.dhs.gov* by 5:00 p.m. ET on Tuesday, March 26, 2019.

Members of the public are invited to provide comment on the issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated briefing materials that participants may discuss during the meeting will be available at *www.dhs.gov/nstac* for review as of, Monday, March 18, 2019. Comments may be submitted at any time and must be identified by Docket Number DHS–2018–0072. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Please follow the instructions for submitting written comments.
- *Email: NSTAC@hq.dhs.gov*. Include the Docket Number DHS–2018–0072 in the subject line of the email.
- *Fax:* (703) 705–6190, ATTN: Sandy Benevides.
- *Mail:* Helen Jackson, Designated Federal Official, Stakeholder Engagement and Cyber Infrastructure Resilience Division, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security, 245 Murray Lane, Mail Stop 0612, Arlington, VA 20598–0612.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number DHS–2018–0072.

A public comment period will be held during the teleconference on April 2, 2019, from 1:40 p.m.–1:55 p.m. ET. Speakers who wish to participate in the public comment period must register in advance by no later than Tuesday, March 26, 2019, at 5:00 p.m. ET by emailing *NSTAC@hq.dhs.gov*. Speakers are requested to limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Helen Jackson, NSTAC Designated Federal Official, Department of Homeland Security, (703) 705–6276 (telephone) or *helen.jackson@hq.dhs.gov* (email).

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will hold a conference call on Tuesday, April 2, 2019, to discuss issues and challenges related to NS/EP communications. This will include discussions with Senior-Level Government Stakeholders and a review of ongoing NSTAC work, including a deliberation and vote on the *NSTAC Letter to the President on Advancing Resiliency and Fostering Innovation in the Information and Communications Technology (ICT) Ecosystem*. In this letter, the NSTAC examined technology capabilities that are critical to NS/EP functions in the evolving ICT ecosystem, and Government measures and policy actions to manage near term risks, support innovation, and enhance vendor diversity for NS/EP-critical capabilities.

Dated: March 6, 2019.

Helen Jackson,

Designated Federal Official for the NSTAC.

[FR Doc. 2019–05169 Filed 3–21–19; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–07]

30-Day Notice of Proposed Information Collection: Request for Termination of Multifamily Mortgage Insurance

AGENCY: Office of the Chief Information Officer, 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:* April 22, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*.

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 at *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 November 9, 2018 at 83 FR 56093.

A. Overview of Information Collection

Title of Information Collection: Request for Termination of Multifamily Mortgage Insurance.

OMB Approval Number: 2502–0416.

Type of Request: Revision of a currently approved collection.

Form Number: HUD 9807.

Description of the need for the information and proposed use: This information collection is used for mortgagees to request HUD to terminate a mortgage insurance contract for an FHA-insured mortgage upon prepayment in full of the mortgage prior to its maturity date, or by an owner's and mortgagee's mutual agreement to voluntarily terminate the contract of mortgage insurance without a prepayment. Adjustments were necessary for the number of respondents and number of responses as the previous collection did not capture the correct information. This revision captures the correct information.

Respondents: Business (mortgage lenders).

Estimated Number of Respondents: 14,580.

Estimated Number of Responses: 14,580.

Frequency of Response: 1.

Average Hours per Response: .25.

Total Estimated Burdens: 3,645.00.

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 information technology, *e.g.,* permitting electronic submission of responses.

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.

Dated: March 6, 2019.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2019–05542 Filed 3–21–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–C–65]

30-Day Notice of Proposed Information Collection: Maintenance Wage Rate Recommendation, Maintenance Wage Rate Survey and Maintenance Wage Survey—Summary Sheet

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Correction, notice.

SUMMARY: This notice corrects the document HUD published on Monday, February 11, 2019 at 84 FR 3218. HUD omitted the following HUD Form—4230A Report of Additional Classification and Rate and Instructions which is included in this document.

DATES: *Comments Due Date:* April 22, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax:202–395–5806, Email: *OIRA__Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for 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 October 17, 2018 at 83 FR 52503.

A. Overview of Information Collection

Title of Information Collection: Report of Additional Classification and Rate.

OMB Approval Number: 2501–0011.

Type of Request: Reinstatement without change of a previously approved collection.

Form Number: HUD Form 4750, HUD Form 4751, HUD Form 4752, and HUD Form 4230A.

Description of the need for the information and proposed use: The information is used by HUD and agencies administering HUD programs to collect information from laborers and mechanics employed on projects subjected to the Federal Labor Standards provisions. The information collected is compared to information submitted by the respective employer on certified payroll reports. The comparison tests the accuracy of the employer's payroll data and may disclose violations. Generally, these activities are geared to the respondent's benefit that is to determine whether the respondent was underpaid and to ensure the payment of wage restitution to the respondent.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Hourly cost per response	Total cost
HUD–4750 Maintenance Wage Recommendation	1,381.00	1.00	1,381.00	2.00	2,762.00	$41.81	$115,479.22
HUD–4751 Maintenance Wage Rate Survey	1,133.00	1.00	1,133.00	2.00	2,266.00	41.81	94,741.46
HUD–4752 Maintenance Wage Rate Survey—Summery Sheet	1,133.00	1.00	1,133.00	4.00	4,532.00	41.81	189,482.92
HUD–4230A Report of Additional Classification and Rate and Instructions	500.00	1.00	500.00	1.00	500.00	41.81	20,905.00
Total	4,147.00		4,147.00	9.00	10,060.00	41.81	420,608.60

Note: HUD now requires this information every 2 years and the table reflects this change.

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 information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: March 13, 2019.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2019–05543 Filed 3–21–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7014–N–04]

60-Day Notice of Proposed Information Collection: Supplement to Application for Federally Assisted Housing HUD Form 92006

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 21, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: A. Rahmaan Sharper, Multifamily Representative (Program Analyst), Subsidy Oversight Branch, Assisted Housing Oversight Division, Office of Asset Management and Portfolio Oversight, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email A. Rahmaan Sharper at *a.rahmaan.sharper@hud.gov* or telephone 202–402–2455. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Supplement to Application for Federally Assisted Housing.

OMB Approval Number: 2502–0581.

OMB Expiration Date: 02/28/2018.

Type of Request: Reinstatement, without changes, of a previously approved collection for which approval has expired.

Form Number: HUD Form 92006.

Description of the need for the information and proposed use: Section 644 of the Housing and Community Development Act of 1992 (42 U.S.C. 13604) imposed on HUD the obligation to require housing providers participating in HUD's assisted housing programs to provide any individual or family applying for occupancy in HUD-assisted housing with the option to include in the application for occupancy the name, address, telephone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization. The objective of providing such information, if this information is provided, and if the applicant becomes a tenant, is to facilitate contact by the housing provider with the person or organization identified by the tenant, to assist in providing any the delivery of services or special care to the tenant and assist with resolving any tenancy issues arising during the tenancy of such tenant. This supplemental application information is to be maintained by the housing provider and maintained as confidential information.

Respondents (i.e., affected public): The respondents are individuals or families who are new admissions in the covered programs.

Estimated Number of Respondents: 302,770.

Estimated Number of Responses: 302,770.

Frequency of Response: Each individual or family only responds once unless they wish to update their information.

Average Hours per Response: 0.25 hours.

Total Estimated Burden: 75,693.

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 information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: March 14, 2019.

Vance T. Morris,

Special Assistant to the Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2019–05536 Filed 3–21–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7014–N–05]

60-Day Notice of Proposed Information Collection: Debt Resolution Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 21, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Michael Demarco, U.S. Department of Housing and Urban Development, Albany Financial Operations Center Director, *Michael.C.Demarco@HUD.GOV,* 1–800–669–5152. This is a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Debt Resolution Program.

OMB Approval Number: 2502–0483.

OMB Expiration Date: July 31, 2019.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–56141, HUD–56142, HUD–56146.

Description of the need for the information and proposed use: HUD is required to collect debt owed to the agency. As part of the collection process, demand for repayment is made on the debtor(s).

Respondents (*i.e.,* affected public): Individuals and Households (See comments in Supporting Statement, regarding reference to ''Accountant Prepared Financial Statements'' from ''Commercial Debtors'').

Estimated Number of Respondents: 735.

Estimated Number of Responses: 2,490.

Frequency of Response: 1.

Average Hours per Response: 1.

Total Estimated Burden: 754.

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 information technology, *e.g.,* permitting electronic submission of responses.

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.

Dated: March 13, 2019.

Vance T. Morris,

Special Assistant to the Assistant, Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2019–05535 Filed 3–21–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX19EE000101000]

OMB Control Number 1028–0115/Renewal; Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; DOUG D. NEBERT National Spatial Data Infrastructure (NSDI) Champion of the Year Award

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of Information Collection Request (ICR) for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the USGS are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 22, 2019.

ADDRESSES: Send written comments on this ICR to the OMB Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to USGS, Information Collections Clearance Officer, 12201Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0115 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Rich Frazier, FGDC by email at *fgdc@fgdc.gov,* or by telephone at 703–648–5733. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: We, the USGS, in accordance with the Paperwork Reduction Act of 1995, provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on December 21, 2018, 83 FR 65712. No comments were received.

We are again soliciting comments on the proposed ICR that is described

below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Nominations for DOUG D. NEBERT NSDI CHAMPION OF THE YEAR AWARD are accepted from the public and private sector individuals, teams, organizations, and professional societies that are from the United States of America. Nomination packages include three sections: (A) Cover Sheet, (B) Summary Statement, and (C) Supplemental Materials. The cover sheet includes professional contact information. The Summary Statement is limited to two pages and describes the nominee's achievements in the development of an outstanding, innovative, and operational tool, application, or service capability that directly supports the spatial data infrastructures. Nominations may include up to 10 pages of supplemental information such as resume, publications list, and/or letters of endorsement. The award consists of a citation and plaque, which are presented to the recipient at an appropriate public forum by the FGDC Chair. The name of the recipient is also inscribed on a permanent plaque, which is displayed by the FGDC.

The DOUG D. NEBERT NSDI CHAMPION OF THE YEAR AWARD honors a respected colleague, technical visionary, and recognized U.S. national leader in the establishment of spatial data infrastructures that significantly enhance the understanding of our physical and cultural world. The award is sponsored by the FGDC and its purpose is to recognize an individual or a team representing Federal, State, Tribal, regional, and (or) local government, academia, or non-profit and professional organization that has developed an outstanding, innovative, and operational tool, application, or service capability used by multiple organizations that furthers the vision of the NSDI.

Title of Collection: DOUG D. NEBERT NSDI CHAMPION OF THE YEAR AWARD.

OMB Control Number: 1028–0115.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State, local, and tribal governments; academia, and non-profit organizations.

Total Estimated Number of Annual Respondents: 10.

Total Estimated Number of Annual Responses: 10.

Estimated Completion Time per Response: 100.

Total Estimated Number of Annual Burden Hours: 100.

Respondent's Obligation: Required to Obtain.

Frequency of Collection: Annually.

Total Estimated Annual Non-hour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Kenneth Shaffer,

Deputy Executive Director, Federal Geographic Data Committee, Core Science Systems.

[FR Doc. 2019–05526 Filed 3–21–19; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZP02000.L14400000.ER0000.19X.AZA–34177]

Notice of Availability for the Sonoran Valley Parkway Project Final Environmental Impact Statement, Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Lower Sonoran Field Office has prepared a Final Environmental Impact Statement (EIS) for the Sonoran Valley Parkway Project (Parkway) and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the Final EIS are available for public inspection at the following locations: BLM Lower Sonoran Field Office, 21605 North 7th Avenue, Phoenix, AZ 85027; Avondale Civic Center Library, 11350 Civic Center Drive, Avondale, AZ 85323; Sam Garcia Western Avenue Library, 495 E Western Avenue, Avondale, AZ 85323; Goodyear Branch Library, 14455 W Van Buren Street C–101, Goodyear, AZ 85338; and Maricopa Public Library, 2700 N Central Avenue Suite 700, Phoenix, AZ 85004. It may also be reviewed on the BLM ePlanning website at *https://go.usa.gov/xP9zF*.

FOR FURTHER INFORMATION CONTACT: Edward J Kender, Lower Sonoran Field Manager, at the previously listed address, telephone 623–580–5500, or email *ekender@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Kender during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question for Mr. Kender. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The City of Goodyear has requested a 250-foot-wide right-of-way (ROW) from the BLM to construct an approximately 15- to 18-mile long, two- to six-lane Parkway in Rainbow Valley, in Maricopa County, Arizona. The project is primarily located on BLM-administered land with smaller sections on State and private land. The BLM's purpose and need for the project is to respond to the application for a ROW grant and decide whether to approve, approve with modifications, or deny the project ROW.

The Parkway would be constructed in phases, beginning with two lanes, with potential future expansions to four and six lanes. Expansion beyond a two-lane Parkway would require further authorizations from the BLM and would be subject to additional environmental review.

The Parkway will provide a direct route in southern Goodyear connecting Rainbow Valley Road to the community of Mobile and State Route 238, and will improve emergency response times. The BLM Preferred and the Applicant

Proposed Alternatives are located almost entirely within the El Paso Natural Gas multi-use utility corridor. The Final EIS addresses in detail the direct, indirect, and cumulative impacts for a suite of alternatives. The BLM identified a portion of Alternative A, the applicant proposed action, in combination with Sub-Alternative G, as the BLM Preferred Alternative. It would be approximately 15 miles long; and include approximately 10 miles of BLM-administered land, 1 mile of State land, and 4 miles of private land.

Sub-Alternative G provides an alternative alignment for approximately 3 miles of Alternative A at the south end of the Parkway. It is the route that has the least impact on resources and infrastructure in the area.

Best management practices, standard operating procedures and application proposed measures to avoid and minimize impacts would be implemented by the applicant during construction, reclamation, and operation of the Parkway. To comply with Section 106 of the National Historic Preservation Act, the BLM consulted with the Arizona State Historic Preservation Office and potentially affected Indian tribes, and executed a Programmatic Agreement to address possible adverse effects from the Parkway.

Comments on the Draft EIS pertained to a variety of issues including: Potential impacts from groundwater drawdown, possible socioeconomic impacts to the local communities, and impacts to wildlife and other natural resources. Substantive comments are addressed in the Final EIS. Public comments resulted in the addition of clarifying text, but did not substantially change the proposed project or alternatives between the Draft and Final EIS.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Edward J. Kender,

Field Manager, Lower Sonoran Field Office.

[FR Doc. 2019–05290 Filed 3–21–19; 8:45 am]

BILLING CODE 4130–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–19X–L14400000.BJ0000; MO#4500131426]

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 Director, Rocky Mountain Region, Billings, 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.

SUPPLEMENTAL INFORMATION: The lands surveyed are:

Principal Meridian, Montana

T. 26 N., R. 46 E.
Secs. 4, 8, and 9.

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. 2019–05421 Filed 3–21–19; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR01016000, XXXR4524KK, RX.411.29361.1010000]

Notice To Reopen the Solicitation Period To Contract for Hydroelectric Power Development on the Bureau of Reclamation's North Unit Main Canal, Deschutes Project, Madras, Oregon

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice to reopen a solicitation period.

SUMMARY: The Bureau of Reclamation is reopening the public notice of intent to contract for hydroelectric power development on the Bureau of Reclamation's North Unit Main Canal, Deschutes Project, Madras, Oregon.

DATES: The solicitation period for the proposals published June 21, 2018 (83 FR 28861), is reopened. Proposals should be received on or before April 22, 2019.

ADDRESSES: You may send eight copies of the written proposal to Mr. Joseph Summers, Regional Power Manager,

Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise ID 83706; telephone (208) 378–5290.

FOR FURTHER INFORMATION CONTACT: Florence Webster, (208) 378–5332, *fwebster@usbr.gov;* or Jake Nink, (208) 378–5090, *jnink@usbr.gov*.

SUPPLEMENTARY INFORMATION: On June 21, 2018, Reclamation published a notice in the **Federal Register** announcing its intent to contract for hydroelectric power development on Reclamation's North Unit Main Canal, Deschutes Project, Madras, Oregon. In response to requests from the applicant, Reclamation is reopening the solicitation period for 30 days for competing proposals.

Dated: March 13, 2019.

Robert Skordas,

Deputy Regional Director, Pacific Northwest Region.

[FR Doc. 2019–05419 Filed 3–21–19; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–19–006]

Government in the Sunshine Act Meeting Notice

TIME AND DATE: March 29, 2019 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 701–TA–488 and 731–TA–1199–1200 (Review) (Larger Residential Washers from Korea and Mexico). The Commission is currently scheduled to complete and file its determinations and views of the Commission by April 17, 2019.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 19, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–05584 Filed 3–20–19; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–19–005]

Government in the Sunshine Act Meeting Notice

TIME AND DATE: March 27, 2019 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 731–TA–929–931 (Third Review) (Silicomanganese from India, Kazakhstan, and Venezuela). The Commission is currently scheduled to complete and file its determinations and views of the Commission by April 12, 2019.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 19, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–05583 Filed 3–20–19; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1088]

Certain Road Construction Machines and Components Thereof; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a final Initial Determination on section 337 violation and a Recommended Determination on remedy and bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, should the Commission find a section 337 violation. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may also be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), provides that if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. 19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting comments on public interest issues raised by the recommended relief, should the Commission find a violation, *i.e.:* (1) A limited exclusion order (''LEO'') against certain road construction machines and components thereof; and (2) a cease and desist order (''CDO'') against each respondent.

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on remedy and bond issued in this investigation on February 14, 2019. Comments should address whether

issuance of the LEO and CDOs in this investigation, should the Commission find a violation, 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 recommended orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainants, their licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainants, complainants' licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the LEO and CDOs would impact consumers in the United States.

Written submissions from the public must be filed no later than close of business on Tuesday, April 2, 2019.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1088'') in a prominent place on the cover page and/or the first page. *See* Handbook on Filing Procedures (*https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.

Issued: March 19, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019–05496 Filed 3–21–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by May 21, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Anatoli Sznoluch by telephone at 202–693–3176, TTY1–877–889–5627 (these are not toll-free numbers), or by email at *Sznoluch.Anatoli@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW, Room S–4524, Washington, DC 20210, by email: *Sznoluch.Anatoli@dol.gov,* or by Fax at 202–693–3975.

FOR FURTHER INFORMATION CONTACT: Contact Kevin Stapleton by telephone at 202–693–3009 (this is not a toll-free number) or by email at *Stapleton.Kevin@dol.gov.*

SUPPLEMENTARY INFORMATION: As part of continuing efforts to reduce paperwork and respondent burden, DOL conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The ETA 538 and ETA 539 reports are submitted weekly and contain information on initial claims and continued weeks claimed for the Unemployment Insurance (UI) program. These figures are important economic indicators. The ETA 538 report provides information that allows UI claims data to be released to the public five days after the close of the reference period. The ETA 539 report contains more detailed weekly claims information including the state's 13-week insured unemployment rate, which determines eligibility for the Extended Benefits program. Section 303(a)(6) of the Social Security Act and 20 CFR 615.15 authorize this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0028.

Submitted comments will also be a matter of public record for this ICR and

posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed.

Form: ETA 538 and ETA 539.

OMB Control Number: 1205–0028.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Both reports once a week.

Total Estimated Annual Responses: 5,512.

Estimated Average Time per Response: 30 minutes per submittal for the ETA 538, 50 minutes per submittal for the ETA 539.

Estimated Total Annual Burden Hours: 3,675 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Molly E. Conway,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2019–05434 Filed 3–21–19; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of H–2A and H–2B Foreign Workers in the United States: Annual Update to Allowable Charges for Agricultural Workers' Meals and for Travel Subsistence Reimbursement, Including Lodging

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The United States Department of Labor (DOL) is issuing this Notice to announce the annual update to: (1) The allowable charges that employers seeking H–2A workers in occupations other than herding or production of livestock on the range may charge their workers when the employer provides three meals per day; and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim under the H–2A and H–2B programs. The Notice also includes a reminder regarding employers' obligations with respect to overnight lodging costs as part of required subsistence.

DATES: This notice is applicable on March 22, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas M. Dowd, Deputy Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, Box PPII 12–200, 200 Constitution Avenue NW, Washington, DC 20210, 202–513–7350 (this is not a toll-free number) or, for individuals with hearing or speech impairments, 1–877–889–5627 (this is the TTY toll-free Federal Information Relay Service number).

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A or H–2B nonimmigrant temporary workers in the United States unless the petitioner has received from DOL an H–2A or H–2B labor certification. *See* 8 CFR 214.2(h)(5) and (h)(6). Both the H–2A and H–2B labor certifications generally provide that: (1) There are not sufficient U.S. workers who are qualified and who will be available to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. *See* 20 CFR 655.1(a) and 655.100.

Allowable Meal Charge

H–2A agricultural employers of workers in occupations other than herding or production of livestock on the range must offer and provide each worker three meals per day or provide the workers free and convenient cooking facilities.[1] *See* § 655.122(g). Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. *Id.* The amount of meal charges is governed by § 655.173.

By regulation, the DOL has established the methodology for determining the maximum amount that H–2A agricultural employers may charge workers for providing them with three meals per day. *See* § 655.173(a). This methodology allows for annual adjustments of the previous year's maximum allowable charge based on the updated Consumer Price Index for All Urban Consumers for Food (CPI–U for Food), not seasonally adjusted. *Id.* The maximum amount employers may charge workers for providing meals is adjusted annually by the 12-month percentage change in the CPI–U for Food for the prior year (*i.e.,* between December of the year just concluded and December of the prior year). *Id.* The Office of Foreign Labor Certification (OFLC) Certifying Officer may also permit an employer to charge workers a higher amount for providing them with three meals a day, if the higher amount is justified and sufficiently documented by the employer, as set forth in § 655.173(b).

The percentage change in the CPI–U for Food between December 2017 and December 2018 was 1.6 percent.[2] Thus, the annual update to the H–2A allowable meal charge is calculated by multiplying the current allowable meal charge ($12.26)[3] by the 12-month percentage change in the CPI–U for Food between December 2017 and December 2018 ($12.26 × 1.016 = $12.46). Accordingly, the updated maximum allowable charge under §§ 655.122(g) and 655.173 is $12.46 per day, and an employer is not permitted to charge a worker more than $12.46 per day unless the OFLC Certifying Officer approves a higher charge, as authorized under § 655.173(b).

[1] H–2A employers must provide workers engaged in herding or the production of livestock on the range meals or food to prepare meals without charge or deposit charge. *See* 20 CFR 655.210(e).

[2] Consumer Price Index—December 2018, published January 11, 2019 at *https://www.bls.gov/news.release/archives/cpi_01112019.pdf.*

[3] In 2018, the maximum allowable charge under 20 CFR 655.122(g) and 655.173 was $12.26 per day. 83 FR 12410 (Mar. 21, 2018).

Reimbursement for Travel-Related Subsistence

Under the following conditions, H–2B and H–2A employers must pay the reasonable travel and subsistence costs, including the costs of meals and lodging, incurred by workers during travel to the worksite from the place from which the worker has come to work for the employer and from the place of employment to the place from which the worker departed to work for the employer, as well as any such costs incurred by the worker incident to obtaining a visa authorizing entry to the U.S. for the purpose of H–2A or H–2B employment. *See* §§ 655.122(h)(1)–(2) and 655.20(j)(1)(i)–(ii). Specifically, an H–2A employer is responsible for providing, paying in advance, or reimbursing a worker for the reasonable costs of daily travel-related subsistence between the employer's worksite and the place from which the worker has come to work for the employer, if the worker completes 50 percent of the work contract period, and must provide (or pay at the time of departure) the worker's return costs, upon the worker completing the contract or being dismissed without cause. *See* § 655.122(h)(1)–(2). Similarly, an H–2B employer is responsible for providing, paying in advance, or reimbursing a worker for the reasonable costs of transportation and daily subsistence between the employer's worksite and the place from which the worker has come to work for the employer, if the worker completes 50 percent of the job order period, and upon the worker completing the job order period or being dismissed early (for any reason), return costs. *See* § 655.20(j)(1)(i)–(ii).

The minimum amount of daily travel subsistence expense for meals, for which a worker is entitled to reimbursement, must be at least as much as the employer would charge for providing the worker with three meals per day during employment (if applicable). In no circumstances may the employer reimburse workers less than the amount permitted under § 655.173(a) (*i.e.,* the current year's daily meal charge amount of $12.46). The maximum amount an employer is required to reimburse workers for daily travel-related subsistence, as evidenced with receipts, is equal to the standard Continental United States (CONUS) per diem rate, as established by the General Services Administration (GSA) at 41 CFR part 301, formerly published in Appendix A, and now found at *https://www.gsa.gov/travel/plan-book/per-diem-rates. See, e.g.,* Annual Update to Allowable Charges for Agricultural Workers' Meals and for Travel Subsistence Reimbursement, Including Lodging, 83 FR 12410 (Mar. 21, 2018) (2018 Update). The standard CONUS meals and incidental expenses rate is $55.00 per day for 2019.[4] Workers who qualify for travel reimbursement are entitled to reimbursement for meals up to the standard CONUS meals and incidental expenses rate when they provide receipts. In determining the appropriate amount of reimbursement for meals for less than a full day, the employer may limit the meal expense reimbursement, with receipts, to 75 percent of the maximum reimbursement for meals, or $41.25, based on the GSA per diem schedule. *See, e.g.,* 2018 Update, 83 FR at 12411. If a worker does not provide receipts, the employer is not obligated to reimburse above the minimum stated at § 655.173, as specified above.

If transportation and lodging are not provided by the employer, the amount an employer must pay for transportation and, where required, lodging, must be no less than (and is not required to be more than) the most economical and reasonable costs. The employer is responsible for those costs necessary for the worker to travel to the worksite if the worker completes 50 percent of the work contract period but is not responsible for unauthorized detours. The employer also is responsible for the costs of return transportation and subsistence, including lodging costs where necessary, as described above. These requirements apply equally to instances where the worker is traveling within the U.S. to the employer's worksite. *See* §§ 655.122(h)(1)–(2) and 655.20(j)(1)(i)–(ii).

For further information on when the employer is responsible for lodging costs, please see the DOL's H–2A Frequently Asked Questions on Travel and Daily Subsistence, which may be found on the OFLC website: *https://www.foreignlaborcert.doleta.gov/.*

Molly E. Conway,

Acting Assistant Secretary, Employment and Training Administration.

[FR Doc. 2019–05442 Filed 3–21–19; 8:45 am]

BILLING CODE 4510–FN–P

[4] Maximum Per Diem Reimbursement Rates for the Continental United States (CONUS), 83 FR 42501 (August 22, 2018); *see also https://www.gsa.gov/travel/plan-book/per-diem-rates/mie-breakdown.*

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Self-Insurance Under the Black Lung Benefits Act; Office of the Secretary

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) proposal titled, ''Application for Self-Insurance Under the Black Lung Benefits Act,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 22, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201901–1240–008* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the Application for Self-Insurance Under the Black Lung

Benefits Act information collection. This information collection is essential to the mission of OWCP's Division of Coal Mine Workers' Compensation, which administers the BLBA. The statute grants the Department authority to authorize and regulate coal mine operators who wish to self-insure their BLBA liabilities. This information collection would provide OWCP with sufficient information to determine whether a coal mine operator should be (or continue to be) authorized to self-insure. The information would also allow OWCP to determine the security amount a coal mine operator must deposit to guarantee that it will be able to meet its BLBA liabilities. The Black Lung Benefits Act authorizes this information collection. *See* 30 U.S.C. 933.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on October 30, 2017.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201901–1240–008. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Application for Self-Insurance Under the Black Lung Benefits Act.

OMB ICR Reference Number: 201901–1240–008.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 318.

Total Estimated Annual Time Burden: 283 hours.

Total Estimated Annual Other Costs Burden: $145.

Authority: 44 U.S.C. 3507(a)(1)(D).

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2019–05475 Filed 3–21–19; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Coal Mine Workers' Compensation; Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning a proposed extension of the existing collection: Disclosure of Medical Evidence. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 21, 2019.

ADDRESSES: You may submit comments by mail, delivery service, or by hand to Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW, Room S–3323, Washington, DC 20210; by fax (202) 354–9647; or by Email to *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail/delivery, fax, or Email). Please note that comments submitted after the comment period will not be considered.

SUPPLEMENTARY INFORMATION:

I. Background

The Department's regulations implementing the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* require parties to exchange all medical information about the miner they develop in connection with a claim for benefits, including information the parties do not intend to submit as evidence in the claim. See 20 CFR 725.413. The rule helps protect a miner's health, assist unrepresented parties, and promote accurate benefit determinations.

The potential parties to a BLBA claim include the benefits claimant, the responsible coal mine operator and its insurance carrier, and the Director, Office of Workers' Compensation Programs (OWCP). Under this rule, a party or a party's agent who receives medical information about the miner must send a copy to all other parties within 30 days after receipt or, if a hearing before an administrative law judge has already been scheduled, at least 20 days before the hearing. The exchanged information is entered into the record of the claim only if a party submits it into evidence. The Department's authority to engage in information collection is specified in BLBA sections 413(b), 422(a), and 426(a). See 30 U.S.C. 923(b), 932(a), and 936(a). This information collection is currently approved for use through May 31, 2019.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions:

The Department of Labor seeks approval for the extension of this currently-approved information collection. The collection is necessary to give miners full access to information about their health, assist unrepresented claimants, and reach accurate benefit determinations under the BLBA.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Disclosure of Medical Evidence.

OMB Number: 1240–0054.

Affected Public: Individuals or households.

Total Respondents: 7,465.

Total Annual Responses: 7,465.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 1,244 hours.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $8,659.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 19, 2019.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2019–05524 Filed 3–21–19; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (19–010)]

National Space Council Users' Advisory Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the National Space Council Users' Advisory Group (UAG). This will be the third meeting of the UAG.

DATES: Monday, April 8, 2019, from 1:00 p.m.–3:00 p.m., Mountain Time.

ADDRESSES: The Broadmoor Hotel, International Center, 21 Lake Circle, Colorado Springs, CO 80906.

FOR FURTHER INFORMATION CONTACT: Mr. Brandon Eden, UAG Designated Federal Officer/Executive Secretary, NASA Headquarters, Washington, DC 20546, (202) 358–2470 or *brandon.t.eden@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be open to the public via teleconference and WebEx. You must use a touch-tone phone to participate in this meeting telephonically. Any interested person may dial the Toll Free Number 888–566–6150 and then the numeric passcode 1725248, followed by the # sign. **Note:** If dialing in, please ''mute'' your phone. To join via WebEx, the link is: *https://nasaenterprise.webex.com/nasaenterprise/onstage/g.php?MTID=e60aca667e6bc1c470401c174a95b6eae.* The meeting number on April 8 is 907 418 615 and the meeting password is 5mXNcyk@(case sensitive). Those wishing to attend in person will be asked to complete a free registration via a link that will be available on the UAG website. This step is necessary to ensure a smooth entry process, manage room capacity, and assist with security at the 35th Space Symposium taking place concurrently with the UAG meeting. Members of the public wishing to attend in person are asked to complete their free registration no later than 24 hours in advance of the meeting. Separate registration for the Space Symposium itself is not required to attend the meeting.

The agenda for the meeting will include the following:

—Opening Remarks by UAG Chairman
—Deliberation of Proposed Findings and Recommendations from Selected Subcommittees
—Remarks on Space Force by Invited Speakers
—Remarks on Spectrum Use by Invited Speakers
—Other UAG Business and Public Input

Attendees will be requested to identify themselves and their organization prior to joining by teleconference or WebEx, and will be asked to sign a register prior to entering the meeting room in person. For further information about the UAG, agenda updates, and registration, visit the UAG website at: *https://www.nasa.gov/content/national-space-council-users-advisory-group.* It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2019–05531 Filed 3–21–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Vendor Registration Form

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before May 21, 2019 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collections to the Mackie Malaka, National Credit Union Administration, 1775 Duke Street, Suite 6058, Alexandria, Virginia 22314, or email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed Mackie Malaka at the address above or telephone (703) 548–2704.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0185.

Title: NCUA Vendor Registration Form.

Form: NCUA Form 1772.

Abstract: Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act) (Pub. L. 111–203) calls for agencies to promote the inclusion of minority and women-owned firms in their business activities. The Act also requires agencies to annually report to Congress the total amounts paid to minority and women-owned businesses. In order for NCUA to

comply with this Congressional mandate, NCUA 1772 is used to collect certain information from its current and potential vendors, so that it can identify businesses that meet the criteria. The vendor information is to be submitted to the agency on a one-time basis and will be used to assign an ownership status to the vendor (*i.e.,* minority-owned business, woman-owned business) per the requirements of the Act. Once an ownership status is assigned to each vendor, NCUA will be able to calculate the total amounts of contracting dollars paid to minority-owned and women-owned businesses.

Type of Review: Extension of a currently approved collection.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated No. of Respondents: 200.

Estimated Annual Frequency: 1.

Estimated Annual Number of Responses: 200.

Estimated Burden Hours per Response: 10 minutes.

Estimated Total Annual Burden Hours: 33.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on March 19, 2019.

Dated: March 19, 2019.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2019–05516 Filed 3–21–19; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Engineering #1170.

Date and Time: April 17, 2019; 12:30 p.m. to 5:50 p.m.; April 18, 2019; 8:30 a.m. to 12:45 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Room E2030, Alexandria, Virginia 22314.

Type of Meeting: Open.

Contact Person: Evette Rollins, National Science Foundation, 2415 Eisenhower Avenue, Suite C14000, Alexandria, Virginia 22314; 703–292–8300.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda

Wednesday, April 17, 2019

- Directorate for Engineering Report
- NSF Budget Update
- Reports from Advisory Committee Liaisons
- Stopping Harassment
- Diversity and Inclusion

Thursday, April 18, 2019

- Synthetic Biology
- NSF Big Idea: Understanding the Rules of Life (URoL)
- Perspectives from the Director's Office
- International Partnerships and MULTIPLIERS
- Roundtable on Strategic Recommendations for ENG

Dated: March 19, 2019.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2019–05476 Filed 3–21–19; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed reinstatement submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

DATES: Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification.

FOR FURTHER INFORMATION CONTACT: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW, Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission(s) may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF 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.

Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Title of Collection: Survey of Earned Doctorates.

OMB Number: 3145–0019.

Type of Request: Intent to seek approval to extend, with revisions, an information collection.

Abstract:

Summary of Collection: The authority to collect information for the Survey of

Earned Doctorates (SED) is established under the National Science Foundation Act of 1950, as amended, Public Law 507 (42 U.S.C. 1862), Section 3(a)(6), which directs the NSF ''. . . to provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formation by other agencies of the federal government.'' The NCSES was established within NSF by Section 505 of the America COMPETES Reauthorization Act of 2010 and given a broader mandate to collect data related to STEM education, the science and engineering workforce, and U.S. competitiveness in science, engineering, technology, and Research and Development. The SED is part of an integrated survey system that fulfills the education and workforce components of this mission.

The SED has been conducted annually since 1958 and is jointly sponsored by four Federal agencies (NSF/NCSES, National Institutes of Health, U.S. Department of Education/ National Center for Education Statistics, and National Endowment for the Humanities) to avoid duplication of effort in collecting such data. It is an accurate, timely source of information on an important national resource—individuals with research doctorates. Data are obtained via Web survey or paper questionnaire from each person earning a research doctorate at the time they receive the degree. Graduate schools help distribute the SED to their graduating doctorate recipients. Data are collected on the doctorate recipient's field of specialty, educational background, sources of financial support in graduate school, debt level, postgraduation plans for employment, and demographic characteristics.

The survey will be collected in conformance with the NSF Act of 1950, as amended, and the Privacy Act of 1974. Responses from individuals are voluntary. NCSES will ensure that all individually identifiable information collected will be kept strictly confidential and will be used for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

Use of the Information: The Federal government, universities, researchers, and others use the information extensively. NCSES, as the lead agency, publishes statistics from the survey in several reports, but primarily in the annual publication series, ''Doctorate Recipients from U.S. Universities.'' These reports are available on the Web. NCSES also uses this information to prepare congressionally mandated reports such as *Science and Engineering Indicators* and *Women, Minorities and Persons with Disabilities in Science and Engineering.*

Expected Respondents: The SED is a census of all individuals receiving a research doctorate in the U.S. in an academic year (AY). An estimated annual average of 56,764 individuals are expected to receive a research doctorate in AY 2020 (1 July 2019–30 June 2020) and AY 2021 (1 July 2020–30 June 2021). Using the target response rate of 91% for the research doctorate recipients, the number of annual respondents is estimated to be 51,655. Additionally, SED requires collection of administrative data from an annual average of 619 Institutional Coordinators among approximately 450 doctorate-granting institutions.

Estimate of Burden: Based on the average Web survey completion time of 20 minutes, the annual respondent burden for completing the SED is estimated at 17,218 hours. Based on focus groups conducted with Institutional Coordinators, which estimated approximately 20 hours for responding to SED requested administrative data over the course of a year. Therefore, the estimated annual burden to Institutional Coordinators is 12,380 hours. Therefore, the total annual estimated burden for the SED is 29,598 hours.

Comment: On 29 October 2018 we published in the **Federal Register** (83 FR 209) a 60-day notice of our intent to request reinstatement of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending 28 December 2018. No comments were received from the public.

Dated: March 18, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–05457 Filed 3–21–19; 8:45 am]

BILLING CODE 7555–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

[DFC–001; DFC–002; DFC–003; DFC–004, DFC–005, DFC–006, DFC–007; DFC–009; DFC–010; DFC–012]

Submission for OMB Review; Comments Request

AGENCY: US International Development Finance Corporation (DFC), Overseas Private Investment Corporation (OPIC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is creating a new information collection for OMB review and approval and requests public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: DFC intends to begin use of these collections on October 1, 2019. Comments must be received by May 21, 2019.

ADDRESSES: Comments and requests for copies of the subject information collections may be sent by any of the following methods:

- *Mail:* Catherine F. I. Andrade, Agency Submitting Officer, Overseas Private Investment Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@opic.gov.*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for the referenced information collection(s). Electronic submissions must include the full agency form number(s) in the subject line to ensure proper routing (*e.g.,* ''DFC–002 and DFC–003''). Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Catherine Andrade, (202) 336–8768.

SUPPLEMENTARY INFORMATION: The Better Utilization of Investments Leading to Development (BUILD) Act of 2018, Public Law 115–254 creates the U.S. International Development Finance Corporation (DFC) by bringing together the Overseas Private Investment Corporation (OPIC) and the Development Credit Authority (DCA) office of the U.S. Agency for International Development (USAID). Section 1465(a) of the Act tasks OPIC staff with assisting DFC in the transition. Section 1466(a)–(b) provides that all completed administrative actions and all pending proceedings shall continue through the transition to the DFC. Accordingly, OPIC is issuing this Paperwork Reduction Act notice and request for comments on behalf of the DFC.

Summary Forms Under Review

Title of Collection: Application for Debt Finance.

Type of Review: New information collection.

Agency Form Number: DFC–001.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 220.

Estimated Time per Respondent: 1.5 hours.

Total Estimated Number of Annual Burden Hours: 330 hours.

Abstract: The Application for Debt Finance will be the principal document used by the agency to determine the investor's and the project's eligibility for debt financing and will collect information for financial underwriting analysis.

Title of Collection: Registration for Political Risk Insurance.

Type of Review: New information collection.

Agency Form Number: DFC–002.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 175.

Estimated Time per Respondent: 0.5 hours.

Total Estimated Number of Annual Burden Hours: 87.5 hours.

Abstract: The Registration for Political Risk Insurance will be used by the agency to screen investors and projects for political risk insurance. Investors will be asked to register their intention to apply for insurance prior to making an irrevocable investment. DFC–002 will serve as proof of this intention and any investments made prior to the submission of a DFC–002 may be ineligible for political risk insurance from the agency.

Title of Collection: Application for Political Risk Insurance.

Type of Review: New information collection.

Agency Form Number: DFC–003.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 45.

Estimated Time per Respondent: 3 hours.

Total Estimated Number of Annual Burden Hours: 135 hours.

Abstract: The Application for Political Risk Insurance will be the principal document used by the agency to determine the investor's and the project's eligibility for political risk insurance and will collect information for underwriting analysis.

Title of Collection: Investment Funds Application.

Type of Review: New information collection.

Agency Form Number: DFC–004.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 150.

Estimated Time per Respondent: 1 hour.

Total Estimated Number of Annual Burden Hours: 150 hours.

Abstract: The Investment Funds Application will be the principal document used by the agency to determine the investor's and the project's eligibility for funding and will collect information for underwriting analysis.

Title of Collection: Personal Financial Statement.

Type of Review: New information collection.

Agency Form Number: DFC–005.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per investor per project.

Affected Public: Individuals.

Total Estimated Number of Annual Number of Respondents: 75.

Estimated Time per Respondent: 1 hour.

Total Estimated Number of Annual Burden Hours: 75 hours.

Abstract: The Personal Financial Statement will be supporting documentation to the agency's Application for Debt Financing (DFC–001). The information provided will be used by the agency to determine if individuals who are providing equity investment in or credit support to a project have sufficient financial wherewithal to meet their expected obligations under the proposed terms of the agency's financing.

Title of Collection: Personal Identification Form.

Type of Review: New information collection.

Agency Form Number: DFC–006.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per party per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 500.

Estimated Time per Respondent: 1 hour.

Total Estimated Number of Annual Burden Hours: 500 hours.

Abstract: The Personal Identification Form will used by the agency in its Character Risk Due Diligence procedures, which are similar to a commercial bank's Know Your Customer procedures. The agency will perform a robust due diligence review on each party that has a significant relationship to the projects the agency supports and this collection is one aspect of that review.

Title of Collection: DFC Impact Assessment Questionnaire.

Type of Review: New information collection.

Agency Form Number: DFC–007.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 230.

Estimated Time per Respondent: 2.8 hours.

Total Estimated Number of Annual Burden Hours: 644 hours.

Abstract: The DFC Impact Assessment Questionnaire is the principal document used by the agency to initiate the assessment of the project's development impact, as well as the project's ability to comply with environmental and social policies, including labor and human rights, as consistent with the agency's authorizing legislation.

Title of Collection: Aligned Capital Investor Screener.

Type of Review: New information collection.

Agency Form Number: DFC–009.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per investor.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals; federal government.

Total Estimated Number of Annual Number of Respondents: 50.

Estimated Time per Respondent: 0.33 hours.

Total Estimated Number of Annual Burden Hours: 16.5 hours.

Abstract: The Aligned Capital Investor Screener is a document used to

screen potential investors interested in participating in the agency's Aligned Capital Program and, if they qualify, to place their information into the program. The Aligned Capital Program is designed to align development finance with other capital, including philanthropic, socially responsible and impact investment, to enable effective deployment of that capital towards projects in the countries and sectors in which the agency works. In order to participate, investors must meet the specified criteria.

Title of Collection: Aligned Capital Investee Opt-in.

Type of Review: New information collection.

Agency Form Number: DFC–010.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit.

Total Estimated Number of Annual Number of Respondents: 75.

Estimated Time per Respondent: 0.5 hours.

Total Estimated Number of Annual Burden Hours: 37.5 hours.

Abstract: The Aligned Capital Investee Opt-In is a document used by companies seeking investments or grant funding to place their information into the agency's Aligned Capital Program. The Aligned Capital Program is designed to align development finance with other capital, including philanthropic, socially responsible and impact investment, to enable effective deployment of that capital towards projects in the countries and sectors in which the agency works.

Title of Collection: Economic Questionnaire.

Type of Review: New information collection.

Agency Form Number: DFC–012.

OMB Form Number: Not assigned, new information collection.

Frequency: One per investor per project per year (as needed).

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 50.

Estimated Time per Respondent: 2 hours.

Total Estimated Number of Annual Burden Hours: 100 hours.

Abstract: The Economic Questionnaire is to be used on an as needed basis to collect information about potential exports of DFC-supported projects.

Dated: March 18, 2019.

Dev Jagadesan,

Deputy General Counsel, Department of Legal Affairs.

[FR Doc. 2019–05436 Filed 3–21–19; 8:45 am]

BILLING CODE 3210–01–P

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System Board of Actuaries Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Civil Service Retirement System Board of Actuaries plans to meet at 10 a.m., on Thursday, April 11, 2019. The purpose of the meeting is for the Board to review the actuarial methods and assumptions used in the valuations of the Civil Service Retirement and Disability Fund (CSRDF).

DATES: The meeting will be April 11, 2019 at 10 a.m.

ADDRESSES: U.S. Office of Personnel Management (OPM), 1900 E Street NW, Room 4351, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Gregory Kissel, Senior Actuary for Pension Programs, U.S. Office of Personnel Management, 1900 E Street NW, Room 4316, Washington, DC 20415. Phone (202) 606–0722 or email at *actuary@opm.gov*.

SUPPLEMENTARY INFORMATION:

Agenda

1. Summary of recent and proposed legislation and regulations
2. Review of actuarial assumptions
3. CSRDF Annual Report

Persons desiring to attend this meeting of the Civil Service Retirement System Board of Actuaries, or to make a statement for consideration at the meeting, should contact OPM at least 5 business days in advance of the meeting date at the address shown below. Any detailed information or analysis requested for the Board to consider should be submitted at least 15 business days in advance of the meeting date. The manner and time for any material presented to or considered by the Board may be limited.

For the Board of Actuaries.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2019–05418 Filed 3–18–19; 4:15 pm]

BILLING CODE 6325–63–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85344; File No. SR–EMERALD–2019–12]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 515A, MIAX Emerald Price Improvement Mechanism (''PRIME'') and PRIME Solicitation Mechanism

March 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 515A, MIAX Emerald Price Improvement Mechanism (''PRIME'') and PRIME Solicitation Mechanism.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 515A, MIAX Emerald Price Improvement Mechanism (''PRIME'') and PRIME Solicitation Mechanism. Specifically, the Exchange proposes to amend Rule 515A to harmonize the rule text to Rule 515A of MIAX Options.[3]

Background

MIAX Emerald commenced operations as a national securities exchange registered under Section 6 of the Act[4] on March 1, 2019. As described more fully in MIAX Emerald's Form 1 application,[5] the Exchange is an affiliate of Miami International Securities Exchange, LLC (''MIAX Options'') and MIAX PEARL, LLC (''MIAX PEARL''). MIAX Emerald Rules, in their current form, were filed as Exhibit B to its Form 1 on August 16, 2018, and at that time, the MIAX Emerald Rule 515A was substantially similar to the rule of MIAX Options Rule 515A. In the time between when the Exchange filed its Form 1 and the time the Exchange's application for registration as a national securities exchange was granted,[6] MIAX Options made changes to its rule 515A.[7] In order to ensure consistent operation of both MIAX Emerald and MIAX Options through having consistent rules, the Exchange proposes to amend the MIAX Emerald Rule to adopt identical rule text from MIAX Options Rule 515A as described below.

Proposal

The Exchange proposes to amend Rule 515A, Interpretation and Policy .12, PRIME for Complex Orders. The current rule provides that, ''. . . the provisions of Rule 515A(a) . . . shall be applicable to the trading of complex orders (as defined in Rule 518) on PRIME. The Exchange will determine, on a class-by-class basis, the option classes in which complex orders are available for trading on PRIME on the Exchange, and will announce such classes to Members[8] via Regulatory Circular.'' The Exchange now proposes to replace the word ''on'' which precedes ''PRIME'' with the phrase ''in the'' to more accurately describe Exchange functionality and maintain consistency with how the functionality is described in other areas of the rule.[9]

The Exchange also proposes to amend Rule 515A, Interpretation and Policy .12(d), to organize the rule for clarity and ease of reference and to codify two additional scenarios describing conditions which will terminate a cPRIME Auction[10] in new proposed subsections (d)(vi) and (d)(vii).[11] Specifically, the Exchange proposes to consolidate current subsection (d)(v) and current subsection (d)(vi) into new subsection (d)(v). Current subsection (d)(v) provides that a cPRIME Auction will terminate if ''a simple order or quote in a component of the strategy on the same side of the market as the cPRIME Agency Order locks or crosses the NBBO for such component.'' Current subsection (d)(vi) similarly provides that a cPRIME Auction will terminate if, ''a simple order or quote in a component of the strategy on the opposite side of the market as the cPRIME Agency Order: (A) locks or crosses the NBBO for such component . . . .''

The Exchange now proposes to combine subsection (d)(v) and (d)(vi) into a single rule under new subsection (d)(v) that provides that a cPRIME Auction will terminate if, ''a simple order or quote in a component of the strategy on either side of the market as the cPRIME Agency Order locks or crosses the NBBO for such component;''. The proposed change simplifies the rule text and clarifies two similar scenarios that will terminate a cPRIME Auction when interest is received on either side of the market as the cPRIME Agency Order. The Exchange believes that the proposed changes promote the protection of investors and the public interest by improving the accuracy and precision of the Exchange's rules.

Additionally, the Exchange proposes to adopt new subsections (d)(vi) and (d)(vii) to include additional scenarios that will cause a cPRIME Auction to terminate when interest is received on the same or opposite side of the market, respectively, as the cPRIME Agency Order. Specifically, proposed subsection (d)(vi) will provide that a cPRIME Auction shall conclude at the earlier of the end of the RFR period,[12] or when ''a simple order or quote in a component of the strategy, eligible to rest on the Simple Order Book,[13] is received on the same side of the market as the cPRIME Agency Order and causes the icEBBO[14] to lock or cross the best price opposite the cPRIME Agency Order;'' This provision ensures that a cPRIME Agency Order will always receive the best price[15] on the Exchange while simultaneously preserving the integrity of the simple market by preventing orders executed in a cPRIME Auction from possibly trading through the Exchange's simple market.

An example of this scenario is illustrated below.

Example 1—A simple order or quote on the same side as the Agency Order causes the icEBBO to equal the best price opposite the Agency Order

MIAX Emerald—LMM[16] Mar 50 Call 5.80–6.30 (10x10)

MIAX Emerald—LMM Mar 55 Call 2.90–3.30 (10x10)

Strategy: Buy 1 Mar 50 Call, Sell 1 Mar 55 Call

The icEBBO is 2.50 debit bid and 3.40 credit offer

The Exchange receives a cPRIME Order with the cPRIME Agency Order representing the purchase of the Strategy at a net debit of 3.00, 500 times. (Auto-match is not enabled and there are no orders for the Strategy on the Strategy Book.)[17]

Since the order price is at least $0.01 better than (inside) the icEBBO and the best net price of any order for the Strategy on the Strategy Book, a cPRIME Auction can begin.

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[3] *See* Securities Exchange Act Release No. 84519 (November 1, 2018), 83 FR 55776 (November 7, 2018) (SR–MIAX–2018–27).

[4] 15 U.S.C. 78f.

[5] *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (order approving the application of MIAX Emerald for registration as a national securities exchange.)

[6] *See Id.*

[7] *See supra* note 3.

[8] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[9] *See* Exchange Rule 515A.01, 515A.03, and 515A.04, which references usage of ''the PRIME.''

[10] *See* Exchange Rule 515A.12(a).

[11] The Exchange notes that the proposed changes are identical to changes made by MIAX Options. *See supra* note 3.

[12] *See* Exchange Rule 515A.12(d)(i).

[13] The term ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[14] The term ''icEBBO'' means the Implied Complex MIAX Emerald Best Bid or Offer. The icEBBO is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed trading interest. *See* Exchange Rule 518(a)(12).

[15] The best price for an Agency Order to buy (sell) is the lowest offer (highest bid) on the Exchange, comprised of all available interest.

[16] The term ''Lead Market Maker'' means a Member registered with the Exchange for the purposes of making markets in securities traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange's Rules with respect to Lead Market Makers. *See* Exchange Rule 100.

[17] The term ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

A Request for Responses (''RFR'') is broadcast to all subscribers and the RFR period is started.

The following responses are received:

- @50 milliseconds BD1 response, cAOC Order [18] @2.95 credit sell of 100 arrives
- @70 milliseconds MM1 response, cAOC eQuote [19] @2.98 credit sell of 500 arrives

The cPRIME Auction process will continue until the Response Time Interval [20] ends or an event eligible to cause the cPRIME Auction to end sooner occurs.

- @85 milliseconds a simple order bid to pay 6.25 for 10 MAR 50 Calls arrives

The icEBBO is now 2.95 debit bid and 3.40 credit offer. Since the bid side of the icEBBO is now equal to the best price opposite the Agency Order [BD1 response, 2.95 credit sell of 100], the cPRIME Auction is concluded prior to the end of the Response Time Interval.

The cPRIME Auction process will trade the cPRIME Agency Order with the best priced responses. The cPRIME Agency order will be filled as follows: [21]

- The cPRIME Agency Order buys 100 from BD1 @2.95
- The cPRIME Agency Order buys 400 from MM1 @2.98

Similarly, proposed subsection (d)(vii) will provide that a cPRIME Auction shall conclude at the earlier of the end of the RFR period or if, ''a simple order or quote in a component of the strategy, eligible to rest on the Simple Order Book, is received on the opposite side of the market from the cPRIME Agency Order and causes the icEBBO to lock or cross the initiating price.'' This provision ensures that a cPRIME Agency Order will always receive the best price on the Exchange while simultaneously preserving the integrity of the simple market by preventing orders executed in a cPRIME Auction from possibly trading through the Exchange's simple market.

An example of this scenario is illustrated below.

Example 2—A simple order or quote on the opposite side from the Agency Order causes the icEBBO to equal the initiating price

MIAX Emerald—LMM Mar 50 Call 5.80–6.30 (10x10)

MIAX Emerald—LMM Mar 55 Call 2.90–3.30 (10x10)

Strategy: Buy 1 Mar 50 Call, Sell 1 Mar 55 Call

The icEBBO is 2.50 debit bid and 3.40 credit offer

The Exchange receives a cPRIME Order with the cPRIME Agency Order representing the purchase of the Strategy at a net debit of 3.00, 500 times. (Auto-match is not enabled and there are no orders for the Strategy on the Strategy Book.)

Since the order price is at least $0.01 better than (inside) the icEBBO and the best net price of any order for the Strategy on the Strategy Book, a cPRIME Auction can begin.

An RFR is broadcast to all subscribers and the RFR period is started.

The following responses are received:

- @40 milliseconds BD1 response, cAOC Order @2.95 credit sell of 100 arrives
- @50 milliseconds MM1 response, cAOC eQuote @2.98 credit sell of 500 arrives

The cPRIME Auction process will continue until the Response Time Interval ends or an event eligible to cause the cPRIME Auction to end sooner occurs.

- @75 milliseconds a simple order offer to sell 10 MAR 50 Calls @5.90 arrives

The icEBBO is now 2.50 debit bid and 3.00 credit offer. Since the offer side of the icEBBO is now equal to the initiating price, the cPRIME Auction is concluded prior to the end of the Response Time Interval.

The cPRIME Auction process will trade the cPRIME Agency Order with the best priced responses. The cPRIME Agency order will be filled as follows:

- The cPRIME Agency Order buys 100 from BD1 @2.95
- The cPRIME Agency Order buys 400 from MM1 @2.98

The Exchange believes that terminating a cPRIME Auction when these conditions are present ensures that the execution of the cPRIME Agency Order improves the best price on the Exchange at the time of receipt, and that there is no interference between the simple and complex markets. (The System [22] will reject cPRIME Agency Orders submitted with an initiating price that is equal to or worse than (outside) the icEBBO or any other complex orders on the Strategy Book.) [23] This provision ensures that a cPRIME Agency Order will always receive the best price on the Exchange while simultaneously preserving the integrity of the simple market by preventing orders executed in a cPRIME Auction from possibly trading through the Exchange's simple market. The Exchange believes that including these scenarios in the rules will provide additional detail concerning the operation of cPRIME Auctions and the conditions which will terminate a cPRIME Auction. The Exchange believes that the proposed changes will provide greater clarity to Members and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and concise so as to minimize the potential for confusion.

2. Statutory Basis

The Exchange believes that its proposed rule changes are consistent with Section 6(b) of the Act [24] in general, and furthers the objectives of Section 6(b)(5) of the Act [25] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because they seek to add additional detail to, and improve the accuracy of, the Exchange's rules. In particular, the Exchange believes that the proposed rule changes will provide clarity and transparency to the Exchange's rules to Members and the public, and it is in the public interest for rules to be accurate and concise so as to minimize the potential for confusion.

The Exchange believes that including additional scenarios which will terminate a cPRIME Auction promotes just and equitable principles of trade and removes impediments to a free and open market by providing greater

[18] A Complex Auction-or-Cancel or ''cAOC'' Order is a complex limit order used to provide liquidity during a specific Complex Auction with a time in force that corresponds with that event. cAOC Orders are not displayed to any market participant, and are not eligible for trading outside of the event. *See* Exchange Rule 518(b)(3).

[19] A ''Complex Auction or Cancel eQuote'' or ''cAOC eQuote,'' which is an eQuote submitted by a Market Maker that is used to provide liquidity during a specific Complex Auction with a time in force that corresponds with the duration of a Complex Auction. *See* Exchange Rule 518.02(c)(1).

[20] The ''Response Time Interval'' means the period of time during which responses to the RFR may be entered. *See* Exchange Rule 518(d)(3).

[21] *See* Exchange Rule 515A(a)(2)(iii).

[22] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[23] *See* Exchange Rule 515A, Interpretation and Policy .12(a)(i).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

transparency concerning the operation of Exchange functionality. This provision ensures that a cPRIME Agency Order will always receive the best price on the Exchange while simultaneously preserving the integrity of the simple market.

Additionally, the Exchange believes that although MIAX Emerald rules may, in certain instances, intentionally differ from MIAX Options rules, the proposed changes will promote uniformity with MIAX Options with respect to rules that are intended to be identical. MIAX Emerald and MIAX Options may have a number of Members in common, and where feasible the Exchange intends to implement similar behavior to provide consistency between MIAX Options and MIAX Emerald so as to avoid confusion among Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to promote competition by improving the efficiency of handling cPRIME Agency Orders on the Exchange. The Exchange believes that this enhances intermarket competition by enabling the Exchange to compete for this type of order flow with other exchanges that have similar rules and functionality in place.

The Exchange does not believe the proposal will impose any burden on intra-market competition as the Exchange's rules apply equally to all Members of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [26] and Rule 19b–4(f)(6) [27] thereunder.

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–EMERALD–2019–12 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–EMERALD–2019–12. 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–EMERALD–2019–12 and should be submitted on or before April 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Deputy Secretary.

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[26] 15 U.S.C. 78s(b)(3)(A).

[27] 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.

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85345; File No. SR–EMERALD–2019–13]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders

March 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 518, Complex Orders, to implement identical functionality currently operative on one of the Exchange's affiliates, Miami International Securities Exchange, LLC (''MIAX Options'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald* at MIAX Emerald's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 518, Complex Orders, to implement stock-option trading on the Exchange in an identical fashion, and with an identical rule, as MIAX Options.[3] MIAX Emerald commenced operations as a national securities exchange registered under Section 6 of the Act[4] on March 1, 2019. As described more fully in MIAX Emerald's Form 1 application,[5] the Exchange is an affiliate of Miami International Securities Exchange, LLC (''MIAX Options'') and MIAX PEARL, LLC (''MIAX PEARL''). MIAX Emerald Rules, in their current form, were filed as Exhibit B to its Form 1 on August 16, 2018. At that time stock-option orders as described in MIAX Options Rule 518 were being implemented on the MIAX Options Exchange and MIAX Options Rule 518 was undergoing revisions to support the implementation and trading of stock-option orders, therefore the revised MIAX Options rule[6] was not included in the Exchange's Form 1 filing. In order to ensure consistent operation of both MIAX Emerald and MIAX Options through having consistent rules, the Exchange now proposes to amend the MIAX Emerald Rule as described below.

Proposal

Complex orders began trading on MIAX Options on October 24, 2016.[7] In its rule filing to establish the trading of complex orders, MIAX Options adopted rules for handling stock-option orders.[8] MIAX Options filed SR–MIAX–2018–16[9] to update its rule text regarding stock-option orders in connection with the launch of such orders on the MIAX Options Exchange. MIAX Emerald now proposes to amend Exchange Rule 518, to adopt the identical provisions from the MIAX Options rulebook for handling stock-option orders that are currently in place on MIAX Options, in order to align stock-option trading on MIAX Emerald to MIAX Options.

In particular, the Exchange is proposing to (i) amend the definition of complex orders to add a stock-option order definition; (ii) amend the definition of Displayed Complex MIAX Emerald Best Bid or Offer (''dcEBBO'') and Implied Complex MIAX Emerald Best Bid or Offer (''icEBBO'') to add the stock-option order provision; (iii) amend subsection (b)(3) Complex Order Priority, to describe order priority handling for a stock-option order that has only one leg; (iv) adopt Interpretation and Policy .01 to Rule 518 titled, Special Provisions Applicable to Stock-Option Orders, to provide additional detail regarding the trading and regulation of stock-option orders on the Exchange; and (v) make certain minor clarifying edits to existing rule text.

A ''complex order'' is currently defined in Exchange Rule 518 as any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ''legs'' or ''components'' of the complex order),[10] for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options.[11] Only those complex orders in the classes designated by the Exchange and communicated to Members[12] via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing.

The Exchange now proposes to update the definition of a complex order to include stock-option orders. The proposed text will state that, a complex order can also be a ''stock-option order'' as described further, and subject to the limitations set forth in proposed Interpretation and Policy .01 of Rule 518. A stock-option order is an order to buy or sell a stated number of units of an underlying security (stock or Exchange Traded Fund Share (''ETF'')) or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (i) the same number of units of the underlying security or convertible security, or (ii) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying security or convertible security in the option leg to the total number of units of the underlying security or convertible security in the stock leg. Only those stock-option orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing.

The Displayed Complex MIAX Emerald Best Bid or Offer (''dcEBBO'') is calculated using the best displayed price for each component of a complex strategy from the Simple Order Book. The Exchange proposes to update the definition of the dcEBBO to include stock-option orders and proposes to append the following sentence to the existing definition, ''For stock-option orders, the dcEBBO for a complex strategy will be calculated using the Exchange's best displayed bid or offer in the individual option component(s) and the NBBO in the stock component.''

The Implied Complex MIAX Emerald Best Bid or Offer (''icEBBO'') is a calculation that uses the best price from the Simple Order Book for each

[3] *See* MIAX Options Exchange Rule 518.

[4] 15 U.S.C. 78f.

[5] *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange.)

[6] *See* Securities Exchange Act Release No. 83726 (July 27, 2018), 83 FR 37849 (August 2, 2018) (SR–MIAX–2018–16).

[7] *See* MIAX Options Regulatory Circular 2016–43, October 20, 2016.

[8] *See* Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR–MIAX–2016–26).

[9] *See supra* note 6.

[10] The different options in the same underlying security that comprise a particular complex order are referred to as the ''legs'' or ''components'' of the complex order throughout this proposal.

[11] This definition is consistent with other options exchanges. *See e.g.,* CBOE Rule 6.53C(a)(1). *See also* PHLX Rule 1098(a)(i); NYSE MKT Rule 900.3NY(e); and BOX Rule 7240(a)(5).

[12] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

component of a complex strategy including displayed and non-displayed trading interest. The Exchange now proposes to update the definition of the icEBBO to include stock-option orders by appending the following sentence to the end of the current definition, ''For stock-option orders, the icEBBO for a complex strategy will be calculated using the best price (whether displayed or non-displayed) on the Simple Order Book [13] in the individual option component(s), and the national best bid or offer (''NBBO'') in the stock component.''

Current Rule 518(c), Trading of Complex Orders and Quotes, describes the manner in which complex orders will be handled and traded on the Exchange. The Exchange will determine and communicate to Members via Regulatory Circular which complex order origin types (*i.e.,* non-broker-dealer customers, broker-dealers that are not Market Makers on an options exchange, and/or Market Makers on an options exchange) are eligible for entry onto the Strategy Book.[14] The rule also states that complex orders will be subject to all other Exchange Rules that pertain to orders generally, unless otherwise provided in Rule 518(b).

Current Rule 518(c)(2)(iii), Legging, provides that complex orders up to a maximum number of legs (determined by the Exchange on a class-by-class basis as either two or three legs and communicated to Members via Regulatory Circular) may be automatically executed against bids and offers on the Simple Order Book for the individual legs of the complex order (''Legging''), provided that the execution price of each component is not executed at a price that is outside of the NBBO. The current rule also provides that legging is not available for cAOC orders, complex Standard quotes, or complex eQuotes. The Exchange now proposes to amend this sentence to provide that legging is not available for cAOC orders, complex Standard quotes, complex eQuotes, or stock-option orders.

Current Rule 518(c)(3), Complex Order Priority, describes how the System [15] will establish priority for complex orders. The complex order priority structure is based generally on the same approach and structure currently effective on MIAX Emerald respecting priority of orders and quotes in the simple market as established in Exchange Rule 514.[16] A complex order may be executed at a net credit or debit price with one other Member without giving priority to bids or offers established in the marketplace that are no better than the bids or offers comprising such net credit or debit; provided, however, that if any of the bids or offers established in the marketplace consist of a Priority Customer Order, at least one leg of the complex order must trade at a price that is better than the corresponding bid or offer in the marketplace by at least a $0.01 increment.[17] The Exchange now proposes to amend Rule 518(c)(3)(i) to now include stock-option orders to the circumstances described above, if a stock-option order has one option leg, such option leg has priority over bids and offers established in the marketplace by Professional Interest (as defined in Rule 100) [18] and Market Makers with priority quotes [19] that are no better than the price of the options leg, but not over such bids and offers established by Priority Customer Orders. If a stock-option order has more than one option leg, such option legs may be executed in accordance with Rule 518(c)(3)(i).

Stock-Option Orders

The Exchange proposes to adopt Interpretation and Policy .01, Special Provisions Applicable to Stock-Option Orders, to provide detail regarding the trading and regulation of stock-option orders on the Exchange.

The Exchange proposes to adopt new subsection (a) to Interpretation and Policy .01, to provide that stock-option orders may be executed against other stock-option orders through the Strategy Book and Complex Auction. Stock-option orders will not be legged against the individual component legs, and the System will not generate a derived order based upon a stock-option order. A stock-option order shall not be executed on the System unless the underlying security component is executable at the price(s) necessary to achieve the desired net price.

Members may only submit stock-option orders if such orders comply with the Qualified Contingent Trade Exemption from Rule 611(a) of Regulation NMS [20] under the Act. Members submitting such complex orders represent that such orders comply with the Qualified Contingent Trade Exemption.

To participate in stock-option order processing, a Member must give up a Clearing Member previously identified to, and processed by the Exchange as a Designated Give Up for that Member in accordance with Exchange Rule 507 and which has entered into a brokerage agreement with one or more Exchange-designated broker-dealers that are not affiliated with the Exchange to electronically execute the underlying security component of the stock-option order at a stock trading venue selected by the Exchange-designated broker-dealer on behalf of the Member.

The Exchange proposes to adopt new subsection (b), Process, to, Interpretation and Policy .01 to provide that when a stock-option order is received by the Exchange, the System will validate that the stock-option order has been properly marked as required by Rule 200 of Regulation SHO under the Act (''Rule 200'').[21] Rule 200 requires all broker-dealers to mark sell orders of equity securities as ''long,'' ''short,'' or ''short exempt.'' Accordingly, Members submitting stock-option orders must mark the underlying security component (including ETF) ''long,'' ''short,'' or ''short exempt'' in compliance with Rule 200. If the stock-option order is not so marked, the order will be rejected by the System. Likewise, any underlying security component of a stock-option order sent by the Exchange to the Exchange-designated broker-dealer shall be marked ''long,'' ''short,'' or ''short exempt'' in the same manner in which it was received by the Exchange from the submitting Member.

If the stock-option order is properly marked, the System will determine whether the stock-option order is Complex Auction-eligible. If the stock-option order is Complex Auction-

[13] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[14] *See* Rule 518(c). *See also* CBOE Rule 6.53C(c)(i), which states that CBOE will determine which classes and which complex order origin types (*i.e.,* non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange) are eligible for entry into the Complex Order Book.

[15] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[16] Exchange Rule 514, Priority of Quotes and Orders, describes among other things the various execution priority, trade allocation and participation guarantees generally applicable to the Simple Order Book. Some sections of Exchange Rule 514 are cross-referenced herein and will apply as noted to complex orders, as the context requires.

[17] *See* Rule 518(c)(3). *See also,* ISE Rule 722(b)(2), which states that in this situation at least one leg must trade at a price that is better by at least one minimum trading increment, and PHLX Rule 1098(c)(iii), requiring in this situation that at least one option leg is executed at a better price than the established bid or offer for that option contract and no option leg is executed at a price outside of the established bid or offer for that option contract.

[18] The term ''Professional Interest'' means (i) an order that is for the account of a person or entity that is not a Priority Customer or (ii) an order or non-priority quote for the account of a Market Maker. *See* Exchange Rule 100.

[19] *See* Exchange Rule 517(b)(1).

[20] 17 CFR 242.611(a).

[21] 17 CFR 242.200.

eligible, the System will initiate the Complex Auction Process described in paragraph (d) of this Rule. Any stock-option order executed utilizing the Complex Auction Process will comply with the requirements of Rule 201 of Regulation SHO under the Act (''Rule 201'') [22] as discussed further below.

When the short sale price test in Rule 201 is triggered for a covered security,[23] a ''trading center,'' [24] such as the Exchange, an Exchange-designated broker-dealer, or a stock trading venue, as applicable, must comply with Rule 201. Rule 201 requires a trading center to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid [25] if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market [26] for the covered security as of the end of regular trading hours on the prior day; [27] and impose these requirements for the remainder of the day and the following day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.[28] A trading center such as the Exchange, an Exchange-designated broker-dealer and a stock trading venue, as applicable, on which the underlying security component is executed, must also comply with Rule 201(b)(1)(iii)(B),[29] which provides that a trading center must establish, maintain, and enforce written policies and procedures reasonably designed to permit the execution or display of a short sale order of a covered security marked ''short exempt'' [30] without regard to whether the order is at a price that is less than or equal to the current national best bid.[31]

If the stock-option order is not Complex Auction-eligible, the System will determine if it is eligible to be executed against another inbound stock-option order or another stock-option order resting on the Strategy Book. If eligible, the System will route both sides of the matched underlying security component of the stock-option order as a Qualified Contingent Trade (''QCT'') to an Exchange-designated broker-dealer for execution on a stock trading venue. The stock trading venue will then either successfully execute the QCT or cancel it back to the Exchange-designated broker-dealer, which in turn will either report the execution of the QCT or cancel it back to the Exchange. While the Exchange is a trading center pursuant to Rule 201, the Exchange will neither execute nor display the underlying security component of a stock-option order. Instead, the execution or display of the underlying security component of a stock-option order will occur on a trading center other than the Exchange, such as an Exchange-designated broker-dealer or other stock trading venue.

If the Exchange-designated broker-dealer or other stock trading venue, as applicable, cannot execute the underlying security component of a stock-option order in accordance with Rule 201, the Exchange will not execute the option component(s) of the stock-option order and will either place the unexecuted stock-option order on the Strategy Book or cancel it back to the submitting Member in accordance with the submitting Member's instructions (except that cAOC and cIOC stock-option orders and eQuotes will be cancelled). Once placed back onto the Strategy Book, the stock-option order will be handled in accordance with Proposed Rule 518, Interpretation and Policy .01(b) as described herein.

If the stock-option order is not Complex Auction-eligible and cannot be executed or placed on the Strategy Book, it will be cancelled by the System. Otherwise, the stock-option order will be placed on the Strategy Book.

The Exchange proposes to adopt subsection (c), Option Component, to Interpretation and Policy .01, to provide that the option leg(s) of a stock-option order shall not be executed (i) at a price that is inferior to the Exchange's best bid (offer) in the option or (ii) at the Exchange's best bid (offer) in that option if one or more Priority Customer Orders are resting at the best bid (offer) price on the Simple Order Book in each of the option components and the stock-option order could otherwise be executed in full (or in a permissible ratio). If one or more Priority Customer Orders are resting at the best bid (offer) price on the Simple Order Book, at least one option component must trade at a price that is better than the corresponding bid or offer in the marketplace by at least $0.01. The option leg(s) of a stock-option order may be executed in a $0.01 increment, regardless of the minimum quoting increment applicable to that series.[32]

The Exchange proposes to adopt subsection (d), Strategy Book, to Interpretation and Policy .01, to provide that stock-option orders and quotes on the Strategy Book that are marketable against each other will automatically execute, subject to price and priority provisions described in the above paragraph relating to the option component of the stock-option order. Orders and quotes may be submitted by Members to trade against orders on the Strategy Book.[33]

The Exchange proposes to adopt subsection (e), Stock-Option Orders in MIAX Emerald Complex Order Auctions, to Interpretation and Policy .01, to provide that stock-option orders executed via Complex Auction shall trade in the sequence set forth in proposed Rule 518(d)(5) described above except that the provision regarding individual orders and quotes in the leg markets resting on the Simple Order Book prior to the initiation of a Complex Auction will not be applicable and such execution will be subject to the conditions noted above concerning

[22] 17 CFR 242.201.

[23] For purposes of this proposal, the term ''covered security'' shall have the same meaning as in Rule 201(a)(1) of Regulation SHO. The term ''covered security'' is defined in Rule 201(a)(1) as any NMS stock as defined in Rule 600(b)(47) of Regulation NMS. *See also* 17 CFR 242.600(b)(47).

[24] Rule 201(a)(9) states that the term ''trading center'' shall have the same meaning as in Rule 600(b)(78). Rule 600(b)(78) of Regulation NMS defines a ''trading center'' as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.'' *See* 17 CFR 242.600(b)(78). The definition encompasses all entities that may execute short sale orders. Thus, Rule 201 will apply to any entity that executes short sale orders.

[25] The term ''national best bid'' is defined in Rule 201(a)(4). 17 CFR 242.201(a)(4).

[26] The term ''listing market'' is defined in Rule 201(a)(3). 17 CFR 242.201(a)(3).

[27] 17 CFR 242.201(b)(1)(i).

[28] 17 CFR 242.201(b)(1)(ii).

[29] 17 CFR 242.201(b)(1)(iii)(B).

[30] 17 CFR 242.200(g)(2).

[31] Since the underlying security component of a stock-option order is not displayed by the Exchange, the exception in Rule 201(b)(1)(iii)(A) is not available. 17 CFR 242.201(b)(1)(iii)(A).

[32] *See also* CBOE Rule 6.53C.06(b), which states that the option leg(s) shall not be executed at a price that is (i) at a price that is inferior to the Exchange's best bid (offer) in the series or (ii) at the Exchange's best bid (offer) in that series if one or more public customer orders are resting at the best bid (offer) price on the Ebook in each of the component option series and the stock-option order could otherwise be executed in full (or in a permissible ratio). The option leg(s) of a stock-option order may be executed in a one-cent increment, regardless of the minimum quoting increment applicable to that series.

[33] *See also* CBOE Rule 6.53C.06(c), which differs slightly, stating that orders and quotes may be submitted by market participants to trade against orders in the COB except that the N-second group timer shall not be in effect for stock-option orders. MIAX does not have an ''N-second group timer.''

the price of the option leg(s), together with all applicable securities laws.

The Exchange proposes to adopt subsection (f), Limit Up-Limit Down State, to Interpretation and Policy .01, to provide that when the underlying security of a stock-option order is in a limit up-limit down state as defined in Rule 530, such order will only execute if the calculated stock price is within the permissible Price Bands as determined by SIPs [34] under the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (the ''LULD Plan'').

The Exchange proposes to adopt subsection (g), Parity Price Protection, to Interpretation and Policy .01, to provide that the System will provide parity price protection for strategies that consist of a sale (purchase) of one call and the purchase (sale) of 100 shares of the underlying stock (''Buy-Write'') or that consist of the purchase (sale) of one put and the purchase (sale) of 100 shares of the underlying stock (''Married-Put''). A Parity Spread Variance (''PSV'') value between $0.00 and $0.50 which will be uniform for all option classes traded on the Exchange, will be determined by the Exchange and communicated via Regulatory Circular. The PSV will be used to calculate a minimum option trading price limit that the System will prevent the option leg from trading below. For call option legs, the PSV value is added to the strike price of the option to establish a parity protected price for the strategy. For put option legs, the PSV value is subtracted from the strike price of the option to establish a parity protected price for the strategy. Married-Put and Buy-Write interest to buy (buy put and buy stock; or buy call and sell stock) that is priced below the parity protected price for the strategy will be rejected. Married-Put and Buy-Write interest to sell (sell put and sell stock; or sell call and buy stock) that is priced below the parity protected price for the strategy will be placed on the Strategy Book at the parity protected price for the strategy.

The examples below provide an illustration of how the protection is calculated for Buy-Write and Married-Put strategies. For the purposes of the following examples the PSV used in the calculations is $.10.

Following is an example of the operation of the price protection feature for a Married-Put Strategy:

Example 1 (Married-Put)

In its simplest terms the parity price of a put option can be expressed as (Strike Price − Stock Price = Put Option Parity Price). If, for example, the stock is trading at $45.00 and the Strike Price of the put option is $50.00, the parity price of the put option would then be $5.00 ($50.00 − $45.00 = $5.00). The Exchange is able to leverage the parity relationship between the components to establish a minimum option trading price limit for Married-Put Strategies by simply subtracting the PSV from the strike price of the option. The effect on the option price can be seen in the following calculation (($50.00 − $0.10) − $45.00 = $49.90 − $45.00 = $4.90). The Exchange will calculate the parity protected price for a Married-Put Strategy by leveraging the put option parity formula by simply subtracting the PSV from the strike price of the option. This would result in a parity protected price for the strategy of $49.90 using the figures above.

This allows for the stock component and the option component prices to fluctuate to achieve the strategy's net price, but ensures that the strategy will not trade below its parity protected price. Married Put Strategy interest received to sell a price protected Married-Put Strategy below $49.90 will be placed on the Strategy Book [35] at $49.90. Married Put Strategy interest received to buy a price protected Married-Put Strategy below $49.90 will be rejected.

Example 2 (Buy-Write)

In its simplest terms the parity price of a call option can be expressed as (Stock Price − Strike Price = Call Option Parity Price). If, for example, the stock is trading at $45.00 and the Strike Price of the call option is $40.00, the parity price of the call option would then be $5.00 ($45.00 − $40.00 = $5.00). The Exchange is able to leverage the parity relationship between the components to establish a minimum option trading price limit for Buy-Write Strategies by adding the PSV to the strike price of the option. The effect on the option price can be seen in the following calculation ($45.00 − ($40.00 + $.10) = $45.00 − $40.10 = $4.90). The Exchange will calculate the parity protected price for a Buy-Write Strategy by leveraging the call option parity formula by simply adding the PSV to the strike price of the option. This would result in a parity protected price for the strategy of $40.10 net debit using the figures above.

This allows for the stock component and the option component prices to fluctuate to achieve the strategy's net price, but ensures that the strategy will not trade below its parity protected price. Buy-Write strategy interest received to sell a price protected Buy-Write Strategy below $40.10 net debit will be placed on the Strategy Book at $40.10 net debit.[36] Buy-Write strategy interest received to buy a price protected Buy-Write Strategy below $40.10 net debit will be rejected.

The Exchange proposes to amend subsection (d), Implied Away Best Bid or Offer (''ixABBO'') Price Protection,[37] of Interpretation and Policy .05 to add that for stock-option orders, the ixABBO for a complex strategy will be calculated using the BBO for each component on each individual away options market and the NBBO for the stock component.

Finally, the Exchange proposes to make a number of minor, non-substantive edits to Rule 518, Interpretation and Policy .05(e), to add clarity and precision to the Exchange's rule text. Since the Exchange will be introducing the trading of complex strategies which include a ''stock'' component, the Exchange seeks to clarify certain aspects of the rule that are intended to apply only to the ''option'' component of a complex strategy. Specifically, the Exchange proposes to clarify the definition of a Wide Market Condition, as described in Interpretation and Policy .05, subsection (e)(1), so that it is clear that it is only applying to the ''option'' component of a complex strategy. The new proposed rule text will provide that, ''[a] 'wide market condition' is defined as any individual option component of a complex strategy having, at the time of evaluation, an EBBO [38] quote width that is wider than the permissible valid quote width as defined in Rule 603(b)(4).'' By definition, the EBBO is comprised of option interest only, therefore providing additional detail to the existing rule adds clarity to the Exchange's rules.

Similarly, the Exchange proposes to clarify that Simple Market Auction or

[34] All U.S. exchanges and associations that quote and trade exchange-listed securities must provide their data to a centralized SIP for data consolidation and dissemination. See 15 U.S.C. 78c(22)(A).

[35] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[36] A seller of the strategy would receive a $40.10 net credit.

[37] The Implied Away Best Bid or Offer (''ixABBO'') price protection feature is a price protection mechanism under which, when in operation as requested by the submitting Member, a buy order will not be executed at a price that is higher than each other single exchange's best displayed offer for the complex strategy, and under which a sell order will not be executed at a price that is lower than each other single exchange's best displayed bid for the complex strategy. *See* Exchange Rule 518.05(d)

[38] The term ''EBBO'' means the best bid or offer on the Simple Order Book on the Exchange. *See* Exchange Rule 518(a)(10).

Timer Events (''SMAT Events'') pertain only to ''option'' components of a complex strategy, by amending Interpretation and Policy .05, subsection (e)(2)(i) and (e)(2)(ii), to include the term ''option component'' in the first sentence of each section. By definition, the Exchange's Simple Market is comprised of option interest only, on the Simple Order Book, therefore providing additional detail to the existing rule adds clarity to the Exchange's rules.

Additionally, the Exchange believes that although MIAX Emerald rules may, in certain instances, intentionally differ from MIAX Options rules, the proposed changes will promote uniformity with MIAX Options with respect to rules that are intended to be identical. MIAX Emerald and MIAX Options may have a number of Members in common, and where feasible the Exchange intends to implement similar behavior to provide consistency between MIAX Options and MIAX Emerald so as to avoid confusion among Members.

2. Statutory Basis

The Exchange believes that its proposed rule changes are consistent with Section 6(b) of the Act [39] in general, and furthers the objectives of Section 6(b)(5) of the Act [40] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes introducing stock-option orders promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by providing investors additional complex orders to use to meet their investment objectives. The Exchange believes that the proposed rule change will assist in the electronic processing of stock-option orders by providing an efficient mechanism for transacting these strategies. The Exchange believes that the general provisions regarding the trading of complex orders provide a clear framework for trading of complex orders in a manner consistent with other options exchanges. This consistency should promote a fair and orderly national options market system.

The Exchange believes establishing a parity price protection for certain Buy-Write and Married-Put strategies promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by ensuring that strategies are not executed at potentially erroneous prices.

Given the relationship that the stock price, strike price, and option price have to each other, the Exchange is able to calculate a minimum option trading price limit for the option leg of certain stock-option strategies with a call or a put component. Specifically, the parity price of a call option can be derived by subtracting the strike price from the stock price (Stock Price − Strike Price = Call Option Parity Price); and the parity price of a put option can be derived by subtracting the stock price from the strike price (Strike Price − Stock Price = Put Option Parity Price). Using these relationships the PSV may be applied to establish a minimum option trading price limit that the System will prevent the option leg from trading below to establish a parity protected price for the strategy to ensure the strategy does not trade below its parity protected price at a potentially erroneous price.

The Exchange believes that Members will benefit from the proposed risk protection measure as the protection ensures that these stock-option strategies are not executed below their parity protected price as calculated by the Exchange. Consequently, the proposed risk protection is designed to encourage Members to submit additional order flow and liquidity to the Exchange in these strategies, thereby removing impediments to and perfecting the mechanisms of a free and open market and a national market system and, in general, protecting investors and the public interest. This protection should provide Members with confidence that protections are in place on the Exchange to reduce the risk of these strategies being executed at potentially erroneous prices. As a result, the Exchange believes that the proposed price protection feature will promote just and equitable principles of trade.

Finally, the Exchange proposes to make minor non-substantive changes to its rule to clarify that Wide Market Conditions and Simple Market Auction or Timer Events on the Exchange are related to the ''option'' components only for complex strategies. The Exchange believes the proposed changes promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system because they seek to add clarity and precision to the Exchange's rules. The Exchange believes that the proposed rule changes will provide greater clarity to Members and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will foster competition as the Exchange will offer stock-option orders which are offered on other exchanges.[41] Additionally, the proposed rule change will foster competition as it provides a risk protection mechanism for certain complex strategies entered on the Exchange and may promote competition by enabling Members to trade more aggressively on the Exchange knowing that these strategies will not be executed below parity protected price at potentially erroneous prices. Accordingly, the price protection feature should instill additional confidence in Members that submit certain stock-option orders to the Exchange that their orders receive price protection, and thus should encourage Members to submit additional order flow and liquidity to the Exchange, thereby removing impediments to and perfecting the mechanisms of a free and open market and a national market system and, in general, protecting investors and the public interest. Further, the additional proposed changes remedy minor non-substantive issues in the text of various rules identified in this proposal.

The Exchange does not believe the proposed rule change will impose any burden on intra-market competition as the rules of the Exchange apply equally to all Members. The Exchange further believes that the proposed price protection should promote inter-market competition, and could result in more competitive order flow to the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(5).

[41] *See* MIAX Options Exchange Rule 518, CBOE Rule 6.53C(a)(2), and NASDAQ PHLX Rule 1098.

the proposed change will enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [42] and Rule 19b–4(f)(6) [43] thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [44] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [45] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the Commission to waive the 30-day operative delay to allow MIAX Emerald to implement the handling and trading of stock-option orders in a manner identical to that of MIAX Options. As noted above, MIAX Emerald states that the proposed rules are identical to rules adopted by MIAX Options.[46] In addition, MIAX Emerald notes that MIAX Emerald and MIAX Options may have a number of Members in common, and that, where feasible, MIAX Emerald intends to implement similar behavior to provide consistency between MIAX Options and MIAX Emerald to avoid confusion among Members. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow MIAX Emerald to implement rules regarding the trading of stock-option orders that are identical to rules adopted by MIAX Options, thereby reducing the potential for confusion among market participants that are Members of both MIAX Emerald and MIAX Options. In addition, the Commission notes that because the proposed rule change is based on substantively identical rules of MIAX Options, the proposal raises no new regulatory issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[47]

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–EMERALD–2019–13 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–EMERALD–2019–13. 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–EMERALD–2019–13 and should be submitted on or before April 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Eduardo A. Aleman,

Deputy Secretary.

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[42] 15 U.S.C. 78s(b)(3)(A).

[43] 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.

[44] 17 CFR 240.19b–4(f)(6).

[45] 17 CFR 240.19b–4(f)(6)(iii).

[46] *See supra* note 3, and accompanying text.

[47] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85346; File No. SR–EMERALD–2019–14]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders

March 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 518, Complex

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Orders, in order to implement identical functionality currently operative on one of the Exchange's affiliates, Miami International Securities Exchange, LLC (''MIAX Options'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 518, Complex Orders, to implement functionality, as described below, that is identical to functionality currently operative on MIAX Options.[3] MIAX Emerald commenced operations as a national securities exchange registered under Section 6 of the Act[4] on March 1, 2019. As described more fully in MIAX Emerald's Form 1 application,[5] the Exchange is an affiliate of Miami International Securities Exchange, LLC (''MIAX Options'') and MIAX PEARL, LLC (''MIAX PEARL''). MIAX Emerald Rules, in their current form, were filed as Exhibit B to its Form 1 on August 16, 2018. At that time MIAX Emerald Rule 518 and MIAX Options Rule 518 were substantially similar. MIAX Options recently amended its Rule 518[6] and in order to ensure consistent operation of both MIAX Emerald and MIAX Options through having consistent rules, the Exchange now proposes to amend MIAX Emerald Exchange Rule 518 as described below.

Specifically, the Exchange proposes to amend Exchange Rule 518, Complex Orders, to (i) amend the Response Time Interval and Defined Time Period for Complex Auctions (each defined below); (ii) amend Interpretation and Policy .05(f), to add additional detail pertaining to the operation of the Complex MIAX [sic] Price Collar (''MPC''), specifically to adopt new rule text for the use of a Temporary MIAX Price Collar (''TMPC'') during a cPRIME Auction or Complex Auction[7] in the limited instance when an MPC has not been assigned; (iii) adopt a new Complex Liquidity Exposure Process (''cLEP''); (iv) make minor changes to the Complex MIAX [sic] Options Price Collar Protection; and (v) clarify that the Calendar Spread Variance (''CSV'') price protection applies only to strategies in American-style option[8] classes.

The Exchange proposes to amend subsection (d)(3) which describes the Response Time Interval of a Complex Auction, which is a single-sided auction. The Exchange offers Complex Auction functionality as described in Exchange Rule 518[9] and also a cPRIME process for paired orders, which is unaffected by this proposal, as described in Exchange Rule 515A.12. The Exchange is not proposing to change the cPRIME process, and thus the cPRIME Timer will remain at 100 milliseconds.

Currently, Rule 518(d)(3) provides that the Response Time Interval means the period of time during which responses to the Request for Responses (''RFR'') message may be entered. The Rule further provides that the Exchange determines the duration of the Response Time Interval, which shall not exceed 500 milliseconds, and communicates it to Members via Regulatory Circular.[10] The Exchange now proposes to adopt new rule text to state that, ''the end of the trading session will also serve as the end of the Response Time Interval for a Complex Auction still in progress.'' In connection with this proposed change, the Exchange proposes to amend subsection (d)(2) to remove the reference to the Defined Time Period for a Complex Auction. The Defined Time Period represents the period of time preceding the end of a trading session during which a Complex Auction will not be initiated. Currently, by Exchange rule the Defined Time Period shall be at least 100 milliseconds and may not exceed 10 seconds.[11] The Exchange anticipates it will launch operations with the duration of a Complex Auction set to 200 milliseconds.[12]

The Exchange also proposes to amend subsection (c)(2)(i) to remove the restriction that a cAOA Order[13] received during the Defined Time Period will not initiate a new Complex Auction. Under the current rules there is no opportunity at all for price improvement via a Complex Auction when there is less than two seconds left in the trading session. The Exchange believes that removing the Defined Time Period and allowing the end of the trading session to serve as the end of the Response Time Interval in the limited instance that a Complex Auction is initiated with less than 200 milliseconds left in the trading session will allow for more opportunities for price improvement via the auction process. In the event that a Member initiates a Complex Auction and no Members respond, the initiating Member is no worse off under the proposed rule than the Member would have been under the current rule which prevents the Member from even attempting to initiate a Complex Auction with less than two seconds left in the trading session. Additionally, a Member who initiates a Complex Auction will not forego the opportunity to trade with unrelated interest received during the Auction period, as this interest is included in the Complex Auction.[14]

The Exchange represents that it has the System[15] capacity and capability to conduct auctions and execute transactions in a timely fashion at any

[3] *See* MIAX Options Exchange Rule 518.

[4] 15 U.S.C. 78f.

[5] *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange).

[6] *See* Securities Exchange Act Release No. 85155 (February 15, 2019), 84 FR 5739 (February 22, 2019) (SR–MIAX–2018–36).

[7] *See* Exchange Rule 518(d).

[8] The term ''American-style option'' means an option contract that, subject to the provisions of Rule 700 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised on any business day prior to its expiration date and on its expiration date. *See* Exchange Rule 100.

[9] Certain option classes, as determined by the Exchange and communicated to Members via Regulatory Circular, will be eligible to participate in a Complex Auction (an ''eligible class''). Upon evaluation as set forth in subparagraph (c)(5) of Rule 518, the Exchange may determine to automatically submit a Complex Auction-eligible order into a Complex Auction. Upon entry into the System or upon evaluation of a complex order resting at the top of the Strategy Book, Complex Auction-eligible orders may be subject to an automated request for responses (''RFR''). *See* Exchange Rule 518(d).

[10] The Exchange notes that the Response Time Interval is currently set to 200 milliseconds.

[11] *See* Exchange Rule 518(d)(2).

[12] The MIAX Options Complex Auction duration is currently set to 200 milliseconds. *See* MIAX Options Regulatory Circular 2016–46.

[13] A ''Complex Auction-on-Arrival'' or ''cAOA'' Order is a complex order designated to be placed into a Complex Auction upon receipt or upon evaluation. *See* Exchange Rule 518(b)(2).

[14] *See* Exchange Rule 518(d)(8).

[15] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

time during the trading session including the last two seconds. Further, the Exchange represents that it has surveillances in place to surveil for conduct that violates the Exchange's rules, specifically as they pertain to Complex Auctions as described herein.[16]

The Exchange also proposes to amend Rule 518, Interpretation and Policy .05, to add additional detail to the rule regarding the establishment of the MIAX [sic] Price Collar (''MPC'') under various circumstances to align MIAX Emerald rule text to that of MIAX Options.[17] The MPC is a price protection feature designed to help maintain a fair and orderly market by helping to mitigate the potential risk of executions at prices that are extreme and potentially erroneous. The MPC prevents complex orders from automatically executing at potentially erroneous prices by establishing a price range outside of which a complex order will not be executed.

The Exchange now proposes to amend Rule 518, Interpretation and Policy .05, by removing current subsection (f)(3) and replacing it with new proposed subsections (f)(3) and (f)(4) as described below. New subsection (f)(3) will provide that, ''[t]he MPC Price is established: (i) upon receipt of the complex order or eQuote during free trading, or (ii) if the complex order or eQuote is not received during free trading, at the opening (or reopening following a halt) of trading in the complex strategy; or (iii) upon evaluation of the Strategy Book by the System when a wide market condition, as described in Interpretation and Policy .05(e)(1) of this Rule, no longer exists.'' [18]

New subsection (f)(4) will provide that, ''[a] Temporary MPC Price ('TMPC Price') is established solely for use during a Complex Auction (as defined in Rule 518(d)) or a cPRIME Auction (as defined in Rule 515A, Interpretation and Policy .12) for (i) any complex order resting on the Strategy Book that does not have an MPC assigned and is eligible to participate in a Complex Auction or a cPRIME Auction in that strategy; or (ii) any complex order or eQuote received during a cPRIME Auction [19] if a wide market condition existed in a component of the strategy at the start of the cPRIME Auction. The TMPC Price shall be the auction start price [20] (the auction start price of a cPRIME Agency Order for a cPRIME Auction is defined in Rule 515A.12(a)(i) and the auction start price for a Complex Auction is defined in Rule 518(d)(1)) plus (minus) the MPC Setting [21] if the order is a buy (sell). If the complex order or eQuote eligible to participate in the Complex Auction or cPRIME Auction is priced more aggressively than the TMPC Price (*i.e.,* the complex order or eQuote price is greater than the TMPC Price for a buy order, or the complex order or eQuote price is lower than the TMPC Price for a sell order) the complex order or eQuote may participate in the auction but will not trade through its TMPC Price.'' The minimum MPC Setting is $0.00 and the maximum MPC Setting is $1.00, as determined by the Exchange and communicated to Members via Regulatory Circular.[22] A TMPC Price will be calculated for use during the length of the auction for any complex order resting on the Strategy Book that does not have an MPC assigned and is eligible to participate in a Complex Auction or cPRIME Auction in that strategy, or any complex order or eQuote received during a cPRIME Auction if a wide market condition existed in a component of the strategy at the start of the cPRIME Auction.

An example of the TMPC Price being established and used is provided below.

Example 3—A TMPC Price is established for an order or eQuote received during a cPRIME Auction

MIAX Emerald—LMM Mar 50 Call 1.00–6.50 (10x10) (Wide Market)
MIAX Emerald—LMM Mar 55 Call 2.90–3.30 (10x10)
ABBO—Mar 50 Call 6.00–6.30 (10x10)
ABBO—Mar 55 Call 3.00–3.30 (10x10)
NBBO—Mar 50 Call 6.00–6.30 (10x10)
NBBO—Mar 55 Call 3.00–3.30 (10x20)
Strategy: Buy 1 Mar 50 Call, Sell 1 Mar 55 Call
The cNBBO is 2.70 debit bid and 3.30 credit offer
The MPC Setting is $.25.

The Exchange receives a cPRIME Order with the cPRIME Agency Order representing the purchase of the Strategy at a net debit of 3.00, 500 times. Auto-match is not enabled and there are no orders for the Strategy on the Strategy Book.

A TMPC Price will be calculated for use during the length of the auction for any complex order or eQuote received during a cPRIME Auction if a wide market condition existed in a component of the strategy at the start of the cPRIME Auction. The TMPC Price will be the cPRIME auction start price +/− the MPC Setting. In this example the auction start price is $3.00. The TMPC Price is $2.75 ($3.00 − $.25) for sell orders, and $3.25 ($3.00 + $.25) for buy orders.

An RFR is broadcast to all subscribers and the RFR period is started.

The following responses are received:

- @20 milliseconds BD1 response, cAOC Order @2.95 credit sell of 200 arrives
- @30 milliseconds MM1 response, cAOC eQuote @2.90 credit sell of 200 arrives
- @50 milliseconds C1 response, cAOC Order @2.70 credit sell of 100 arrives

The cPRIME Auction process will continue until the Response Time Interval ends. When the 100 millisecond Response Time Interval ends, the cPRIME Auction process will trade the Agency Order with the best priced responses. The Agency Order will be filled as follows:

- The cPRIME Agency Order buys 100 from C1 @2.75
- The cPRIME Agency Order buys 200 from MM1 @2.90
- The cPRIME Agency Order buys 200 from BD1 @2.95

Note that C1 is prevented from selling at 2.70 by the cPRIME Auction TMPC Price limit of 2.75.

The Exchange believes that amending the rule to [sic] regarding the use of a TMPC Price, which is applicable only in the limited circumstance when an MPC has not been assigned, and exists only for the duration of a Complex Auction or cPRIME Auction, adds additional detail to the Exchange's rules and provides greater transparency of Exchange functionality. The use of a TMPC Price provides protection for orders that participate in either a

[16] The Exchange notes that Rule 518.04, Dissemination of Information, remains in effect for any Complex Auction-eligible order submitted to the Exchange at any time.

[17] *See* Securities Exchange Act Release No. 84519 (November 1, 2018), 83 FR 55776 (November 7, 2018) (SR–MIAX–2018–27).

[18] The Exchange notes that if wide market conditions exist (any individual option component of a complex strategy has a displayed EBBO quote width that is wider than the permissible simple market quote width) when an order is received, an MPC will not be calculated until the wide market conditions are resolved. *See* Exchange Rule 518.05(e)(1).

[19] The Exchange notes that if a wide market condition exists for a component of a complex strategy, trading in the strategy will be suspended, except as otherwise set forth in Exchange Rule 518.05(e)(1)(iii), which states that a wide market condition shall have no impact on the trading of cPRIME Orders and processing of cPRIME Auctions (including the processing of cPRIME Auction responses) pursuant to Rule 515A, Interpretation and Policy .12. *See* Exchange Rule 518.05(e)(1)(i).

[20] The auction start price for a cPRIME Auction is the initiating price of a cPRIME Agency Order as described in Exchange Rule 515A.12(a)(i). The auction start price for a Complex Auction is the initiating order's limit price as described in Exchange Rule 518(d)(1).

[21] *See* Exchange Rule 518.05(f).

[22] *See* Exchange Rule 518.05(f)(2). The Exchange anticipates that the setting for the launch of trading on MIAX Emerald will be $.25.

Complex Auction or a cPRIME Auction when the order does not have an assigned MPC Price as described above. This price protection ensures that orders are not executed at potentially erroneous prices during the auction. The Exchange believes that the proposed changes promote the protection of investors and the public interest by providing greater clarity and specificity of Exchange functionality, and it is in the public interest for the Exchange's rules to be accurate and concise so as to minimize the potential for confusion.

The Exchange also proposes to amend current subsection (f)(4) (proposed subsection (f)(5)) which states that, ''Any unexecuted portion of such a complex order or eQuote: (A) Will be cancelled if it would otherwise be displayed or executed at a price that is outside the MPC Price, and (B) may be subject to the managed interest process described in Rule 518(c)(4).'' The Exchange proposes to amend this sentence to account for a proposed Complex Liquidity Exposure Process (''cLEP'') as described below. The proposed amended sentence will provide, ''Any unexecuted portion of such a complex order or eQuote: (A) will be subject to the cLEP as described in subsection (e) of this Rule, and (B) may be subject to the managed interest process described in Rule 518(c)(4).''

The Exchange also proposes to adopt new subsection (e) to Rule 518 to describe a Complex Liquidity Exposure Process (''cLEP'') for complex orders and complex eQuotes that would violate their Complex MIAX [sic] Price Collar (''MPC'') price. The MPC price protection feature is an Exchange-wide mechanism under which a complex order or complex eQuote to sell will not be displayed or executed at a price that is lower than the opposite side cNBBO [23] bid at the time the MPC is assigned by the System (*i.e.,* upon receipt or upon opening) by more than a specific dollar amount expressed in $0.01 increments (the ''MPC Setting''), and under which a complex order or eQuote to buy will not be displayed or executed at a price that is higher than the opposite side cNBBO offer at the time the MPC is assigned by the System by more than the MPC Setting (each the ''MPC Price''). [24]

The Exchange now proposes to initiate a Complex Liquidity Exposure Auction (''cLEP Auction'') whenever a complex order or complex eQuote would execute or post at a price that would violate its MPC Price. To begin the cLEP Auction, the System will first broadcast a liquidity exposure message to all subscribers of the Exchange's data feeds. The liquidity exposure message will include the symbol, side of the market, auction start price (MPC Price of the complex order or eQuote), and the imbalance quantity. The purpose of including the imbalance quantity in the RFR message is to inform such participants of the number of contracts that are available for execution.

The System will initiate a Response Time Interval, as determined by the Exchange and communicated via Regulatory Circular which shall be no less than 100 milliseconds and no more than 5,000 milliseconds. [25] At the conclusion of the Complex Liquidity Exposure Auction the resulting trade price will be determined by the Exchange's Complex Auction Pricing described in subsection (d)(6) of this Rule and interest will be executed as provided in subsection (d)(6) of this Rule. In no event will the resulting trade price of a cLEP Auction ever be more aggressive than the MPC Price. Remaining liquidity with an original limit price that is (i) less aggressive (lower for a buy order or eQuote, or higher for a sell order or eQuote) than or equal to the MPC Price will be handled in accordance with subsection (c)(2)(ii)–(v) of this Rule, or (ii) more aggressive than the MPC Price will be subject to the Reevaluation process as described below. Orders and quotes executed in a cLEP Auction will be allocated in accordance with the Complex Auction allocation procedures described in Exchange Rule 518(d)(7)(i)–(vi).

At the conclusion of a cLEP Auction the System will calculate the next potential MPC Price for remaining liquidity with an original limit price more aggressive than the existing MPC Price. The next MPC Price will be calculated as the MPC Price plus (minus) the next MPC increment for buy (sell) orders (the ''New MPC Price''). The System will initiate a cLEP Auction for liquidity that would execute or post at a price that would violate its New MPC Price. Liquidity with an original limit price less aggressive (lower for a buy order or eQuote, or higher for a sell order or eQuote) than or equal to the New MPC Price will be posted to the Strategy Book at its original limit price or handled in accordance with subsection (c)(2)(ii)–(v) of Rule 518. The cLEP process will continue until no liquidity remains with an original limit price that is more aggressive than its MPC Price. At the conclusion of the cLEP process, any liquidity that has not been executed will be posted to the Strategy Book at its original limit price.

The current rule provides that if the MPC Price is priced less aggressively than the limit price of the complex order or eQuote (*i.e.,* the MPC Price is less than the complex order or eQuote's bid price for a buy, or the MPC Price is greater than the complex order or eQuote's offer price for a sell), or if the complex order is a market order, the complex order or eQuote will be displayed and/or executed up to its MPC Price. Any unexecuted portion of such a complex order or eQuote: (A) will be cancelled if it would otherwise be displayed or executed at a price that is outside the MPC Price, and (B) may be subject to the managed interest process described in 518(c)(4). [26]

The Exchange now proposes to amend subsection(f)(6)(A) to provide that any unexecuted portion of such a complex order or eQuote will be subject to the cLEP as described in proposed subsection (e). The Exchange believes it to be in the best interest of the Member [27] to seek liquidity via the Complex Liquidity Exposure Process as described above, rather than cancel any unexecuted portion of the order. The Exchange represents that it has the System capability and capacity to handle the potential cLEP Auctions that may occur under the Exchange's proposal.

The examples below demonstrate an order subject to the Complex Liquidity Exposure Process.

Example 1

MPC: $0.25

The Exchange has one order resting on its Strategy Book: [28] +1 component A, − 1 component B:

Order 1 is to sell 10 at $1.90

EBBO [29] component A: 4.00(10) × 5.00(10)

EBBO component B: 2.00(10) ×

[23] The term cNBBO means the Complex National Best Bid or Offer and is calculated using the National Best Bid or Offer (''NBBO'') for each component of a complex strategy to establish the best net bid and offer for a complex strategy. *See* Exchange Rule 518(a)(2).

[24] *See* Exchange Rule 518.05(f).

[25] The Exchange notes that the current duration of a cPRIME Auction is 100 milliseconds and the current duration of a Complex Auction is 200 milliseconds.

[26] *See* Exchange Rule 518.05(f)(6).

[27] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[28] The term ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[29] The term ''EBBO'' means the best bid or offer on the Simple Order Book on the Exchange. *See* Exchange Rule 518(a)(10).

2.50(10)
NBBO [30] component A: 4.05(10) × 4.15(10)
NBBO component B: 2.30(10) × 2.40(10)
icEBBO:[31] 1.50 (10) × 3.00 (10)
cNBBO: [32] 1.65 (10) × 1.85 (10)

The Exchange receives a new order (Order 2) to buy 20 at $2.25.

Order 2 buys 10 from Order 1 at $1.90 and initiates the Complex Liquidity Exposure Process: Order 2 reprices to its protected price of $2.10 (cNBO of 1.85 + 0.25) and is posted at that price on the Strategy Book and the Complex Liquidity Exposure Process Auction begins.

During the cLEP Auction the Exchange receives a new order (Order 3) to sell 10 at $2.10. This order locks the current same side Book Price of $2.10. At the end of the auction, Order 3 sells 10 to Order 2 at $2.10, filling both Order 2 and Order 3.

Example 2

MPC: $0.25

The Exchange has one order resting on its book in Strategy +1 component A, −1 component B:

Order 1 is to sell 10 at $1.90
EBBO component A: 4.00(10) × 5.00(10)
EBBO component B: 2.00(10) × 2.50(10)
NBBO component A: 4.05(10) × 4.15(10)
NBBO component B: 2.30(10) × 2.40(10)
icEBBO: 1.50 (10) × 3.00 (10)
cNBBO: 1.65 (10) × 1.85 (10)

The Exchange receives a new order (Order 2) to buy 20 at $2.25.

Order 2 buys 10 from Order 1 at $1.90 and initiates the Complex Liquidity Exposure Process: Order 2 reprices to its protected price of $2.10 (cNBO of 1.85 + 0.25) and is posted at that price on the Strategy Book and the Complex Liquidity Exposure Process Auction begins.

No new liquidity arrives during the Auction. At the end of the Auction, Order 2 reprices to its limit of $2.25 and is posted at that price on the Strategy Book, ending the Complex Liquidity Exposure Process.

Example 3

MPC: $0.25

The Exchange has one order resting on its book in Strategy +1 component A, −1 component B:

Order 1 is to sell 10 at $1.90
EBBO component A: 4.00(10) × 5.00(10)
EBBO component B: 2.00(10) × 2.50(10)
NBBO component A: 4.05(10) × 4.15(10)
NBBO component B: 2.30(10) × 2.40(10)
icEBBO: 1.50 (10) × 3.00 (10)
cNBBO: 1.65 (10) × 1.85 (10)

The Exchange receives a new order (Order 2) to buy 20 at $2.45.

Order 2 buys 10 from Order 1 at $1.90 and initiates the Complex Liquidity Exposure Process: Order 2 reprices to its protected price of $2.10 (cNBO of 1.85 + 0.25) and is posted at that price on the Strategy Book and the Complex Liquidity Exposure Process Auction begins.

No new liquidity arrives during the Auction. At the end of the Auction, Order 2 reprices to its next protected price of $2.35 (prior protected price of 2.10 + 0.25) and is posted at that price on the Strategy Book and the Complex Liquidity Exposure Process Auction begins.

No new liquidity arrives during the Auction. At the end of the Auction, Order 2 reprices to its limit of $2.45 and is posted at that price on the Strategy Book, ending the Complex Liquidity Exposure Process.

Finally, the Exchange proposes to amend subsection (b) of Interpretation and Policy .05 to adopt new rule text stating that the Calendar Spread Variance (''CSV'') price protection applies only to strategies in American-style option classes. A Calendar Spread is a complex strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have different expirations but the same strike price. The CSV establishes a minimum trading price limit for Calendar Spreads. The maximum possible value of a Calendar Spread is unlimited, thus there is no maximum price protection for Calendar Spreads. The minimum possible trading price limit of a Calendar Spread is zero minus the pre-set value of $.10. This ensures that the Strategy doesn't trade more than $.10 away from its intrinsic value. (On a basic level the price of an American-style option is comprised of two components; intrinsic value and time value. If the strike price of a call option is $5.00 and the stock is priced at $6.00, there is $1.00 of intrinsic value in the price of the call option, anything above $1.00 represents the time value component.) An American-style option must be worth at least as much as its intrinsic value because the holder of the option can realize the intrinsic value by immediately exercising the option. In a Calendar Spread strategy comprised of American-style options, ceteris paribus, the far month should be worth more than the near month due to its having a longer time to expiration and therefore a greater time value. As European-style options [33] may only be exercised on their expiration date, the relationship between the stock price, option price, and option strike price that exists for American-style options does not exist for European-style options. Therefore the CSV price protection would be ineffective and will not be available for strategies comprised of European-style options.

Additionally, the Exchange believes that although MIAX Emerald rules may, in certain instances, intentionally differ from MIAX Options rules, the proposed changes will promote uniformity with MIAX Options with respect to rules that are intended to be identical. MIAX Emerald and MIAX Options may have a number of Members in common, and where feasible the Exchange intends to implement similar behavior to provide consistency between MIAX Options and MIAX Emerald so as to avoid confusion among Members.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [34] in general, and furthers the objectives of Section 6(b)(5) of the Act [35] 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 mechanisms of a free and open market and a national market system and, in

[30] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[31] The Implied Complex MIAX Emerald Best Bid or Offer (''icEBBO'') is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed trading interest. *See* Exchange Rule 518(a)(12).

[32] The Complex National Best Bid or Offer (''cNBBO'') is calculated using the NBBO for each component of a complex strategy to establish the best net bid and offeror a complex strategy. *See* Exchange Rule 518(a)(2).

[33] The term ''European-style option'' means an option contract that, subject to the provisions of Rule 700 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised only on its expiration date. *See* Exchange Rule 100.

[34] 15 U.S.C. 78f(b).

[35] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

The Exchange believes that its proposal to eliminate the Defined Time Period to allow Complex Auctions [36] to occur throughout the trading session removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by removing an unnecessary barrier which prevented Complex Auctions from occurring with less than two seconds left in the trading session. The current anticipated duration of a Complex Auction is just 200 milliseconds. The Exchange believes it is in the best interest of the investor to allow for opportunities for price improvement throughout the entire trading session. In the event that a Member initiates a Complex Auction and no Members respond, the initiating Member is no worse off under the proposed rule than the Member would have been under the current rule which prevents the Member from even attempting to initiate a Complex Auction with less than two seconds left in the trading session. Additionally, a Member who initiates a Complex Auction will not forego the opportunity to trade with unrelated interest received during the Auction period, as this interest is included in the Complex Auction.[37]

The Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because they seek to add additional detail to, and improve the accuracy of, the Exchange's rules. In particular, the Exchange believes that the proposed rule changes will provide clarity and transparency of the Exchange's rules to Members and the public, and it is in the public interest for rules to be accurate and concise so as to minimize the potential for confusion.

Further, the Exchange believes that providing a TMPC Price during a Complex Auction or a cPRIME Auction protects investors against executions at potentially erroneous prices. Additionally, the Exchange believes that adding additional detail to the Exchange's rules regarding the operation of MIAX [sic] Options Price Collar, and including the method of calculating a TMPC Price for the limited circumstances when one is used, promotes just and equitable principles of trade and removes impediments to a free and open market by providing greater transparency concerning the operation of Exchange functionality.

The Exchange also believes its proposal to adopt a Complex Liquidity Exposure Process promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest. The Complex Liquidity Exposure Process provides an additional opportunity for price discovery for those orders that would trade through their MPC Price. The Exchange believes its proposal promotes just and equitable principles of trade as it is in the best interest of the Member to seek liquidity for the unexecuted portion of the order which exceeds the order's MPC Price rather than to simply cancel the unexecuted portion back to the Member.[38]

The Exchange also believes that its proposal to amend Interpretation and Policy .05(f) to reflect the changes resulting from the introduction of the Complex Liquidity Exposure Process promotes just and equitable principles of trade, and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by clearly describing the operation of the Exchange's functionality in the Exchange's rules. The Exchange believes it is in the interest of investors and the public to accurately describe the behavior of the Exchange's System in its rules as this information may be used by investors to make decisions concerning the submission of their orders. Further, the Exchange's proposal to make non-substantive changes to re-number certain paragraphs for internal consistency within the rule benefits investors and the public interest by providing clarity and accuracy in the Exchange's rules.

Finally, the Exchange believes its proposal to clarify that the Calendar Spread Variance (CSV) price protection is available only for American-style options promotes just and equitable principles of trade, and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, and protects investors and the public interest by providing clarity and precision in the Exchange's rules. Given that European-style options may only be exercised on their expiration date, the CSV price protection would be ineffective for strategies comprised of European-style options. Therefore, under the Exchange's proposal, the CSV price protection will not be available for strategies comprised of European-style options. The Exchange believes it is in the interest of investors and the public to accurately describe the behavior of the Exchange's System in its rules as this information may be used by investors to make decisions concerning the submission of their orders. Transparency and clarity are consistent with the Act because it removes impediments to and helps perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by accurately describing the behavior of the Exchange's System. In particular, the Exchange believes that the proposed rule change will provide greater clarity to Members and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose any burden on inter-market competition. The Exchange's proposal seeks to enhance complex order trading on the Exchange, and may potentially enhance competition among the various markets for complex order execution, potentially resulting in more active complex order trading on all exchanges. The changes to the Exchange rules concerning the use of a TMPC Price is designed to add additional detail to the rules to further clarify the operation of Exchange functionality and to minimize the potential for confusion.

Additionally, the Exchange does not believe the proposed rule change will impose any burden on intra-market competition as the Rules apply equally to all Members of the Exchange.

[36] Complex Auctions are described in Exchange Rule 518(d) and are separate and distinct from cPRIME Auctions which are described in Interpretation and Policy .12 of Exchange Rule 515A, MIAX Price Improvement Mechanism (''PRIME'') and PRIME Solicitation Mechanism.

[37] *See supra* note 14.

[38] The Exchange notes that Members who believe that an execution has occurred at an erroneous price may avail themselves of the protections provided in Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [39] and Rule 19b–4(f)(6) [40] thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [41] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [42] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the Commission to waive the 30-day operative delay to allow MIAX Emerald to harmonize its rules with those of MIAX Options. MIAX Emerald states that the proposal will implement functionality that is identical to functionality currently operative on MIAX Options [43] and does not raise new regulatory issues. In addition, as discussed above, MIAX Emerald notes that MIAX Emerald and MIAX Options may have a number of Members in common, and that, where feasible, MIAX Emerald intends to implement similar behavior to provide consistency between MIAX Options and MIAX Emerald to avoid confusion among Members. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow MIAX Emerald to harmonize its rules with those of MIAX Options, thereby reducing the potential for confusion among market participants that are Members of both MIAX Emerald and MIAX Options. In addition, the Commission notes that the proposed rule change is based on substantively identical rules of MIAX Options and thus raises no new regulatory issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[44]

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-EMERALD–2019–14 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–EMERALD–2019–14. 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–EMERALD–2019–14 and should be submitted on or before April 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Eduardo A. Aleman,

Deputy Secretary.

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[39] 15 U.S.C. 78s(b)(3)(A).

[40] 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.

[41] 17 CFR 240.19b–4(f)(6).

[42] 17 CFR 240.19b–4(f)(6)(iii).

[43] *See supra* note 3, and accompanying text.

[44] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85348; File No. SR–NYSEAMER–2019–05]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to Rule 960NY To Specify That Replacement Issues May Be Added to the Penny Pilot Quarterly

March 18, 2019.

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 March 7, 2019, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to Rule 960NY to specify that replacement issues may be added to the Penny Pilot (''Pilot'') on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .02 to Rule 960NY, regarding the Pilot, to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019.

The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.[4] The Rule authorizes the Exchange to replace any options issues in the Pilot that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Program, based on trading activity in the previous six months.[5] The Exchange proposes to modify Commentary .02 to Rule 960NY to allow the Exchange to add replacement issues (for Pilot issues that have been delisted) on a quarterly basis. The Exchange added replacement issues in January 2019 and would add eligible to add eligible replacement issues in April, July and October. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot (by replacing delisted issues) on a quarterly basis (as opposed to semi-annual) and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the ''six month lookback'') but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from August 1, 2018 through February 28, 2019.[6] The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Act, in general, and furthers the objectives of Section 6(b)(5),[8] 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 mechanisms of a free and open market and a national market system.

The Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in the a more current list of Pilot-eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). Thus, the Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchanges notes that it not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it.

The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued

[4] *See* Securities Exchange Act Release No. 84871 (December 19, 2018), 83 FR 66789 (December 27, 2018) (SR–NYSEAMER–2018–57). On January 3, 2019, the Exchange added new issues to replace delisted Pilot issues, as announced by Trader Update, *available here, https://www.nyse.com/publicdocs/nyse/notifications/trader-update/Penny%20Pilot%20Replacements%20January%202018.pdf.*

[5] *See* Commentary .02 to Rule 960NY.

[6] The Rule continues to obligate the Exchange to announce the replacement issues by Trader Update. *See id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

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 [9] and Rule 19b–4(f)(6) thereunder.[10] 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) [11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2019–05 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–NYSEAMER–2019–05. 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. 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 20549–1090 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–NYSEAMER–2019–05 and should be submitted on or before April 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05463 Filed 3–21–19; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 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.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85347; File No. SR–CboeBZX–2019–015]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Units of Each of (i) Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy ETNs; (ii) Cboe Vest S&P 500® Enhanced Growth Strategy ETNs; (iii) Cboe Vest S&P 500® Accelerated Return Strategy ETNs; and (iv) Cboe Vest S&P 500® Power Buffer Strategy ETNs Under Rule 14.11(d), Equity Index-Linked Securities

March 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 a rule change to list and trade units of each of (i) the Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy ETNs; (ii) the Cboe Vest S&P 500® Enhanced Growth Strategy ETNs; (iii) the Cboe Vest S&P 500® Accelerated Return Strategy ETNs; and (iv) the Cboe Vest S&P 500® Power Buffer Strategy ETNs under Rule 14.11(d), which governs the listing and trading of Equity Index-Linked Securities on the Exchange.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade units (''Units'') of up to twelve monthly series of each of the following under Rule 14.11(d), which governs the listing and trading of Linked Securities [3] on the Exchange: [4] Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy ETNs (the ''Buffer Notes''), Cboe Vest S&P 500® Enhanced Growth Strategy ETNs (the ''Enhanced Growth Notes''), Cboe Vest S&P 500® Accelerated Return Strategy ETNs (the ''Accelerated Return Notes''), and Cboe Vest S&P 500® Power Buffer Strategy ETNs (the ''Power Buffer Notes'') (each a ''Series of Notes'' and, collectively, the ''Notes'' or the ''Target Outcome Notes'').

The Exchange is submitting this proposal because the indexes underlying the Notes (the ''Indexes'') do not meet the listing requirements of Rule 14.11(d)(2)(K)(i)(a) applicable to a series of Equity Index-Linked Securities,[5] which requires that the equity securities in the underlying index meet the criteria set forth in Rule 14.11(d)(2)(K)(i)(a)(1) [6] or 14.11(d)(2)(K)(i)(a)(2).[7] Specifically, the Notes do not meet all of the ''generic'' listing requirements of Rule 14.11(d)(2)(K)(i)(a)(2), applicable to the listing of Equity Index-Linked Securities. Rule 14.11(d)(2)(K)(i)(a)(2) sets forth the requirements to be met by components of an index of equity securities. Because the Indexes consist exclusively of standardized and/or FLexible EXchange Options (''FLEX Options'') on the S&P 500® Index (together, ''SPX Options''), rather than equity securities, the Indexes do not satisfy the requirements of Rule 14.11(d)(2)(K)(i)(a)(2).[8] However, the Notes and the Issuer, as defined below, will conform to all other initial and continued listing criteria applicable to Equity Index-Linked Securities under Rule 14.11(d).

The Notes will be offered by Bank of Montreal. Bank of Montreal (the ''Issuer'') is a company listed on NYSE.[9] The Notes will be the non-convertible debt of the Issuer. The Issuer is currently and will continue to be in compliance with Rule 10A–3 under the Act prior to initial listing and on a continual basis.[10] Each Series of Notes will: Have a term not less than one year and not greater than thirty years, which the Issuer expects will consist of a twenty year term with two five-year extensions at the discretion of the Issuer; [11] have a minimum public market value at the time of issuance of at least $4 million; [12] be redeemable at the option of holders thereof on at least

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Rule 14.11(d), ''Linked Securities'' includes Multifactor Index-Linked Securities, Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities, and Futures-Linked Securities.

[4] The Commission originally approved BZX Rule 14.11(d) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[5] As defined in Rule 14.11(d), ''Equity Index-Linked Securities'' are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying equity index or indexes (an ''Equity Reference Asset'').

[6] Rule 14.11(d)(2)(K)(i)(a)(1) requires that the index or indexes to which the security is linked shall have been reviewed and approved for the trading of Index Fund Shares or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied. The Indexes have not been reviewed and approved by the Commission under Section 19(b)(2) of the Act.

[7] Rule 14.11(d)(2)(K)(i)(a)(2) provides certain quantitative standards applicable to an underlying index or indexes and constituent securities.

[8] The Exchange notes that the Commission has approved the listing and trading of several series of funds, including both Index Fund Shares and Managed Fund Shares, that employ similar target outcome strategies as those of the Notes, as further discussed below. *See* Securities Exchange Act Release No. 83679 (July 26, 2018), 83 FR 35505 (July 26, 2018) (SR–BatsBZX–2017–72); and 83796 (August 8, 2018), 83 FR 40361 (August 14, 2018) (SR–CboeBZX–2017–005) (the ''Approval Order''). While such products are different product types than the Notes, the Exchange believes that many of the issues contemplated both in that proposal and in the Approval Order are either very similar or identical to those applicable to the Notes, specifically related to the susceptibility to manipulation of the underlying instruments, which include FLEX Options and certain other instruments based on the S&P 500® Index.

Rule 14.11(d)(2)(K)(i)(a)(2)(E) provides that all U.S. listed equity securities in the applicable index shall be, among other things, an NMS Stock as defined in Rule 600 under Regulation NMS of the Act. Options are excluded from the definition of NMS Stock, meaning that the Indexes do not meet this requirement because they are composed exclusively of SPX Options. The Exchange, however, notes that each component stock of the S&P 500® Index is an NMS Stock and that the S&P 500® Index meets the requirements of Rule 14.11(d)(2)(K)(i)(a)(2)(A)–(E).

[9] The Exchange notes that the Issuer will meet the requirements applicable under Rules 14.8(b)(2)(A)(1), 14.11(d)(2)(E), 14.11(h)(1)(A), and 14.11(h)(1)(E) on both an initial and continual basis.

[10] *See* Rule 14.11(d)(2)(F).

[11] *See* Rule 14.11(d)(2)(B).

[12] *See* Rule 14.11(h)(1)(D).

a weekly basis;[13] and will not have a loss (negative payment) at maturity accelerated by a multiple that exceeds three times the performance of the applicable Index.[14]

Rule 14.11(d)(2)(G)(i) requires that if the index is maintained by a broker-dealer, the broker-dealer shall erect and maintain a ''firewall'' around the personnel who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer. The Indexes are maintained by Cboe Exchange, Inc. (the ''Index Provider'' or ''Cboe Options''), which is not a broker-dealer.

Cboe Vest Target Outcome Notes

The investment objective of each Series of Notes is to track, before fees and expenses, the performance of its respective Index. The value of each Index is calculated daily by the Index Provider utilizing an options valuation methodology. Each Index is a rules-based options index that consists exclusively of SPX Options and that is designed to provide a targeted outcome based on the performance of the S&P 500® Index over a period of one year, as further described below.

Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy ETNs

The Exchange is proposing to list and trade each monthly series of the Buffer Notes,[15] each of which is based on its respective Cboe S&P 500® Buffer Enhanced Growth Protect Index. Each Index is a rules-based options index that consists exclusively of SPX Options. The Indexes are designed to provide exposure to the large capitalization U.S. equity market, with lower volatility and downside risk than traditional equity indices, except in environments of rapid appreciation in the U.S. equity market over the course of one year. On a specified day of the applicable month for each Index, the SPX Options expire (the ''Expiry Date'') and on the following trading day (typically the last trading day of that month, subject to postponement; the applicable Index implements a new portfolio of SPX Options (the ''Roll Date,'' and the time period from and including the Expiry Date to and including the Roll Date, is the ''Roll Period''),[16] with expirations on the next Expiry Date that, if held to such Expiry Date, seeks to ''buffer protect'' against the first 10% decline in the value of the S&P 500® Index, while providing 200% participation up to a maximum capped gain in the value of the S&P 500® Index (the ''Capped Level'').

Each Index is designed to provide the following outcomes between Roll Dates:

- *If the S&P 500® Index declines more than 10%:* The Index declines 10% less than the S&P 500® Index (*e.g.,* if the S&P 500® Index returns −35%, the Index is designed to return −25%);
- *If the S&P 500® Index declines between 0% and 10%:* The Index provides a total return of zero (0%);
- *If the S&P 500® Index appreciates between 0% and the Capped Level:* The Index appreciates by an amount that equals 200% of the gain in the level of the S&P 500® Index; and
- *If the S&P 500® Index appreciates more than the Capped Level:* The Index appreciates by the amount equal to the Capped Level.

Each Index includes a mix of purchased and written (sold) SPX Options structured to achieve the results described above. Such results are only applicable for each full 12-month period from one Roll Date to the next Roll Date, and the Index may not return such results for shorter or longer periods. The value of each Index is calculated daily by Cboe Options utilizing a rules-based options valuation methodology, which utilizes the prices at which the component SPX Options that comprise the Index trade on that day or prices that are derived from a valuation model when a traded price is not available or appropriate.

Cboe Vest S&P 500® Enhanced Growth Strategy ETN

The Exchange is proposing to list and trade each monthly series of the Enhanced Growth Notes,[17] each of which is based on its respective Cboe S&P 500® Enhanced Growth Index. Each Index is a rules-based options index that consists exclusively of SPX Options. The Indexes are designed to provide exposure to the large capitalization U.S. equity market with similar volatility and downside risk, but higher upside potential in market environments with modest gains in the U.S. equity market over the course of one year. On a specified day of the applicable month for each Index the SPX Options expire (the ''Expiry Date'') and on the following trading day (typically the last trading day of that month, subject to postponement, the applicable Index implements a new portfolio of SPX Options (the ''Roll Date,'' and the time period from and including the Expiry Date to and including the Roll Date, is the ''Roll Period''),[18] with expirations

[13] *See* Rule 14.11(d)(2)(A). Rule 14.11(d)(2)(A) provides that both the issue and the issuer of a security must meet the criteria applicable under Rule 14.11(h); however, where a security is redeemable at the option of holders thereof on at least a weekly basis, then no minimum number of holders and no minimum public distribution of trading units shall be required. Because the Notes will be redeemable at the option of a holder on at least a weekly basis, the Issuer and the Notes will not be required to meet such requirements under Rule 14.11(h). The public distribution and trading unit requirements under Rule 14.11(h) require a minimum of 400 holders and a minimum public distribution of 1,000,000 trading units. *See* Rule 14.11(h)(1)(B) and (C).

[14] *See* Rule 14.11(d)(2)(D).

[15] In total, the Exchange is proposing to list and trade twelve monthly series of the Cboe Vest S&P 500® Enhanced Growth Buffer Protect Strategy ETNs. The Buffer Notes will include the following: Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy (January) ETN; Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy (February) ETN; Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy (March) ETN; Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy (April) ETN; Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy (May) ETN; Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy (June) ETN; Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy (July) ETN; Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy (August) ETN; Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy (September) ETN; Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy (October) ETN; Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy (November) ETN; and Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy (December) ETN. Each Note will be based on the Cboe S&P 500® Buffer Enhanced Growth Protect Index (Month) Series, where ''Month'' is the corresponding month associated with the Roll Date as defined below, of the applicable Series of Notes.

[16] Each of the twelve Indexes are designed to provide returns over a defined year long period and, thus, there is an Index associated with each month. As such, the Roll Date for a specific Index is dependent on the monthly series for which the Index is associated. For example, the Roll Date for the Cboe® S&P 500® Enhanced Growth Buffer Protect Index January Series is in January and the Roll Date for the Cboe® S&P 500® Enhanced Growth Buffer Protect Index February Series is in February, a pattern which continues through the rest of the calendar year.

[17] In total, the Exchange is proposing to list and trade twelve monthly series of the Cboe Vest S&P 500® Enhanced Growth Strategy ETNs. The Enhanced Growth Notes will include the following: Cboe Vest S&P 500® Enhanced Growth Strategy ETN. Each Note will be an index-based exchange traded note (''ETN''). The Notes will be the following: Cboe Vest S&P 500® Enhanced Growth Strategy (January) ETN; Cboe Vest S&P 500® Enhanced Growth Strategy (February) ETN; Cboe Vest S&P 500® Enhanced Growth Strategy (March) ETN; Cboe Vest S&P 500® Enhanced Growth Strategy (April) ETN; Cboe Vest S&P 500® Enhanced Growth Strategy (May) ETN; Cboe Vest S&P 500® Enhanced Growth Strategy (June) ETN; Cboe Vest S&P 500® Enhanced Growth Strategy (July) ETN; Cboe Vest S&P 500® Enhanced Growth Strategy (August) ETN; Cboe Vest S&P 500® Enhanced Growth Strategy (September) ETN; Cboe Vest S&P 500® Enhanced Growth Strategy (October) ETN; Cboe Vest S&P 500® Enhanced Growth Strategy (November) ETN; and Cboe Vest S&P 500® Enhanced Growth Strategy (December) ETN. Each Note will be based on the Cboe S&P 500 Enhanced Growth Index (Month) Series, where ''Month'' is the corresponding month associated with the Roll Date of the applicable Series of Notes.

[18] Each of the twelve Indexes are designed to provide returns over a defined year long period and, thus, there is an Index associated with each month. As such, the Roll Date for a specific Index is

on the next Expiry Date that, if held to such Expiry Date, seeks to provide 200% participation up to a maximum capped gain in the value of the S&P 500® Index (the ''Capped Level'') and 100% participation in losses in the value of the S&P 500® Index.

Each Index is designed to provide the following outcomes between Roll Dates:

• *If the S&P 500® Index declines:* The Index declines by the same amount as the S&P 500® Index (*e.g.,* if the S&P 500® Index returns −35%, the Index is designed to return −35%);

• *If the S&P 500® Index appreciates between 0% and the Capped Level:* The Index appreciates by an amount that equals 200% of the gain in the price of the S&P 500® Index; and

• *If the S&P 500® Index appreciates more than the Capped Level:* The Index appreciates by the amount equal to the Capped Level.

Each Index includes a mix of purchased and written (sold) SPX Options structured to achieve the results described above. Such results are only applicable for each full 12-month period from one Roll Date to the next Roll Date, and the Index may not return such results for shorter or longer periods. The value of each Index is calculated daily by Cboe Options utilizing a rules-based options valuation methodology, which utilizes the prices at which the component SPX Options that comprise the Index trade on that day or prices that are derived from a valuation model when a traded price is not available or appropriate.

Cboe Vest S&P 500® Accelerated Return Strategy ETN

The Exchange is proposing to list and trade each monthly series of the Accelerated Return Notes,[19] each of which is based on its respective Cboe S&P 500® Accelerated Return Index. Each Index is a rules-based options index that consists exclusively of SPX Options. The Indexes are designed to provide exposure to the large capitalization U.S. equity market with similar volatility and downside risk, but higher upside potential in market environments with modest gains in the U.S. equity market over the course of one year. On a specified day of the applicable month for each Index the SPX Options expire (the ''Expiry Date'') and on the following trading day (typically the last trading day of that month, subject to postponement, the applicable Index implements a new portfolio of SPX Options (the ''Roll Date,'' and the time period from and including the Expiry Date to and including the Roll Date, is the ''Roll Period''),[20] with expirations on the next Expiry Date that, if held to such Expiry Date, seeks to provide 300% participation up to a maximum capped gain in the value of the S&P 500® Index (the ''Capped Level'') and 100% participation in losses in the value of the S&P 500® Index.

Each Index is designed to provide the following outcomes between Roll Dates:

• *If the S&P 500® Index declines:* The Index declines by the same amount as the S&P 500® Index (*e.g.,* if the S&P 500® Index returns −35%, the Index is designed to return −35%);

• *If the S&P 500® Index appreciates between 0% and the Capped Level:* The Index appreciates by an amount that equals 300% of the gain in the price of the S&P 500® Index; and

• *If the S&P 500® Index appreciates more than the Capped Level:* The Index appreciates by the amount equal to the Capped Level.

Each Index includes a mix of purchased and written (sold) SPX Options structured to achieve the results described above. Such results are only applicable for each full 12-month period from one Roll Date to the next Roll Date, and the Index may not return such results for shorter or longer periods. The value of each Index is calculated daily by Cboe Options utilizing a rules-based options valuation methodology, which utilizes the prices at which the component SPX Options that comprise the Index trade on that day or prices that are derived from a valuation model when a traded price is not available or appropriate.

Cboe Vest S&P 500® Power Buffer Strategy ETN

The Exchange is proposing to list and trade each monthly series of the Power Buffer Notes,[21] each of which is based on its respective Cboe S&P 500® Power Buffer Index. Each Index is a rules-based options index that consists exclusively of SPX Options. The Indexes are designed to provide exposure to the large capitalization U.S. equity market with lower volatility and downside risks than traditional equity indices, except in environments of rapid appreciation in the U.S. equity market over the course of one year. On a specified day of the applicable month for each Index the SPX Options expire (the ''Expiry Date'') and on the following trading day (typically the last trading day of that month, subject to postponement, the applicable Index implements a new portfolio of SPX Options (the ''Roll Date,'' and the time period from and including the Expiry Date to and including the Roll Date, is the ''Roll Period''),[22] with expirations on the next Expiry Date that, if held to such Expiry Date, seeks to ''buffer

dependent on the monthly series for which the Index is associated. For example, the Roll Date for the Cboe® S&P 500® Enhanced Growth Index January Series is in January and the Roll Date for the Cboe® S&P 500® Enhanced Growth Index February Series is in February, a pattern which continues through the rest of the calendar year.

[19] In total, the Exchange is proposing to list and trade twelve monthly series of the Cboe Vest S&P 500® Accelerated Return Strategy ETNs. The Accelerated Return Notes will include the following: Cboe Vest S&P 500® Accelerated Return Strategy ETN. Each Note will be an index-based exchange traded note (''ETN''). The Notes will be the following: Cboe Vest S&P 500® Accelerated Return Strategy (January) ETN; Cboe Vest S&P 500® Accelerated Return Strategy (February) ETN; Cboe Vest S&P 500® Accelerated Return Strategy (March) ETN; Cboe Vest S&P 500® Accelerated Return Strategy (April) ETN; Cboe Vest S&P 500® Accelerated Return Strategy (May) ETN; Cboe Vest S&P 500® Accelerated Return Strategy (June) ETN; Cboe Vest S&P 500® Accelerated Return Strategy (July) ETN; Cboe Vest S&P 500® Accelerated Return Strategy (August) ETN; Cboe Vest S&P 500® Accelerated Return Strategy (September) ETN; Cboe Vest S&P 500® Accelerated Return Strategy (October) ETN; Cboe Vest S&P 500® Accelerated Return Strategy (November) ETN; and Cboe Vest S&P 500® Accelerated Return Strategy (December) ETN. Each Note will be based on the Cboe S&P 500® Accelerated Return Index (Month) Series, where ''Month'' is the corresponding month associated with the Roll Date of the applicable Series of Notes.

[20] Each of the twelve Indexes are designed to provide returns over a defined year long period and, thus, there is an Index associated with each month. As such, the Roll Date for a specific Index is dependent on the monthly series for which the Index is associated. For example, the Roll Date for the Cboe® S&P 500® Accelerated Return Index January Series is in January and the Roll Date for the Cboe® S&P 500® Accelerated Return Index February Series is in February, a pattern which continues through the rest of the calendar year.

[21] In total, the Exchange is proposing to list and trade twelve monthly series of the Cboe Vest S&P 500® Power Buffer Strategy ETNs. The Power Buffer Notes will include the following: Cboe Vest S&P 500® Power Buffer Strategy (January) ETN; Cboe Vest S&P 500® Power Buffer Strategy (February) ETN; Cboe Vest S&P 500® Power Buffer Strategy (March) ETN; Cboe Vest S&P 500® Power Buffer Strategy (April) ETN; Cboe Vest S&P 500® Power Buffer Strategy (May) ETN; Cboe Vest S&P 500® Power Buffer Strategy (June) ETN; Cboe Vest S&P 500® Power Buffer Strategy (July) ETN; Cboe Vest S&P 500® Power Buffer Strategy (August) ETN; Cboe Vest S&P 500® Power Buffer Strategy (September) ETN; Cboe Vest S&P 500® Power Buffer Strategy (October) ETN; Cboe Vest S&P 500® Power Buffer Strategy (November) ETN; and Cboe Vest S&P 500® Power Buffer Strategy (December) ETN. Each Note will be based on the Cboe S&P 500® Power Buffer Index (Month) Series, where ''Month'' is the corresponding month associated with the Roll Date of the applicable Series of Notes.

[22] Each of the twelve Indexes are designed to provide returns over a defined year long period and, thus, there is an Index associated with each month. As such, the Roll Date for a specific Index is dependent on the monthly series for which the Index is associated. For example, the Roll Date for the Cboe® S&P 500® Power Buffer Index January Series is in January and the Roll Date for the Cboe® S&P 500® Power Buffer Index February Series is in February, a pattern which continues through the rest of the calendar year.

protect'' against the first 15% decline in the value of the S&P 500® Index, while providing 100% participation up to a maximum capped gain in the value of the S&P 500® Index (the ''Capped Level'').

Each Index is designed to provide the following outcomes between Roll Dates:

- *If the S&P 500® Index declines more than 15%:* The Index declines 15% less than the S&P 500® Index (*e.g.,* if the S&P 500® Index returns −35%, the Index is designed to return −20%);
- *If the S&P 500® Index declines between 0% and 15%:* The Index provides a total return of zero (0%);
- *If the S&P 500® Index appreciates between 0% and the Capped Level:* The Index appreciates by an amount that equals the gain in the price of the S&P 500® Index; and
- *If the S&P 500® Index appreciates more than the Capped Level:* The Index appreciates by the amount equal to the Capped Level.

Each Index includes a mix of purchased and written (sold) SPX Options structured to achieve the results described above. Such results are only applicable for each full 12-month period from one Roll Date to the next Roll Date, and the Index may not return such results for shorter or longer periods. The value of each Index is calculated daily by Cboe Options utilizing a rules-based options valuation methodology, which utilizes the prices at which the component SPX Options that comprise the Index trade on that day or prices that are derived from a valuation model when a traded price is not available or appropriate.

S&P 500® Options

The market for options contracts on the S&P 500® Index traded on Cboe Options is among the most liquid markets in the world. According to publicly available data, more than 1.48 million options contracts on the S&P 500® Index were traded per day on Cboe Options in 2018, which is more than $350 billion in notional volume traded on a daily basis. While FLEX Options are traded differently than standardized options contracts, the Exchange believes that this liquidity bolsters the market for FLEX Options, as described below. Every FLEX Option order submitted to Cboe Options is exposed to a competitive auction process for price discovery. The process begins with a request for quote (''RFQ'') in which the interested party establishes the terms of the FLEX Options contract. The RFQ solicits interested market participants, including on-floor market makers, remote market makers trading electronically, and member firm traders, to respond to the RFQ with bids or offers through a competitive process. This solicitation contains all of the contract specifications-underlying, size, type of option, expiration date, strike price, exercise style and settlement basis. During a specified amount of time, responses to the RFQ are received and at the end of that time period, the initiator can decide whether to accept the best bid or offer. The process occurs under the rules of Cboe Options, which means that customer transactions are effected according to the principles of a fair and orderly market following trading procedures and policies developed by Cboe Options.

The Exchange believes that sufficient protections are in place to protect against market manipulation of the Notes and SPX Options for several reasons: (i) The diversity, liquidity, and market cap of the securities underlying the S&P 500® Index; (ii) the significant liquidity in the market for options on the S&P 500® Index; (iii) the competitive quoting process for FLEX Options combined with the significant liquidity in the market for options on the S&P 500® Index results in a well-established price discovery process that provides meaningful guideposts for FLEX Option pricing; and (iv) surveillance by the Exchange, Cboe Options [23] and the Financial Industry Regulatory Authority (''FINRA'') designed to detect violations of the federal securities laws and self-regulatory organization (''SRO'') rules. The Exchange has in place a surveillance program for derivative products, including Linked Securities, to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Notes less readily susceptible to manipulation. Further, the Exchange believes that because the Indexes will consist only of SPX Options, which trade in extremely liquid and highly regulated markets, the Notes are less readily susceptible to manipulation.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Notes on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Notes through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Linked Securities. All statements and representations made in this filing regarding (a) the description of the portfolio, reference assets, and index, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Notes on the Exchange. The Issuer has represented to the Exchange that it will advise the Exchange of any failure by a Series of Notes to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Series of Notes is not in compliance with the applicable listing requirements, then, with respect to such Series of Notes, the Exchange will commence delisting procedures under Exchange Rule 14.12. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Units and exchange-traded options contracts with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG'') [24] and may obtain trading information regarding trading in the Units and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Units and SPX Options from Cboe Options. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, options on the S&P 500® Index are among the most liquid options in the world and derive their value from the actively traded S&P 500® Index components. The contracts are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P

[23] The Exchange notes that Cboe Options is a member of the Option Price Regulatory Surveillance Authority, which was established in 2006, to provide efficiencies in looking for insider trading and serves as a central organization to facilitate collaboration in insider trading and investigations for the U.S. options exchanges. For more information, *see http://www.cboe.com/aboutcboe/legal/departments/orsareg.aspx.*

[24] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

500® Index make securities that derive their value from that index less susceptible to market manipulation in view of the market capitalization and liquidity of the S&P 500® Index components, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for S&P 500® Index securities, options on the S&P 500® Index, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the price of the Units. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Notes would present manipulation concerns.

The Exchange represents that, except for the exception to Rule 14.11(d)(2)(K)(i)(a), the Indexes will satisfy, on an initial and continued listing basis, all of the listing standards under BZX Rule 14.11(d)(K)(i) and all other requirements under Rule 14.11(d) that are applicable to Equity Index-Linked Securities. The Issuer is required to comply with Rule 10A–3 under the Act for the initial and continued listing of the Notes. In addition, the Exchange represents that the Notes will comply with all other requirements applicable to Equity Index-Linked Securities, which includes index dissemination,[25] suspension of trading or removal,[26] trading halts,[27] surveillance,[28] minimum price variation for quoting and order entry,[29] and the information circular,[30] as set forth in Exchange rules applicable Equity Index-Linked Securities. Further, all statements or representations regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of the index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules shall constitute continued listing requirements for the Notes. Moreover, all of the options contracts included in the Indexes will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Quotation and last sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority. RFQ information for FLEX Options will be available directly from Cboe Options. The intra-day, closing and settlement prices of exchange-traded options will be readily available from the options exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters.

Lastly, the Issuer represents that there will be a publicly available web tool for each Series of Notes on a website that provides existing and prospective investors with important information to help inform investment decisions. The information provided will include the start and end dates of the current outcome period, the time remaining in the outcome period, the Index's current value, the applicable cap for the outcome period and the maximum investment gain available up to the cap for an investor purchasing Notes at the current Index value. For each of the Series of Notes, the web tool will also provide information regarding its buffer. This information will include the remaining buffer available for an investor purchasing Notes at the current Index value or the amount of losses that an investor purchasing Notes at the Index value would incur before benefitting from the protection of the buffer.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[31] in general and Section 6(b)(5) of the Act[32] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the 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 the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest in that the Notes will meet each of the initial and continued listing criteria in BZX Rule 14.11(d) with the exception of Rule 14.11(d)(2)(K)(i)(a)(2), because the Indexes consist exclusively of SPX Options, rather than equity securities. Rule 14.11(d)(2)(K)(i)(a)(2) is intended to ensure that a series of Equity Index-Linked Securities is not subject to manipulation by requiring that the underlying reference index is composed of equity securities that are sufficiently large, liquid, and diverse to mitigate manipulation concerns. The Exchange believes that these manipulation concerns are otherwise mitigated.

Specifically, the Exchange believes that sufficient protections are in place to protect against market manipulation of the Units and SPX Options for several reasons: (i) The diversity, liquidity, and market cap of the securities underlying the S&P 500® Index; (ii) the significant liquidity in the market for options on the S&P 500® Index; (iii) the competitive quoting process for FLEX Options combined with the significant liquidity in the market for options on the S&P 500® Index results in a well-established price discovery process that provides meaningful guideposts for FLEX Option pricing; and (iv) surveillance by the Exchange, Cboe Options and FINRA designed to detect violations of the federal securities laws and SRO rules. The Exchange has in place a surveillance program for transactions in Linked Securities to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Notes less readily susceptible to manipulation. Further, the Exchange believes that because the assets in each Index, which are comprised entirely of SPX Options on the S&P 500® Index, are priced in extremely liquid and highly regulated markets, the Notes are less readily susceptible to manipulation.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Notes on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Notes through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Linked Securities. All statements and representations made in this filing regarding (a) the description of the portfolio, reference assets, and index, (b) limitations on portfolio holdings or reference assets, or (c) the applicability

[25] *See* Rule 14.11(d)(2)(G).
[26] *See* Rule 14.11(d)(2)(K)(i)(b).
[27] *See* Rule 14.11(d)(2)(H).
[28] *See* Rule 14.11(d)(2)(I).
[29] *See* Rule 11.11(a).
[30] *See* Rule 14.11(h)(1)(F).
[31] 15 U.S.C. 78f.
[32] 15 U.S.C. 78f(b)(5).

of Exchange rules shall constitute continued listing requirements for listing the Notes on the Exchange. The Issuer has represented to the Exchange that it will advise the Exchange of any failure by a Series of Notes to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Series of Notes is not in compliance with the applicable listing requirements, then, with respect to such Notes, the Exchange will commence delisting procedures under Exchange Rule 14.12. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Series of Notes is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Series of Notes under Exchange Rule 14.12.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Notes and exchange-traded options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Notes and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Notes and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. As noted above, options on the S&P 500® Index are among the most liquid options in the world and derive their value from the actively traded S&P 500® Index components. The contracts are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P 500® Index make securities that derive their value from that index less susceptible to market manipulation in view of the market capitalization and liquidity of the S&P 500® Index components, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for S&P 500® Index securities, options on the S&P 500® Index, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the price of the Notes. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Units would present manipulation concerns.

The Exchange represents that, except as described above, the Notes will meet and be subject to all other requirements of the listing standards and other applicable continued listing requirements for Equity Index-Linked Securities, including index dissemination,[33] suspension of trading or removal,[34] trading halts,[35] surveillance,[36] minimum price variation for quoting and order entry,[37] and the information circular.[38] The Issuer is required to comply with Rule 10A–3 under the Act for the initial and continued listing of each Series of Notes. Moreover, all of the options contracts included in the Indexes will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of several additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[33] *See* Rule 14.11(d)(2)(G).

[34] *See* Rule 14.11(d)(2)(K)(i)(b).

[35] *See* Rule 14.11(d)(2)(H).

[36] *See* Rule 14.11(d)(2)(I).

[37] *See* Rule 11.11(a).

[38] *See* Rule 14.11(h)(1)(F).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2019–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–015, and should be submitted on or before April 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05459 Filed 3–21–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85350; File No. SR–ICEEU–2019–006]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to Amendments to the CDS Risk Management Model Description Document

March 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2019, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes to make certain amendments to its CDS Risk Model Description document to incorporate risk model enhancements related to the single name credit default swap (''CDS'') liquidity charge methodology.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The ICE Clear Europe CDS risk model includes explicit provision to account for the additional liquidation cost due to the exposure to Bid/Offer Width (''BOW'') as, in the event of Clearing Member default, the Clearing House might incur in additional costs to unwind the positions. Specifically, a bid/offer risk requirement, named liquidity charge, is introduced. Such liquidity charges are computed separately for single names and indices.

ICE Clear Europe proposes a revised approach to computing single name CDS liquidity charges. Specifically, ICE Clear Europe proposes to introduce minimum instrument liquidity requirements independent of instrument maturities. ICE Clear Europe's current spread-based liquidity charge approach features instrument liquidity requirements that decay with time to maturity for fixed credit spread levels. The proposed approach introduces minimum liquidity requirements for individual instruments, independent of time to maturity for the considered instruments, and thus establishes minimum liquidity charges that do not decay over time as contract maturity is approached. The proposed calculation for single name CDS liquidity charges at the instrument level incorporates a price-based bid-offer width floor component to provide stability and anti-procyclicality requirements, as well as a dynamic spread-based BOW component to reflect the additional risk associated with distressed market conditions. The values of such price-based BOW and spread-based BOW are fixed factors, which are subject to at least monthly reviews and updates by ICE Clear Europe Risk Management Department with consultation with the Risk Working Group.

ICE Clear Europe also proposes enhancements to the liquidity charge calculation at the single name level. The current liquidity charge approach at the single name level accounts for the liquidation cost across the curve. All positions are aggregated and priced at each maturity interval separately as a synthetic forward CDS instrument. This current approach introduces potential sub-additivity at the single name level, as it may result in a higher liquidity charge than the sum of the single name instrument requirements.

Under the proposed calculation, liquidity charges at single name level will be computed by first calculating the liquidity requirements for each individual instrument position in the portfolio, and then summing all instrument liquidity requirements for positions with the same directionality, *i.e.* bought or sold protection. The liquidity charge requirements at the single name level will be the greatest liquidity requirement associated with either the sum of all bought protection position liquidity requirements, or the sum of all sold protection position liquidity requirements. Under this proposed approach, the portfolios' liquidity charge cannot exceed the sum of the individual instrument's requirements. There are no changes to the liquidity charge calculation at the portfolio level.

ICE Clear Europe expects these enhancements will ensure more stable liquidity requirements for instruments across the curve. Further, the enhancements simplify ICE Clear Europe's liquidity charge methodology, which promotes ease of understanding. As stated above, the current single name level liquidity requirements are based on forward CDS spread levels and are, in general, more difficult to calculate as forward spread levels are not observable across the term structure (''curve''). ICE Clear Europe, as part of its end-of-day price discovery process, provides end-of-day pricing data for instruments in which clients have open positions, which will, under the proposed approach, allow for easier replication for clients who wish to estimate liquidity charges for hypothetical and current positions.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act[4] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[5] Section

[39] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules.

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 240.17Ad–22.

17A(b)(3)(F) of the Act[6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes enhance ICE Clear Europe's risk methodology by better capturing the proper liquidation cost for portfolios. The changes are expected to promote the stability and conservative bias of margin requirements, which would enhance the financial resources available to ICE Clear Europe and ensure ICE Clear Europe maintains the appropriate level of risk management resources to cover losses in the case of a default. As such, the proposed changes enhance ICE Clear Europe's ability to manage risk and therefore facilitate its ability to promptly and accurately clear and settle its cleared CDS contracts and contribute to the safeguarding of securities and funds in ICE Clear Europe's custody or control, within the meaning of Section 17A(b)(3)(F) of the Act.[7]

In addition, the proposed revisions are consistent with the relevant requirements of Rule 17Ad–22.[8] Rule 17Ad–22(b)(2)[9] requires ICE Clear Europe to establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions. The proposed changes will improve ICE Clear Europe's ability to calculate margin requirements and establish margin requirements commensurate with the risk and characteristics presented by each portfolio, thereby improving ICE Clear Europe's ability to limit its credit exposures to participants under normal market conditions, consistent with the requirements of Rule 17Ad–22(b)(2).[10]

Rule 17Ad–22(b)(3)[11] requires ICE Clear Europe to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions. Rule 17Ad–22(e)(4)[12] requires a covered clearing, in relevant part, to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. The changes to the single name liquidity charge will enhance the financial resources available to ICE Clear Europe by enhancing its margin computation such that ICE Clear Europe is better able to capture portfolio risk and generate more stable and conservative margin requirements. As such, ICE Clear Europe will continue to ensure that it maintains sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence and to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3)[13] and (e)(4).[14]

Rule 17Ad–22(e)(6)(i)[15] requires a covered clearing agency that provides central counterparty services to, in relevant part, cover its credit exposures to its participants by established a risk-based margin system that, at a minimum, considers and produces margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market. Further, Rule 17Ad–22(e)(6)(v)[16] requires a covered clearing agency that provides central counterparty services to, in relevant part, to cover its credit exposures to its participants by established a risk-based margin system that, at a minimum uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. As previously noted the changes to the single name CDS liquidity charge calculation are designed to better capture the proper liquidation cost for portfolios, which allows ICE Clear Europe to appropriately capture the overall risk of portfolios and ensure that ICE Clear Europe establishes margin requirements that are commensurate with the risks and characteristics of each portfolio, consistent with Rule 17Ad–22(e)(6)(i) and (v).[17]

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] Id.

[8] 17 CFR 240.17Ad–22.

[9] 17 CFR 240.17Ad–22(b)(2).

[10] Id.

[11] 17 CFR 240.17Ad–22(b)(3).

[12] 17 CFR 240.17Ad–22(e)(4).

[13] 17 CFR 240.17Ad–22(b)(3).

[14] 17 CFR 240.17Ad–22(e)(4).

[15] 17 CFR 240.17Ad–22(e)(6)(i).

[16] 17 CFR 240.17Ad–22(e)(6)(v).

[17] 17 CFR 240.17Ad–22(e)(6)(i), (v).

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The revised approach may result in increased single name liquidity charge requirements for CDS Clearing Members, and so may increase the cost of clearing for those Clearing Members. However, ICE Clear Europe believes that any such additional cost is appropriate to take into account the risk posed to the Clearing House by such Clearing Members, consistent with the provisions of the Act and Commission regulations relating to financial resource and margin requirements and methodologies as discussed above. The risk model enhancements related to the single name CDS liquidity charge methodology apply uniformly to all CDS Clearing Members, and such Clearing Members will be able to manage their positions to limit potential single name liquidity charges if they so choose. ICE Clear Europe does not believe that the revised methodology will otherwise impact competition among Clearing Members or other market participants, or affect the ability of market participants to access clearing generally. Therefore, ICE Clear Europe does not believe the proposed rule changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2019–006 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2019–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2019–006 and should be submitted on or before April 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05465 Filed 3–21–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85351; File No. SR–IEX–2018–23]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the Resting Price of Discretionary Peg Orders

March 18, 2019.

I. Introduction

On November 30, 2018, the Investors Exchange, LLC (''IEX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the resting price of Discretionary Peg orders. The proposed rule change was published for comment in the **Federal Register** on December 19, 2018.[3] The Commission received two comments on the proposed rule change,[4] and one response letter from the Exchange.[5] On March 13, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange offers a Discretionary Peg order type that is an entirely non-displayed, pegged order.[7] Upon entry, the order is priced by the IEX system to be equal to the less aggressive of the midpoint of the NBBO or the order's limit price, if any. Currently, any unexecuted portion of the order is posted and ranked non-displayed on the IEX order book at the *near-side primary quote* (*i.e.,* the NBB for buy orders, the NBO for sell orders). Thereafter, the resting price of the order is automatically adjusted by the IEX system in response to changes in the NBB (NBO) for buy (sell) orders so that its non-displayed resting price remains pegged at the near-side primary quote, up (down) to the order's limit price, if any.[8]

Once posted to the IEX order book, a Discretionary Peg order, in response to incoming active orders, will exercise the least amount of price discretion necessary from its resting price to its discretionary price, and thus may trade more aggressively up to (for buy orders) or down to (for sell orders) the midpoint of the NBBO,[9] but will only do so when the IEX system determines the quote in the subject security to be ''stable.''[10] When IEX determines the quote to be ''unstable'' for the subject security and activates the crumbling quote indicator (''CQI'') for up to 2 milliseconds, as specified in IEX Rule 11.190(g), Discretionary Peg orders do not exercise price discretion to trade at prices to the midpoint of the NBBO. However, Discretionary Peg orders remain eligible for execution at their resting price (*i.e.,* at the NBB (NBO) for buy (sell) orders) when the CQI is on. Therefore, when IEX determines the quote to be unstable, Discretionary Peg orders are protected

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84820 (December 13, 2018), 83 FR 65186 (December 19, 2018) (''Notice'').

[4] *See* Letters from Joanna Mallers, Secretary, FIA Principals Traders Group to Brent J. Fields, Secretary, Office of the Secretary, Commission, dated January 22, 2019 (''FIA PTG Letter I'') and March 1, 2019 (''FIA PTG Letter II'').

[5] *See* Letter from John Ramsey, Chief Market Policy Officer, IEX Group, Inc. to Brent J. Fields, Secretary, Office of the Secretary, Commission, dated February 14, 2019 (''IEX Letter'').

[6] In Amendment No. 1, the Exchange specified that, if the Commission were to approve its proposed rule change, the Exchange would implement it within ninety (90) days of Commission approval and would provide market participants with at least 10 days of notice via a Trading Alert once a specific implementation date is determined. To promote transparency of its proposed amendment, when the Exchange filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its website and placed in the public comment file for SR–IEX–2018–23 (available at *https://www.sec.gov/comments/sr-iex-2018-23/sriex201823-5101841-183253.pdf*). The Exchange also posted a copy of its Amendment No. 1 on its website.

[7] The Exchange currently offers three types of pegged orders—primary peg, midpoint peg, and Discretionary Peg—each of which are non-displayed orders that are pegged to a reference price based on the national best bid and offer (''NBBO''). *See* IEX Rule 11.190(a)(3).

[8] *See* IEX Rule 11.190(b)(10).

[9] When ''exercising discretion,'' a Discretionary Peg order is prioritized behind any displayed or non-displayed interest resting at the discretionary price. *See* IEX Rule 11.190(b)(10).

[10] *See* IEX Rule 11.190(g).

from trading more aggressively to a reference price that IEX determines may become stale imminently.

In its proposal, the Exchange now proposes to modify the resting price of Discretionary Peg orders to be equal to the less aggressive of *1 MPV less aggressive* than the primary quote (rather than the primary quote itself) or the order's limit price. The Exchange notes that the proposed resting price for Discretionary Peg orders will be the same as the resting price of primary peg orders pursuant to IEX Rule 11.190(b)(8).[11]

In its filing, the Exchange stated that one of the purposes for its proposed rule change was to ''further protect resting Discretionary Peg orders from execution at a stale price'' and noted that Discretionary Peg orders currently ''remain susceptible to trading at the primary quote'' when the CQI is on.[12] The Exchange further noted that, in its experience, while Discretionary Peg orders do not often execute at the primary quote, a considerable portion of such executions at the primary quote occur when the CQI is on.[13]

Finally, the Exchange also proposes conforming changes to the description of the resting price of Discretionary Peg orders for purposes of ranking and priority in the Regular Market Session Opening Process for Non-IEX-Listed Securities and IEX Auctions.[14]

III. Comment Letter and Exchange Response

The Commission received two comments from one commenter that opposed the proposal rule change.[15] The commenter expressed concern that IEX's proposal would allow a Discretionary Peg order to ''jump over'' other orders to price more aggressively up to the midpoint when the CQI signal indicates it is ''safe'' to do so, but IEX will ''reprice'' the order back below the near-side primary quote ''to *avoid execution*'' (emphasis in original) when the CQI signal indicates a potential unstable quote.[16]

The commenter stated that, as a result of IEX's proposed rule change, ''the Discretionary Peg [o]rder can avoid being executed at all whenever the CQI signal is active'' [17] and noted that current Discretionary Peg functionality to price more aggressively when the CQI is off ''is partly counterbalanced by the fact that even when the CQI signal is active, Discretionary Peg [o]rders will still be executed.'' [18] The commenter argued that the proposal ''would be eliminating this counterbalance'' as a Discretionary Peg order would ''never'' execute when the CQI ''predicted an imminent price change in the NBBO.'' [19] In turn, the commenter believed that the proposal presents a ''conflict between the proposed change and the promotion of price discovery through the display of protected quotes.'' [20]

In its second letter, the commenter noted that a Discretionary Peg order is ''much more likely to be exercising discretion than not'' as they are ''eligible to trade more aggressively throughout the entire day with the exception of the 1.24 seconds when IEX has determined the market is *unstable*'' (emphasis in original).[21] The commenter also noted that the merits of the proposal are subjective and ''depend on the perspective from which the order is viewed.'' [22] For example, while IEX views the proposal as providing an additional measure of protection to Discretionary Peg orders when the CQI is on, ''[f]rom the point of view of the seller, the [Discretionary Peg order] appears to have faded its interest in response to preferential access to market data.'' [23] The commenter further criticized the Exchange's lack of data or analysis on the impact that its proposal might have on the provision of displayed liquidity on IEX.[24]

In its response, the Exchange stated its belief that the commenter described aspects of the Discretionary Peg order inaccurately.[25] In particular, the Exchange disagreed that Discretionary Peg orders ''fall back'' or reprice passively when the CQI is on, but rather characterized them as resting passively when the CQI is active.[26] Thus, the Exchange characterized the proposal as ''rather than repricing when the CQI is active, IEX is simply proposing that [Discretionary Peg orders] *rest* more passively'' than they do currently (emphasis in original).[27]

The Exchange also argued that the commenter mischaracterized the operation of the Discretionary Peg order by suggesting it could ''jump over'' resting displayed orders.[28] The Exchange explained that a Discretionary Peg order ''exercise[s] the least amount of price discretion necessary from [its] resting price to its discretionary price,'' except during periods of quote instability, and ''is prioritized behind any displayed or non-displayed interest resting at the discretionary price.'' [29] Thus, the Exchange explained that Discretionary Peg orders can only trade at prices *more* aggressive than resting displayed orders (*i.e.,* at the midpoint) only when the active incoming order is priced *less* aggressive than the NBBO (*i.e.,* active sell orders priced higher than the NBB or active buy orders priced lower than the NBO) (emphasis in original).[30]

Further, the Exchange countered the commenter's assertion that, unlike displayed orders, Discretionary Peg orders would never be eligible to execute when the CQI is active. The Exchange explained that a Discretionary Peg order would remain eligible to trade at its proposed resting price when the active order is priced more aggressive than the NBBO.[31]

Finally, the Exchange stated its belief that its proposed change did not present a novel application of discretionary pricing.[32]

IV. Discussion and Commission Findings

After careful review of the proposal and the comments received thereon the Commission finds that the proposed rule change is consistent with the requirements of the Act [33] and the rules and regulations thereunder applicable to a national securities exchange.[34] In particular, the Commission finds that the proposed rule change is consistent

[11] *See* Notice, *supra* note 3, at n.12.

[12] *See id.* at 65187.

[13] *See id.* (observing that in May-June 2018, ''90% of Discretionary Peg order executions trade within the NBBO when the CQI is off, 88% of which execute at the Midpoint Price. However, of the remaining 10% of Discretionary Peg order executions that occur at the primary quote, 31% occur when the CQI is on'').

[14] *See* proposed IEX Rule 11.231(a)(1)(iii) and IEX Rule 11.350(b)(1)(A)(i)(c), respectively.

[15] *See supra* note 4.

[16] *See* FIA PTG Letter I, *supra* note 4, at 2.

[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] *See id.* The commenter also urged the Commission to establish standards or guidelines for the use of discretionary price mechanisms and the ability of matching engines to adjust order prices based on predictive signals, and posed several hypothetical order types that could introduce additional complexity and potential conflicts between order types. *See id.* at 3.

[21] *See* FIA PTG Letter II, *supra* note 4, at 2.

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *See* IEX Letter, *supra* note 4, at 2.

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] *See id.*

[30] *See id.*

[31] *See id.* In its second comment letter, FIA PTG acknowledged this point but argued that it is unlikely to occur because it believes ''it is not common practice to route through the NBBO into the depth of book.'' *See* FIA PTG Letter II, *supra* note 4, at n.3.

[32] *See* IEX Letter, *supra* note 4, at 3.

[33] 15 U.S.C. 78f.

[34] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

with Section 6(b)(5) of the Act,[35] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes the proposed rule change is consistent with the protection of investors and the public interest because it is reasonably designed to protect non-displayed resting Discretionary Peg orders from unfavorable executions when IEX's precise rules-based mathematical quote instability formula suggests the possibility that the market may soon move against them in the next two milliseconds. If the market does move, the Discretionary Peg orders are re-ranked at a new resting price and permitted to once again exercise discretion to meet the limit price of active orders.

In general, the core design of a Discretionary Peg order, when resting, is to provide liquidity at a price as aggressive as the midpoint of the NBBO. While such orders currently rest at the near-side quote, these orders are non-displayed (*i.e.,* not reflected in the near-side quote) and thus market participants do not know in advance whether or to what extent they may be present on IEX. Further, such orders are ranked *behind* other interest, and they exercise the least amount of price discretion necessary in response to an incoming active order. As the Exchange continuously updates the NBBO and calculates the midpoint thereof, it also applies its CQI functionality in an attempt to predict an in-process market move that could result imminently in a new midpoint price. In ranking a Discretionary Peg order at its resting price during this time, investors may be better able to achieve their goals of passively trading up to the most up-to-date midpoint while minimizing the adverse selection of their non-displayed interest.

The proposed change will result in Discretionary Peg orders resting at the less aggressive of *one MPV less aggressive* than the primary quote (or the order's limit price), rather than the primary quote itself. As these order types are non-displayed, the Commission disagrees with the commenter's assertion that, from the perspective of a seller, a Discretionary Peg order can appear to have faded its interest. As such orders are *non*-displayed, they cannot so appear.

Rather, resting a Discretionary Peg order at one MVP less aggressive than it currently rests is reasonably designed to further protect such orders from execution at potentially stale prices, and therefore may help users of such orders avoid subjecting them to ''latency arbitrage'' by those market participants using very sophisticated latency-sensitive technology who can rapidly aggregate market data feeds and react fast to changing market conditions.[36] As IEX notes, Discretionary Peg orders will remain subject to execution at their new, only slightly less aggressive, resting prices, which, because they are only one MPV less aggressive, still will be eligible to trade against incoming orders that are aggressively seeking liquidity slightly through the best displayed price. At the same time, their protection from algorithms that may be seeking to trade at a potentially soon-to-be stale price will be enhanced.

To the extent this enhancement incentivizes the entry of additional Discretionary Peg orders on the Exchange by better protecting them from adverse selection, it could increase overall liquidity available on the Exchange to the benefit of all market participants and provide additional opportunities for price improvement to market participants removing liquidity on the Exchange during periods of quote stability.

The Commission agrees with the commenter that the impact on displayed liquidity is an important consideration, and the Commission agrees with IEX's response that the design of the Discretionary Peg order achieves a reasonable balance in that regard. Specifically, because Discretionary Peg orders exercise the least amount of price discretion, they may trade at prices more aggressive than resting displayed orders *only* when the active order is priced *less* aggressive then the NBBO (*i.e.,* active sell orders priced higher than the NBB or active buy orders priced lower than the NBO). As such, Discretionary Peg orders are not ''jumping over'' resting displayed interest on IEX because those types of incoming orders are priced such that they are not marketable against the displayed orders.

Finally, the Commission believes that the conforming changes to the description of the resting price of Discretionary Peg orders for purposes of ranking and priority in the Regular Market Session Opening Process for Non-IEX-Listed Securities is consistent with the protection of investors and the public interest because as it conforms those provisions to the change being made to the resting price of Discretionary Peg orders, which change the Commission addresses above.

Accordingly, the Commission finds that this proposed rule change, as modified by Amendment No. 1, is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 1 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–IEX–2018–23 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–IEX–2018–23. This file number should be included in 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

[35] 15 U.S.C. 78f(b)(5).

[36] *See* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142, 41157 (June 23, 2016) (In the Matter of the Application of: Investors' Exchange, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission).

provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 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 will also be available for inspection and copying at the IEX's principal office and on its internet website at *www.iextrading.com.* 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–IEX–2018–23 and should be submitted on or before April 12, 2019.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of the notice of Amendment No. 1 in the **Federal Register**. As noted above, in Amendment No. 1, the Exchange specified that, if the Commission were to approve its proposed rule change, the Exchange would implement it within ninety (90) days of Commission approval and would provide market participants with at least 10 days of notice via a Trading Alert once a specific implementation date is determined. Because Amendment No. 1 relates to the implementation of the proposed rule change and does not make any substantive changes to the proposal, the Commission believes that good cause exists for accelerated approval of the proposed rule change, as modified by Amendment No. 1. The Commission further notes that the original proposal was subject to a 21 day comment period; and three comments were received, and considered, on the proposal. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[37] to approve the proposed rule change prior to the 30th day after the date of publication of the notice of Amendment No. 1 in the **Federal Register**.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change (SR–IEX–2018–23), as modified by Amendment No. 1, hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05469 Filed 3–21–19; 8:45 am]

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[37] 15 U.S.C. 78s(b)(2).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85349; File No. SR–CboeBZX–2019–016]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Allow the JPMorgan Core Plus Bond ETF of the J.P. Morgan Exchange-Traded Fund Trust To Hold Certain Instruments in a Manner That May Not Comply With Rule 14.11(i), Managed Fund Shares

March 18, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 proposed [sic] rule change to allow the JPMorgan Core Plus Bond ETF (the ''Fund'') of the J.P. Morgan Exchange-Traded Fund Trust (the ''Trust'' or the ''Issuer'') to hold certain instruments in a manner that may not comply with Rule 14.11(i) (''Managed Fund Shares''). The shares of the Fund are referred to herein as the ''Shares.''

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 submits this proposal in order to allow the Shares, which are currently listed on the Exchange under Rule 14.11(i)[3] and began trading on January 30, 2019, to continue listing and trading on the Exchange while holding certain instruments in a manner that may not comply with three of the quantitative requirements under the Generic Listing Standards, as defined below [sic]. Two such exceptions are substantively identical or more restrictive[4] than representations in another rule filing that was approved by the Commission[5] and one exception relates to a de minimis portion of the Fund's holdings and therefore also does not raise any substantive issues for the Commission to consider. Specifically, the Exchange submits this proposal in order to allow the Fund to hold instruments in a manner that may not comply with Rule 14.11(i)(4)(C)(ii)(d),[6]

[3] The Commission approved Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[4] The Exchange notes that certain of the exceptions and substitute requirements approved in the Approval Order are measured using mark-to-market. The Exchange is not proposing to measure any of the exceptions to the Generic Listing Standards proposed herein using mark-to-market and, as such, all of the proposed representations about the Fund's holdings are either identical or more restrictive than those approved in the Approval Order.

[5] *See* Securities Exchange Act Release No. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR–NASDAQ–2017–128) (the ''Approval Order'').

[6] Rule 14.11(i)(4)(C)(ii)(d) provides that ''component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding

Rule 14.11(i)(4)(C)(iv)(b),[7] and/or Rule 14.11(i)(4)(C)(i) as further described below.[8] Otherwise, the Fund will continue to comply with all other listing requirements on an initial and continued listing basis under Rule 14.11(i).

The Fund is an actively managed exchange-traded fund that will seek a high level of current income by investing primarily in a diversified portfolio of high-, medium-, and low-grade debt securities.[9] The Shares are offered by the Trust, which was established as a Delaware statutory trust. The Trust is registered with the Commission as an open-end investment company and has filed an effective registration statement on behalf of the Fund on Form N–1A (''Registration Statement'') with the Commission.[10]

Description of the Shares and the Fund

The Shares are offered by the Trust, which was established as a Delaware statutory trust. J.P Morgan Investment Management, Inc. is the investment adviser (the ''Adviser'') to the Fund. JPMorgan Chase Bank, N.A. is the administrator, custodian, and transfer agent for the Trust. JPMorgan Distribution Services, Inc. serves as the distributor (''Distributor'') for the Trust.

Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[11] In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented and will maintain ''fire walls'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with another broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

JPMorgan Core Plus Bond ETF

According to the Registration Statement, the Fund is an actively managed exchange-traded fund that will seek a high level of current income by investing primarily in a diversified portfolio of high-, medium-, and low-grade debt securities. The Fund seeks to achieve its investment objective by investing, under Normal Market Conditions,[12] at least 80% of its net

securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.'' The Exchange instead is proposing that the fixed income portion of the portfolio excluding ABS and Private MBS, as defined below, will satisfy this 90% requirement.

[7] Rule 14.11(i)(4)(C)(iv)(b) provides that ''the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).'' The Exchange is proposing that the Fund would meet neither the 65% nor the 30% requirements of Rule 14.11(i)(4)(C)(iv)(b). Specifically, the Exchange is proposing that the Fund be exempt from this requirement as it relates to the Fund's holdings in futures and options (including options on futures) referencing Eurodollars and sovereign debt issued by the United States (*i.e.,* Treasury Securities) and other ''Group of Seven'' countries (Group of Seven or G–7 countries include the United States, Canada, France, Germany, Italy, Japan and the United Kingdom), where such futures and options contracts are listed on an exchange that is an ISG member or an exchange with which the Exchange has a comprehensive surveillance sharing agreement (''Eurodollar and G–7 Sovereign Futures and Options''). The Fund may also hold other listed derivatives, which will include only the following: Debt futures, interest rate futures, index futures, foreign exchange futures, equity options, equity futures, Treasury options, options on Treasury futures, interest rate swaps, foreign exchange options, foreign exchange swaps, credit default swaps (including single-name and index reference pools), loan credit default swap indices, and inflation-linked swaps, however such holdings will, when calculated independently of the Fund's holdings in Eurodollar and G–7 Sovereign Futures and Options, meet the requirements of Rule 14.11(i)(4)(C)(iv)(a) and (b).

[8] The Adviser, as defined below, notes that the Fund may by virtue of its holdings be issued certain equity instruments (''Equity Holdings'') that may not meet the requirements of Rule 14.11(i)(4)(C)(i). The Fund will not purchase such instruments and will dispose of such holdings as the Adviser determines is in the best interest of the Fund's shareholders. Such holdings will not constitute more than 10% of the Fund's net assets. The Adviser expects that the Fund will generally acquire such instruments through issuances that it receives by virtue of its other holdings, such as corporate actions or convertible securities.

[9] The Fund plans to employ a strategy very similar to that currently employed by JPMorgan Core Plus Bond Fund, a mutual fund operated by the Adviser since March 5th, 1993.

[10] *See* Registration Statement on Form N–1A for the Trust, dated January 23, 2019 (File Nos. 333–191837 and 811–22903). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') (the ''Exemptive Order''). Investment Company Act Release No. 31990 (February 9, 2016) (File No. 812–13761).

[11] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[12] As defined in Rule 14.11(i)(3)(E), the term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

assets in Bonds.[13] The Adviser will invest across the credit spectrum to provide the Fund exposure to various credit ratings. Under Normal Market Conditions, at least 65% of the Fund's assets will be invested in securities that, at the time of purchase, are rated investment grade by a nationally recognized statistical rating organization or in securities that are unrated but are deemed by the Adviser to be of comparable quality. Among others, such securities include U.S. or foreign mortgage-backed securities (''MBS''), which are securities that represent direct or indirect participations in, or are collateralized and by and payable from, mortgage loans secured by real property and which may be issued or guaranteed by government-sponsored entities (''GSEs'') [14] such as Fannie Mae (formally known as the Federal National Mortgage Association) or Freddie Mac (formally known as the Federal Home Loan Mortgage Corporation) or issued or guaranteed by agencies of the U.S. government, such as the Government National Mortgage Association (''Ginnie Mae''); [15] and U.S. or foreign asset-backed securities (''ABS'').[16] Under Normal Market Conditions, the Fund will not invest more than 35% of its assets in securities rated below investment grade. The Fund's average weighted maturity will ordinarily range between five and twenty years.

Under Normal Market Conditions, the Fund may also invest up to 20% of its net assets in the following: Cash and certain Cash Equivalents [17] that are not otherwise captured under the definition of Bond, listed derivative instruments, as described above, and OTC derivative instruments [18] The Fund's holdings in Cash Equivalents and OTC derivative instruments will be in compliance with the limitations provided in Rules 14.11(i)(4)(C)(iii), 14.11(i)(4)(C)(v), and 14.11(i)(4)(C)(vi).

The Fund's investments, including derivatives, will be consistent with the 1940 Act and the Fund's investment objective and policies and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).[19] That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A). The Fund will only use those derivatives described above. The Fund's use of derivative instruments will be collateralized.

Discussion

Based on the characteristics of the Fund and the representations made above, the Exchange believes it is appropriate to allow the Fund to hold certain listed derivatives, fixed income instruments, and equity securities in a manner that may not comply with the Generic Listing Standards. The Exchange notes that the representations for the Fund related to Rule 14.11(i)(4)(C)(ii)(d) and Rule 14.11(i)(4)(C)(iv)(b) are substantively identical or more restrictive than representations in the Approval Order.

The Fund will not meet the requirements of Rule 14.11(i)(4)(C)(ii)(d) because certain ABS and Private MBS by their nature cannot satisfy the requirements. As described above, the Exchange is instead proposing that the fixed income portion of the portfolio excluding ABS and Private MBS will satisfy this 90% requirement. The Exchange believes that this alternative limitation is appropriate because Rule 14.11(i)(4)(C)(ii)(d) is not designed for structured finance vehicles such as ABS and Private MBS. The Exchange also notes that the Fund's portfolio is consistent with the policy issues underlying the rule as a result of the diversification provided by the investments and the Adviser's selection process, which closely monitors investments to ensure maintenance of credit and liquidity standards. As noted above, the other fixed income instruments held by the Fund will meet the requirements of Rule 14.11(i)(4)(C)(ii)(d).

The Exchange is also proposing that the Fund would meet neither the 65% nor the 30% requirements of Rule 14.11(i)(4)(C)(iv)(b) because the Fund

[13] For purposes of this proposal, the term ''Bond'' includes only the following: Corporate bonds, U.S. government and agency debt securities, asset-backed securities, municipal securities, credit linked notes, participation notes, collateralized debt obligations, agency, non-agency and stripped mortgage-related and mortgage-backed securities (including adjustable rate mortgage loans), convertible securities (including contingent convertible securities), preferred stock, loan participations and assignments, commitments to loan assignments, variable and floating rate instruments, commercial paper, and foreign and emerging market debt securities. The Adviser intends to hold asset-backed securities, mortgage-related and mortgage-backed securities as part of a strategy designed to manage portfolio risk by diversifying away from corporate debt and to take advantage of certain market environments.

[14] A ''GSE'' is a type of financial services corporation created by the United States Congress. GSEs include Fannie Mae and Freddie Mac, but not Sallie Mae, which is no longer a government entity.

[15] MBS include collateralized mortgage obligations (''CMOs''), which are debt obligations collateralized by mortgage loans or mortgage pass-through securities. Typically, CMOs are collateralized by Ginnie Mae, Fannie Mae or Freddie Mac certificates, but they may also be collateralized by whole loans or pass-through securities issued by private issuers (*i.e.,* issuers other than U.S. government agencies or GSEs) (''Private MBS''). Payments of principal and of interest on the mortgage-related instruments collateralizing the MBS, and any reinvestment income thereon, provide the funds to pay debt service on the CMOs. In a CMO, a series of bonds or certificates is issued in multiple classes. Each class of CMOs, often referred to as a ''tranche'' of securities, is issued at a specified fixed or floating coupon rate and has a stated maturity or final distribution date.

[16] ABS are securitized products in connection with which the securities issued, which may be issued by either a U.S. or a foreign entity, are collateralized by any type of financial asset, such as a consumer or student loan, a lease, or a secured or unsecured receivable. For purposes of this filing, ABS exclude: (i) MBS; (ii) a small business administration backed ABS traded ''To Be Announced'' or in a specified pool transaction as defined in FINRA Rule 6710(x); and (iii) U.S. or foreign collateralized debt obligations. Consistent with the requirements of Rule 14.11(i)(4)(C)(ii)(e), the Fund will limit investments in ABS and Private MBS (together, ''ABS/Private MBS'') to 20% of the weight of the fixed income portion of the Fund's portfolio.

[17] As defined in Exchange Rule 14.11(i)(4)(C)(iii)(b), Cash Equivalents are short-term instruments with maturities of less than three months, which includes only the following: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[18] For purposes of this filing, OTC derivative instruments will include only the following: Index options, foreign exchange options, swaptions, credit default swaps (including single-name and index reference pools), foreign exchange swaps, loan credit default swap indices, inflation-linked swaps, interest rate swaps, non-dollar swaps, non-deliverable forward contracts and foreign exchange forward contracts.

[19] The Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Fund will segregate or earmark liquid assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board and in accordance with the 1940 Act (or, as permitted by applicable regulations, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. *See* 15 U.S.C. 80a–18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

may maintain significant positions in Eurodollar and G–7 Sovereign Futures and Options. Such instruments provide cost efficient methods to achieve such exposure. The Exchange notes that Eurodollar and G–7 Sovereign Futures and Options are highly liquid investments [20] and are not subject to the concentration risk that the rule is intended to address because of such liquidity. Further, the Exchange notes that the significantly diminished risk of Treasury Securities is reflected in their exclusion from the concentration requirements applicable to fixed income securities in Rule 14.11(i)(4)(C)(ii)(b). The Exchange proposes that the Fund will comply with the concentration requirements in Rule 14.11(i)(4)(C)(iv)(b) except with respect to the Fund's investment in Eurodollar and G–7 Sovereign Futures and Options. The Exchange believes that this alternative limitation is appropriate to provide the Fund with sufficient flexibility and because of the highly liquid and transparent nature of Eurodollar and G–7 Sovereign Futures and Options. Further, the G–7 Sovereign Futures and Options in which the Fund invests will be listed on an exchange that is an ISG member or an exchange with which the Exchange has a comprehensive surveillance sharing agreement.

[20] The Exchange notes that the Commission has previously granted exemptions under the Act to facilitate the trading of futures on sovereign debt issued by each of the Group of Seven countries (among other countries) and that such exemptions were based in part on the Commission's assessment of the sufficiency of the credit ratings and liquidity of such sovereign debt. *See* Approval Order; 17 CFR 240.3a12–8; Securities Exchange Act Release No. 41453 (May 26, 1999), 64 FR 29550 (June 2, 1999). According to publicly available information, eurodollars and Treasury Securities eurodollar futures and options traded through CME Group had an average daily open interest of approximately 53 million contracts and futures and options on Treasury Securities had an average daily open interest of approximately 15 million contracts during the first three quarters of 2017. As of September 2017, the open interest in futures and options on Canadian sovereign debt traded on The Montreal Exchange was approximately 560,000 contracts. As of July 2015, the open interest in futures on German sovereign debt traded on Eurex was approximately 3,000,000 contracts and the open interest in options on German sovereign debt futures traded on Eurex was approximately 3,000,000 contracts. The open interest peaks in 2017 for futures on long-term and short-term Italian sovereign debt traded on Eurex was approximately 450,000 and 270,000 contracts, respectively. As of July 2017, the open interest in futures on long-term French sovereign debt traded on Eurex was approximately 600,000 contracts. As of the third quarter of 2014, the open interest in futures on long-term British sovereign debt traded on the Intercontinental Exchange was approximately 400,000 contracts. As of July 2016, the open interest in futures on 10-year Japanese sovereign debt traded on the Osaka Exchange was approximately 80,000 contracts.

The Exchange also believes that the exception to Rule 14.11(i)(4)(C)(i) related to the Fund's equity holdings is de minimis and does not raise any substantive issues for the Commission to review because: (i) Such holdings will not constitute more than 10% of the Fund's net assets; and (ii) the Fund will not purchase equities [21] and will dispose of such holdings as the Adviser determines is in the best interest of the Fund's shareholders.

In addition, the Exchange represents that: (1) Except as described above, the Fund will continue to satisfy all of the generic listing standards under Rule 14.11(i)(4); (2) the continued listing standards under Rule 14.11(i) will apply to the shares of the Fund; and (3) the issuer of the Fund is required to comply with Rule 10A–3 [22] under the Act for the initial and continued listing of the Shares. In addition, the Exchange represents that the Fund will meet and be subject to all other requirements of the Generic Listing Rules and other applicable continued listing requirements for Managed Fund Shares under Exchange Rule 14.11(i), including those requirements regarding the Disclosed Portfolio (as defined in the Exchange rules) and the requirement that the Disclosed Portfolio and the net asset value (''NAV'') will be made available to all market participants at the same time,[23] intraday indicative value,[24] suspension of trading or removal,[25] trading halts,[26] disclosure,[27] and firewalls.[28]

The Shares

The Fund will issue and redeem Shares on a continuous basis at the NAV per Share only in large blocks of a specified number of Shares or multiples thereof (''Creation Units'') in transactions with authorized participants who have entered into agreements with the Distributor. The Fund currently anticipates that a Creation Unit will consist of 50,000 Shares, though this number may change from time to time. The exact number of Shares that will constitute a Creation Unit will be disclosed in the respective Registration Statement of the Fund. Once created, Shares of the Fund trade on the secondary market in amounts less than a Creation Unit.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees and expenses, portfolio holdings disclosure policies, distributions, taxes and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the website for the Fund (*www.JPMorgan.com*), as applicable.

Availability of Information

As noted above, the Fund will comply with the requirements for Managed Fund Shares related to Disclosed Portfolio, NAV, and the Intraday Indicative Value. Additionally, the intra-day, closing and settlement prices of exchange-traded portfolio assets, including futures, swaps, listed options, and certain Equity Holdings, will be readily available from the exchanges on which such products are listed, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Quotation and last sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority. Intraday price quotations on Bonds, OTC derivative instruments, and OTC Equity Holdings are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay or in real-time for a paid fee. Price information for Cash Equivalents will be available from major market data vendors.

The Disclosed Portfolio will be available on the Fund's website (*www.jpmorgan.com/etfs*) free of charge. The Fund's website includes a form of the prospectus for the Fund and additional information related to NAV and other applicable quantitative information. Information regarding market price and trading volume of the Shares will be continuously available throughout the day on brokers' computer screens and other electronic services. Quotation and last sale information on the Shares will be available through the Consolidated Tape Association. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. Trading in the Shares may be halted for market conditions or for reasons that, in the view of the Exchange, make trading inadvisable. The Exchange deems the Shares to be equity securities, thus rendering trading

[21] As noted above, the Adviser expects that the Fund will generally acquire such instruments through issuances that it receives by virtue of its other holdings, such as corporate actions or convertible securities.

[22] 17 CFR 240.10A–3.

[23] *See* Exchange Rules 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

[24] *See* Exchange Rule 14.11(i)(4)(B)(i).

[25] *See* Exchange Rule 14.11(i)(4)(B)(iii).

[26] *See* Exchange Rule 14.11(i)(4)(B)(iv).

[27] *See* Exchange Rule 14.11(i)(6).

[28] *See* Exchange Rule 14.11(i)(7).

in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange has appropriate rules to facilitate trading in the shares during all trading sessions.

Surveillance

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. All of the futures contracts and listed options contracts, as well as certain Equity Holdings held by the Fund will trade on markets that are a member of Intermarket Surveillance Group (''ISG'') or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[29] The Exchange, FINRA, on behalf of the Exchange, or both will communicate regarding trading in the Shares and the underlying listed instruments, including listed derivatives and certain Equity Holdings, held by the Fund with the ISG, other markets or entities who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). Trade price and other information relating to municipal securities is available through the Municipal Securities Rulemaking Board's (the ''MSRB'') Electronic Municipal Market Access (''EMMA'') system. All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset, and intraday indicative values, and the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for the Fund. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. The Exchange will halt trading in the Shares under the conditions specified in Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which trading in the Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange allows trading in the Shares from 8:00 a.m. until 8:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Rule 11.11(a), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[30] in general and Section 6(b)(5) of the Act[31] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the 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 excluding ABS and Private MBS in calculating Rule 14.11(i)(4)(C)(ii)(d) is consistent with the Act because the Fund's portfolio will be consistent with the policy issues underlying the rule as a result of the diversification provided by the investments and the Adviser's selection process, which closely monitors investments to ensure maintenance of credit and liquidity standards. Further, the other fixed income instruments, excluding ABS and Private MBS, held by the Fund will satisfy the 90% requirement under Rule 14.11(i)(4)(C)(ii)(d).

The Exchange believes that the proposal that the Fund would meet neither the 65% nor the 30% requirements of Rule 14.11(i)(4)(C)(iv)(b) is consistent with the Act because such instruments are highly liquid investments and are not subject to the concentration risk that the rule is intended to address because of such liquidity. Further, the Exchange notes that the significantly diminished risk of Treasury Securities is reflected in their exclusion from the concentration requirements applicable to fixed income securities in Rule 14.11(i)(4)(C)(ii)(b). The Fund will comply with the concentration requirements in Rule 14.11(i)(4)(C)(iv)(b) except with respect to the Fund's investment in Eurodollar and G–7 Sovereign Futures and Options. The Exchange believes that this alternative limitation is appropriate to provide the Fund with sufficient flexibility and because of the highly liquid and transparent nature of Eurodollar and G–7 Sovereign Futures and Options. Further, the G–7 Sovereign Futures and Options in which the Fund invests will be listed on an exchange that is an ISG member or an exchange with which the Exchange has a comprehensive surveillance sharing agreement.

The Exchange also believes that the exception to Rule 14.11(i)(4)(C)(i) related to the Fund's equity holdings is consistent with the Act because it is de minimis and does not raise any substantive issues for the Commission to review because: (i) Such holdings will not constitute more than 10% of the Fund's net assets; and (ii) the Fund will not purchase equities and will dispose of such holdings as the Adviser determines is in the best interest of the Fund's shareholders.

The Exchange also believes that the proposal is consistent with the Act because the proposed exceptions to the Generic Listing Standards for the Fund related to Rule 14.11(i)(4)(C)(ii)(d) and Rule 14.11(i)(4)(C)(iv)(b) are substantively identical or more

[29] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[30] 15 U.S.C. 78f.

[31] 15 U.S.C. 78f(b)(5).

restrictive than representations that have already been approved by the Commission.

The Exchange further believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will continue to be listed and traded on the Exchange pursuant to the continued listing criteria in Rule 14.11(i). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. The Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented and will maintain ''fire walls'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. All of the futures contracts and listed options contracts, as well as certain Equity Holdings held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[32] The Exchange, FINRA, on behalf of the Exchange, or both will communicate regarding trading in the Shares and the underlying listed instruments, including listed derivatives and certain Equity Holdings, held by the Fund with the ISG, other markets or entities who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to FINRA's TRACE. Trade price and other information relating to municipal securities is available through the MSRB EMMA system.

According to the Registration Statement, the Fund will invest, under Normal Market Conditions, at least 80% of its net assets in Bonds. Additionally, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), as deemed illiquid by the Adviser under the 1940 Act.[33] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, the Fund will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Pricing information will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's NAV and the market closing price or mid-point of the Bid/Ask Price,[34] and a calculation of the premium or discount of the market closing price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily market closing price or Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of a Fund will be halted under the conditions specified in Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Additionally, the intra-day, closing and settlement prices of exchange-traded portfolio assets, including futures, swaps, listed options, and certain Equity Holdings, will be readily available from the exchanges on which such products are listed, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Quotation and last sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority. Intraday price quotations on Bonds,

[32] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[33] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[34] The Bid/Ask Price of a Fund will be determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund or its service providers.

OTC derivative instruments, and OTC Equity Holdings are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay or in real-time for a paid fee. Price information for Cash Equivalents will be available from major market data vendors.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG, from other exchanges that are members of ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange, or FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income instruments reported to TRACE and the MSRB EMMA system. As noted above, investors will also have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will allow the Adviser to fully implement its investment strategy, which will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–016, and should be submitted on or before April 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–05460 Filed 3–21–19; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 21, 2019.

ADDRESSES: Send all comments to Jermanne Perry, Management Analyst, Office of Surety Guarantee, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jermanne Perry, Management Analyst, Office of Surety Guarantee, *Jermanne.perry@sba.gov* 202–401–8275, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Under its Surety Bond Guarantee Program (SBG Program), the U.S. Small Business Administration is authorized to guarantee a bid bond, payment bond, performance bond, as well as any required related ancillary bonds, on a contract issued to a small business contractor up to $6.5 million or up to $10 million if a Federal contracting officer certifies that SBA's guarantee is necessary. *See* Title IV of the Small Business Investment Act (SBIA), Part B, 15 U.S.C. 694a *et seq.* The SBG Program was created to encourage surety companies to issue bonds for small business contractors. The SBIA

[35] 17 CFR 200.30–3(a)(12).

authorizes SBA to -establish the terms and conditions for providing surety bond guarantee assistance and for paying claims resulting from any contractor defaults.

This information collection consists of forms relating to the application process for an SBA-guaranteed bond and claims for the reimbursement of losses, including SBA Forms 990, 991, 994, 994B, 994F, and 994H. Except in the case of SBA Form 994H, SBA uses the information to evaluate whether the small business applicant meets the eligibility requirements for a surety bond, as well as the likelihood that the small business will successfully complete the bonded contract. The information collected for this purpose includes: demographics on all owners of the bond applicant; the status of any current or past SBA financial assistance provided to the applicant; NAICS code for applicant's industry; financial statements; contract amount and nature of contract performance; and in the event performance has begun, evidence that applicant has paid all suppliers and subcontractors. With respect to SBA Form 994H, SBA uses the information collected to evaluate the surety's claim for reimbursement of losses. Surety is required to provide information regarding the date the small business defaulted on the contract; the reason for the default, the amount of any recoveries, and any additional information that would support the surety's claim for reimbursement.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Surety Bond Guarantee Assistance.

Description of Respondents: Surety Companies.

Form Number: SBA Form 990, 991, 994B, 994H.

Total Estimated Annual Responses: 21,046.

Total Estimated Annual Hour Burden: 3,065.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–05477 Filed 3–21–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

SBA Guaranteed Business Loans to Cooperatives

Correction

In notice document 2019–04940, appearing on page 9858, in the issue of Monday, March 18, 2019 make the following correction:

On page 9858, in the second column, in the third paragraph, beginning on the second line, ''*http://ems8.intellor.com/do=register&t=1&p=813511*'' should read, ''*http://ems8.intellor.com?do=register&t=1&p=813511*''.

[FR Doc. C1–2019–04940 Filed 3–21–19; 8:45 am]

BILLING CODE 1301–01–D

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 2.88 percent for the April–June quarter of FY 2019.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Dianna L. Seaborn,

Director, Office of Financial Assistance.

[FR Doc. 2019–05544 Filed 3–21–19; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10714]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Antonio Rizzo's Adam, Eve, and Mars Restored'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Antonio Rizzo's Adam, Eve, and Mars Restored,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about April 10, 2019, until on or about October 10, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, 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, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–26 of March 8, 2019.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–05528 Filed 3–21–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10715]

In the Matter of the Review and Amendment of the Designation of ISIS (and Other Aliases) as a Foreign Terrorist Organization Pursuant to the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled pursuant to Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the aforementioned organization (and other aliases) as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation, and that

the national security of the United States does not warrant a revocation of the designation. I also conclude that there is a sufficient factual basis to find that the aforementioned organization (and other aliases) uses the additional aliases: Amaq News Agency and Al Hayat Media Center, also known as Al-Hayat Media Center, also known as Al Hayat.

Therefore, I hereby determine that the designation of the aforementioned organization (and other aliases) as a Foreign Terrorist Organization, pursuant to Section 219 of the INA, as amended (8 U.S.C. 1189), shall be maintained. Additionally, pursuant to Section 219(b) of the INA, as amended (8 U.S.C. 1189(b)), I hereby amend the designation of the aforementioned organization as a Foreign Terrorist Organization to include the following new aliases: Amaq News Agency and Al Hayat Media Center, also known as Al-Hayat Media Center, also known as Al Hayat.

This determination shall be published in the **Federal Register**.

Dated: December 21, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–05565 Filed 3–21–19; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10716]

In the Matter of the Amendment of the Designation of ISIS (and Other Aliases) as a Specially Designated Global Terrorist

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I have concluded that there is a sufficient factual basis to find that ISIS (and other aliases) is also known as Amaq News Agency and Al Hayat Media Center, also known as Al-Hayat Media Center, also known as Al Hayat.

Therefore, pursuant to Section l(b) of Executive Order 13224, I hereby amend the designation of ISIS as a Specially Designated Global Terrorist to include the following new aliases: Amaq News Agency and Al Hayat Media Center, also known as Al-Hayat Media Center, also known as Al Hayat.

This determination shall be published in the **Federal Register**.

Dated: December 21, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–05564 Filed 3–21–19; 8:45 am]

BILLING CODE 4710–AD–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 227 (Sub-No. 13X)]

Wheeling & Lake Erie Railway Company—Discontinuance of Service Exemption—in Erie County, Ohio

Wheeling & Lake Erie Railway Company (W&LE) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue: (1) W&LE's lease and operation of the Norfolk Southern Railway Company (NSR) rail-water dock facility in Huron, Erie County, Ohio, consisting of approximately 27.6 acres of land, a 5,142-foot loop track, and approximately two miles of yard and support track in the dock area (collectively, Huron Dock); and (2) W&LE's overhead trackage rights on NSR's rail lines extending from approximately milepost B242 at Bellevue, Ohio, to approximately milepost B229 at Berlin Heights, Ohio, and from milepost B232/SC2.61 at Shinrock, Ohio (on the Bellevue-Berlin Heights segment), through milepost SC0.0/H10.7 at Huron Jct., Ohio, to the Huron Dock connection at milepost H12.2 in Huron, a total distance of approximately 17.1 miles in Erie County, Ohio (collectively, the Bellevue-Huron Trackage Rights).[1] The Huron Dock is located in U.S. Postal Service Zip Code 44839, and the Bellevue-Huron Trackage Rights traverse Zip Codes 44839, 44814, 44846, 44847, and 44811.

W&LE states that the agreements with NSR governing the Huron Dock lease and the Bellevue-Huron Trackage Rights have now expired and the requested discontinuance exemption will terminate W&LE's remaining common carrier status with respect to those rights and permit NSR to pursue abandonment and disposition of the Huron Dock.

W&LE has certified that: (1) No W&LE revenue traffic has moved over the Huron Dock or the Bellevue-Huron Trackage Rights for at least two years;[2] (2) any W&LE overhead traffic formerly handled via the Huron Dock or the Bellevue-Huron Trackage Rights could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Huron Dock or the Bellevue-Huron Trackage Rights (or a state or local government entity acting on behalf of such user) regarding cessation of service either is pending before the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of the complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA)[3] to subsidize continued rail service has been received, this exemption will be effective on April 21, 2019, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[4] must be filed by April 1, 2019.[5] Petitions for reconsideration must be filed by April

[1] W&LE leased the Huron Dock and acquired the related Bellevue-Huron Trackage Rights from the Norfolk and Western Railway Company (N&W), a predecessor to NSR, in 1994. *See Wheeling & Lake Erie Ry.—Lease & Operation Exemption—Norfolk & W. Ry.'s Dock at Huron, Ohio,* FD 32516 (ICC served June 27, 1994); *Wheeling & Lake Erie Ry.—Trackage Rights Exemption—Norfolk & W. Ry.,* FD 32525 (ICC served July 15, 1994); *see also CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc.,* FD 33388 (Sub-No. 95), slip op. at 3–4 (STB served Jan. 26, 2005) (extending the Huron Dock lease and the Bellevue-Huron Trackage Rights as part of a settlement between NSR and W&LE).

[2] W&LE states that it has received railroad ballast for its own use at Huron Dock within the last two years. Such non-revenue movements, however, do not affect the availability of the class exemption for abandonment or discontinuance of out-of-service rail lines. *See, e.g., Cambria & Ind. R.R.—Aban. Exemption—in Cambria Cty., Pa.,* AB 240 (Sub-No. 4X) (ICC served Nov. 23, 1994).

[3] The Board modified its OFA procedures effective July 29, 2017. Among other things, the OFA process now requires potential offerors, in their formal expression of intent, to make a preliminary financial responsibility showing based on a calculation using information contained in the carrier's filing and publicly available information. *See Offers of Financial Assistance,* EP 729 (STB served June 29, 2017); 82 FR 30,997 (July 5, 2017).

[4] Each OFA must be accompanied by the filing fee, which currently is set at $1,800. *See* 49 CFR 1002.2(f)(25).

[5] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require environmental review.

11, 2019, with the Surface Transportation Board, 395 E Street, SW, Washington, DC 20423–0001.

A copy of any petition filed with Board should be sent to W&LE's representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available at *www.stb.gov.*

Decided: March 19, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2019–05489 Filed 3–21–19; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Effective Date of Modifications to Rules of Origin of the United States-Morocco Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In December 2018, the President modified the rules of origin for certain goods of Morocco under the United States-Morocco Free Trade Agreement (USMFTA). This notice announces the effective date for those modifications.

DATES: This notice is applicable on April 1, 2019.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, Deputy Assistant U.S. Trade Representative for Textiles, at 202–395–6092 or *janet.e.heinzen@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: Presidential Proclamation 7971 of December 22, 2005, implemented the USMFTA with respect to the United States. The USMFTA Implementation Act [Pub. L. 108–302, 118 Stat. 1103] incorporated the tariff modifications and rules of origin necessary or appropriate to carry out the USMFTA in the Harmonized Tariff Schedule of the United States (HTSUS). Section 203 of the USMFTA Implementation Act provides rules for determining whether goods imported into the United States originate in the territory of Morocco and, thus, are eligible for the tariff and other treatment contemplated under the USMFTA. It also authorizes the President to proclaim, as a part of the HTSUS, the rules of origin set out in the USMFTA, and to modify previously proclaimed rules of origin, subject to the consultation and layover requirements of section 104 of the Act.

In 2015 and 2016, the Government of Morocco submitted requests to modify certain textile and apparel rules of origin based on commercial availability of specific inputs. Following public comment on the proposed rules changes, the United States and Morocco reached agreement to modify certain rules of origin. Pursuant to the USMFTA Implementation Act, the International Trade Commission conducted an economic impact review and concluded that the impact on U.S. imports, exports, and production of the proposed modifications would be negligible. The Industry Trade Advisory Committee on Textiles and Clothing did not object to the proposed modifications. Congress also did object during the consultation and layover process.

In Proclamation 9834 of December 21, 2018, the President determined pursuant to section 203 of the USMFTA Implementation Act, that the subject modifications to the HTSUS were appropriate and modified general note 27 to the HTSUS with respect to goods of Morocco. The modifications are effective with respect to goods of Morocco entered or withdrawn from warehouse for consumption on the date announced by the United States Trade Representative in the **Federal Register**.

On March 4, 2019, Morocco notified the United States that it had completed its domestic procedures to give effect to the agreement to change the USMFTA rules of origin for certain apparel goods of specified fabrics with respect to goods of the United States. Subsequently, Morocco and the United States agreed to implement these changes with respect to each other's eligible goods, effective April 1, 2019.

William Jackson,

Assistant U.S. Trade Representative for Textiles, Office of the U.S. Trade Representative.

[FR Doc. 2019–05551 Filed 3–21–19; 8:45 am]

BILLING CODE 3290–F9–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No: FAA–2019–0195]

Deadline for Notification of Intent To Use the Airport Improvement Program Primary, Cargo, and Nonprimary Entitlement Funds Available to Date for Fiscal Year 2019

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces May 1, 2019, as the deadline for each airport sponsor to notify the FAA whether or not it will use its fiscal year 2019 entitlement funds (also referred to as apportioned funds) to accomplish Airport Improvement Program (AIP) eligible projects that the airport sponsor previously identified through the Airports Capital Improvement Plan process during the preceding year.

FOR FURTHER INFORMATION CONTACT: James A. Johnson, Acting Director, Office of Airport Planning and Programming, APP–1, at (202) 267–8775.

SUPPLEMENTARY INFORMATION: Title 49 U.S.C. 47105(f) provides that the sponsor of an airport for which entitlement funds are apportioned shall notify the Secretary, by such time and in a form as prescribed by the Secretary, of the airport sponsor's intent to submit a grant application for its available entitlement funds. Therefore, the FAA is hereby notifying such airport sponsors of the steps required to ensure that the FAA has sufficient time to carry over and convert remaining entitlement funds. In accordance with legislation enacted as of the date of this notice, the AIP has approximately $2.4 billion of entitlement funds available through September 30, 2019.

The airport sponsor's notification must address all entitlement funds available to date for fiscal year 2019, as well as any entitlement funds not obligated from prior years. On Monday, July 1, 2019, the FAA will carry over any currently available entitlement funds for which the airport sponsor has not notified the FAA of its intention to use, and these funds will not be available again until at least the beginning of fiscal year 2020. Under 49 U.S.C. 47114(d)(3)(C), airports having an unclassified status in the most recent National Plan of Integrate Airport Systems that accrue entitlement funds in fiscal year 2019, will only have these

funds available in the same fiscal year and may not transfer the entitlements.

This notice applies to airports that have entitlement funds apportioned to them, except nonprimary airports located in designated Block Grant States. Airport sponsors intending to apply for any of their available entitlement funds, including those unused from prior years, shall make their intent known by 12:00 p.m. prevailing local time on Wednesday, May 1, 2019, consistent with prior practice.

This notice must address all entitlement funds available to date for fiscal year 2019, including those entitlement funds not obligated from prior years. A written indication stating the airport sponsor's intent to submit a grant application must be provided no later than close of business Friday, May 31, 2019. These notifications are critical to ensure efficient planning and administration of the AIP. The final grant application deadline is Friday, June 28, 2019.

All notifications and grant applications must be provided to the designated FAA Airports District Office (or Regional Office in regions without Airports District Offices). Absent notification of the intent to use entitlement funds, notification of the intent to submit a grant application, or submission of a grant application by the relevant deadlines noted above, the FAA will proceed on Monday, July 1, 2019 to carry-over the remainder of available entitlement funds. These funds will not be available again until at least the beginning of fiscal year 2020. Under 49 U.S.C. 47114(d)(3)(C), airports having an unclassified status in the most recent National Plan of Integrate Airport Systems that accrue entitlement funds in fiscal year 2019, will only have these funds available in the same fiscal year and may not transfer the entitlements.

Dates are subject to possible adjustment based on future legislation. As of the publication of this notice, appropriations for the FAA expire on September 30, 2019 and authorization legislation for the FAA expires on September 30, 2023. This notice is promulgated to expedite and facilitate the grant-making process.

The AIP grant program is operating under the requirements of Public Law 115–254, the ''FAA Reauthorization Act of 2018,'' enacted on October 5, 2018, which authorizes the FAA through September 30, 2023 and Public Law 116–6, the ''Consolidated Appropriations Act, 2019,'' which appropriates fiscal year 2019 funds for the AIP through September 30, 2019.

Issued in Washington, DC on March 13, 2019.

James A. Johnson,

Acting Director, Office of Airport Planning and Programming.

[FR Doc. 2019–05195 Filed 3–21–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project on State Route 47 (Post Miles 0.3 to PM 0.8) in the City of Los Angeles in Los Angeles County, California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 19, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Karl Price, Senior Environmental Planner, Caltrans District 7, 100 South Main Street, Suite MS 16A, Los Angeles, California, 90012, (213) 897–1839, *karl.price@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans and the FHWA have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The State Route 47/Vincent Thomas Bridge and Front Street/Harbor Boulevard Interchange Reconfiguration Project will reconfigure the existing interchange at State Route 47 (SR–47)/Vincent Thomas Bridge and Harbor Boulevard/Front Street. Also as part of the project, improvements include modification of the eastbound ramps and modification of Harbor Boulevard and Front Street between the new and existing termini. Caltrans has identified the Build Alternative as the Preferred Alternative. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment/Finding of No Significant Impact (EA/FONSI) for the project, approved on March 8, 2019, and in other documents in the FHWA project records. The EA/FONSI and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA/FONSI can be viewed and downloaded from the project website at *http://www.dot.ca.gov/d7/env-docs/.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4351)
2. Clean Air Act (42 U.S.C. 7401–7671(q))
3. Migratory Bird Treaty Act (16 U.S.C. 703–712)
4. Coastal Zone Management Act of 1972
5. Title VI of the Civil Rights Act of 1964, as amended
6. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470(f) *et seq.*)
7. Clean Water Act (Section 401) (33 U.S.C. 1251–1377)
8. Federal Endangered Species Act of 1973 (16 U.S.C. 1531–1543)
9. Executive Order 11990—Protection of Wetlands
10. Department of Transportation Act of 1966, Section 4(f) (49 U.S.C. 303)
11. Noise Control Act of 1972
12. Executive Order 13112—Invasive Species

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: March 18, 2019.

Tashia J. Clemons,

Director, Planning and Environment, Federal Highway Administration, Sacramento, California.

[FR Doc. 2019–05563 Filed 3–21–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by FHWA and the other Federal agencies that are final. The actions relate to a proposed widening of Interstate 26 from U. S. 25 near Hendersonville to the I–40/240 Interchange in Asheville, also known as State Transportation Improvement Program Project I–4400/I–4700, in Henderson and Buncombe Counties, North Carolina. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filled on or before August 19, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence W. Coleman, P. E., Preconstruction and Environment Director, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601–1418; Telephone: (919) 747–7014; email: *clarence.coleman@dot.gov*. FHWA North Carolina Division Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time). Mr. William C. Kincannon, P. E., Director of Technical Services (Acting), North Carolina Department of Transportation (NCDOT), 1516 Mail Service Center, Raleigh, North Carolina 27699–1516; Telephone: (919) 707–2502, email: *wckincannon@dot.state.nc.us*. NCDOT's normal business hours are 8 a.m. to 5 p.m. (Eastern Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions by issuing a Record of Decision (ROD) for the following highway project in the State of North Carolina: the widening of I–26 from U.S. 25, near Hendersonville, to I–40/240, south of Asheville. Widening I–26 in the area would help improve existing and projected deficiencies when it comes to roadway capacity. The project would also improve insufficient pavement structure and deteriorating existing road surface conditions. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Combined Final Environmental Impact Statement (EIS)/Record of Decision (ROD) for the project, approved on March 5, 2019, and in other documents in the project records. The Combined Final EIS/ROD, and other documents in the project file are available by contacting the FHWA or the NCDOT at the addresses provided above. The Combined Final EIS/ROD along with referenced technical documents can be viewed and downloaded from the project website at *https://www.ncdot.gov/projects/i-26-widening/Pages/default.aspx* or viewed at the NCDOT office at 1 South Wilmington Street, Raleigh, North Carolina 27601.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Record of Decision (ROD) for the project and in other documents in the project file. The ROD and other documents in the project file are available by contacting FHWA or NCDOT at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319)]; Coastal Barrier Resources Act [16 U.S.C. 3501–3510]; Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139 (*l*)(1)

Issued on: March 13, 2019.

Clarence W. Coleman,

Preconstruction and Environment Director, Raleigh, North Carolina.

[FR Doc. 2019–05420 Filed 3–21–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed I–15 Corridor Project in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327 and U.S. Army Corps of Engineers (USACE).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, and USACE that are final. The actions relate to a proposed highway project, Interstate 15 in the cities of Eastvale, Jurupa Valley, Ontario, Rancho Cucamonga, and Fontana, in San Bernardino County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 19, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: *For Caltrans:* Shawn Oriaz, Senior Environmental Planner, California Department of Transportation (Caltrans), District 8, 464 West 4th Street, MS–827, San Bernardino, CA 92401–1400, 8 a.m. to 4 p.m., (909) 388–7034, *shawn.oriaz@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Construct Express Lanes, including tolled facilities, in both directions of Interstate 15 from approximately 0.3 miles south of Cantu-Galleano Ranch Road in the cities of Eastvale and Jurupa Valley at Post Mile 49.8 in Riverside County to approximately 1.2 miles north of Duncan Canyon Road at Post Mile 12.2 in the City of Fontana in San Bernardino County. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment with Finding of No Significant Impacts for the project EA/FONSI), approved on December 20, 2018. The EA/FONSI and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA/FONSI can be viewed and downloaded from the project website: *www.gosbcta.com/i15corridor.* This United State Army Corps of Engineers (USACE) decision and permit Clean Water Act Section 404 Nationwide Permit are available by contacting Caltrans at the address provided above, and can be viewed and downloaded from the project website: *www.gosbcta.com/i15corridor.* This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to

1. Council on Environmental Quality regulations
2. National Environmental Policy Act of 1969, as amended
3. Department of Transportation Act of 1996
4. Federal Aid Highway Act of 1970 Section 109(h)
5. Clean Air Act Amendments of 1990
6. Department of Transportation Act of 1966; Section 4 (f)
7. Clean Water Act of 1977 and 1987
8. Endangered Species Act of 1973
9. Executive Order 13186, Migratory Birds
10. National Historic Preservation Act of 1966, as amended (section 106)
11. Historic Sites Act of 1935
12. Executive Order 11990, Protection of Wetlands
13. Executive Order 13112, Invasive Species
14. Executive Order 11988, Floodplain Management
15. Executive Order 12898, Environmental Justice
16. Farmland Protection Policy Act of 1981
17. Fish and Wildlife Coordination Act of 1934, as amended
18. Migratory Bird Treaty Act of 1918, as amended
19. Noise Control Act of 1972
20. Title VI of the Civil Rights Act of 1964, as amended

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: March 18, 2019.

Tashia J. Clemmons,

Director, Planning and Environmental, Federal Highway Administration, Sacramento, California.

[FR Doc. 2019–05557 Filed 3–21–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0012]

Notice and Request for Comments

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

ACTION: Notice and request for comments.

SUMMARY: The DOT invites public comments about our intention to request the Office of Management and Budget (OMB) approval to reinstate an information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

DATES: Written comments should be submitted by May 21, 2019.

ADDRESSES: You may submit comments identified by Docket No. NHTSA–2019–0012 through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Hisham Mohamed, NHTSA 1200 New Jersey Ave. SE, West Building, Room W43–437, NVS–131, Washington, DC 20590. Mr. Mohamed's telephone number is 202–366–0307. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

Title: 49 CFR part 569 & 574, Compliance and Labeling of Motor Vehicle Tires and Rims.

OMB Control Number: 2127–0503.

Type of Request: Reinstatement of a previously approved collection of information.

Abstract: The labeling of motor vehicle tires and rims with the information required by regulations and standards benefits motor vehicle manufacturers and consumers. Primarily, these labeling requirements help ensure tires are mounted on appropriate rims and the rims and tires are mounted on vehicles for which they were intended. If tires and rims were not labeled, mismatching of tire and rim sizes would likely occur, often resulting in poor tire performance. The absence of the vehicle label specifying vehicle loads, axle loads, and recommended tire inflation pressure would likely result in improper tire selection by a tire dealer or vehicle owner. Mismatching of rims and tires can greatly reduce the performance of tires, may cause tire and rim failure, and may result in vehicle handling and stability problems, which could result in loss of vehicle control.

Federal Motor Vehicle Safety Standard (FMVSS) Nos. 109, 117, 119, 129, and 139 establish a fixed format for the labeling requirements to be placed into or onto both sidewalls of tires manufactured for use on motor vehicles. Each new tire manufacturer, brand name owner, and retreader must label each tire manufactured by engraving tire and retreaded tire molds with the appropriate labeling information.

FMVSS Nos. 110 and 120 specify a fixed format for the placard labeling requirements to be placed on each motor vehicle. In addition, FMVSS Nos. 110 and 120 require additional information be labeled onto the finished rim used on vehicles covered by this standard.

Affected Public: New tire manufacturers, manufacturers of retreaded tires, and manufacturers of motor vehicles.

Frequency: Once.

Number of Respondents: 1,800.

The agency estimates the number of respondents to be 1,800. This corresponds to approximately 20 new tire manufacturers and 780 manufacturers of retreaded tires, both domestically and internationally located, that must label motor vehicle tires they manufacture in accordance with FMVSS Nos. 109, 117, 119, 129, 139, and Regulations Part 569 and 574. Additionally, the agency estimates approximately 1,000 manufacturers of motor vehicles (trucks, buses, automobiles, motorcycles, and trailers), both domestically and internationally, that must provide placard labeling for the vehicles they manufacture. NHTSA estimates about 142,555,506 annual responses.

Estimated Total Annual Burden Hours: 274,491.

The estimated total annual burden of the collection of information for new tire manufacturers, retreaders, and rim manufacturers to label the motor vehicle tires and rims is 274,491 hours. This estimate is the sum of the total yearly burden from Tables 1 and 2 (190,463 hours + 84,028 hours = 274,491 hours).

TABLE 1–BURDEN HOURS ASSOCIATED WITH TIRES

[New and retreaded]

FMVSS or regulation	Molds per year	Rate of burden/mold (hours)	Annual burden (hours)
109/139	7,906	5.0	39,530
117	6,117	5.0	30,585
119/139	4,313	5.0	21,565
129	1	5.0	5
569	150	5.0	750
574	15,560	6.3	98,028
Total Yearly burden hours:			190,463

TABLE 2—BURDEN HOURS ASSOCIATED WITH RIMS

FMVSS	Number of vehicles	Rate of burden/vehicle (hours)	Total annual burden (hours)
110/120	19,000,000	0.0044225	84,028

Estimated Total Annual Burden Cost: $970,620.

The estimated total annual burden cost of the collection of information is $970,620. This is the sum of the yearly costs in Tables 3 and 4 ($267,620 + $703,000 = $970,620).

TABLE 3—ANNUAL COSTS FOR RECORD KEEPERS ASSOCIATED WITH TIRES

[New and retreaded]

FMVSS or regulation	Manufacturers or retreaders	Number of molds	Cost per mold ($)	Cost per FMVSS ($)
109/139	20	10,000	10	100,000
117	50	500	10	5,000
119/139	780	3,000	20	60,000
129	1	1	120	120
569	20	250	10	2,500
574	780	10,000	10	100,000

TABLE 3—ANNUAL COSTS FOR RECORD KEEPERS ASSOCIATED WITH TIRES—Continued

[New and retreaded]

FMVSS or regulation	Manufacturers or retreaders	Number of molds	Cost per mold ($)	Cost per FMVSS ($)
Total yearly cost:				267,620

TABLE 4—ANNUAL COSTS FOR RECORD KEEPERS ASSOCIATED WITH RIMS

[New and retreaded]

FMVSS	Number of vehicles	Number of rims	Cost per label	Cost per rim	Yearly cost
110/120	19,000,000	95,000,000	$0.0074	NA	$703,000

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35; and delegation of authority at 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2019–05449 Filed 3–21–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Toyota Motor North America, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full Toyota Motor North America, Inc.'s, (Toyota) petition for an exemption of the model year 2020 C–HR vehicle line from the Federal Motor Vehicle Theft Prevention Standard (Theft Prevention Standard). The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with the 2020 model year (MY).

FOR FURTHER INFORMATION, CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is 202–366–5222. Her fax number is 202–493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated September 25, 2018, Toyota requested an exemption from the parts-marking requirements of the Theft Prevention Standard for the C–HR vehicle line beginning with model year (MY) 2020. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, ''Exemption from Vehicle Theft Prevention Standard'', based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Toyota provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the C–HR vehicle line. Toyota stated its MY 2020 C–HR vehicle line will be installed with an engine immobilizer device as standard equipment. Toyota also stated it will offer two entry/start systems on its C–HR vehicle line. Specifically, Toyota stated the C–HR vehicle line will be offered with a ''smart entry and start'' system or a ''transponder key and start'' system. Key components of the ''smart entry and start'' system on the C–HR vehicle line will include, a certification engine control unit (ECU), engine switch, steering lock ECU, security indicator, door control receiver, electrical key, ID code box, and an engine control module (ECM). Key components of the ''transponder key and start'' system on the C–HR vehicle line will include, a transponder key ECU assembly, transponder key coil, security indicator, ignition key and an ECM. Toyota stated there will also be position switches installed on the vehicle to protect the hood and doors from unauthorized tampering/opening. Toyota further explained that locking the doors can be accomplished through use of a key, wireless switch, or its smart entry system, and unauthorized tampering with the hood or door without using one of these methods will cause the position switches to trigger its antitheft device to operate. Toyota will not incorporate an audible and visual alarm system on its vehicle line.

Toyota's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In addressing the specific content requirements of § 543.6, Toyota provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Toyota conducted tests based on its own specified standards. Toyota provided a detailed list of the tests conducted (*i.e.,* high and low temperature operation, strength, impact, vibration, electro-magnetic interference, etc.). Toyota stated it believes its device is reliable and durable because it complied with its own specific design standards, and the antitheft device is installed on other vehicle lines for which the agency has granted a parts-marking exemption. As an additional measure of reliability and durability, Toyota stated its vehicle key cylinders are covered with casting cases to prevent the key cylinder from easily being broken. Toyota further explained there are approximately 10,000 combinations for inner cut keys, which

makes it difficult to unlock the doors without using a valid key because the key cylinders would spin out and cause the locks to not operate.

Toyota stated its ''smart entry and start'' system is activated when the engine switch is pushed from the ''ON'' ignition status to any other status. The certification ECU then performs the calculation for the immobilizer and the immobilizer signals the ECM to activate the device. Toyota also stated key verification is performed after the driver pushes the engine switch. Specifically, after the driver pushes the engine switch, the certification ECU and steering lock ECU receive confirmation of a valid key, and the certification ECU allows the ECM to start the engine. Toyota stated the ''transponder key and start'' system is activated when the ignition key is turned from the ''ON'' position to some other status and the key is removed allowing the immobilizer to activate and signal the ECM. Toyota also stated in both systems, a security indicator is installed notifying users and others inside and outside the vehicle with the status of the immobilizer. Toyota further explained the security indicator flashes continuously when the immobilizer is activated, and turns off when it is deactivated. Toyota stated that the proposed antitheft device has also been installed as standard equipment on its C–HR vehicle line beginning with its MY 2018 vehicles. The theft rate for the MY 2018 C–HR vehicle line is not available. However, Toyota compared its proposed device to other devices NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Toyota compared its proposed device to that which has been installed on the Nissan Altima and granted a parts-marking exemption from 49 CFR part 541 by the agency beginning with its MY 2000 vehicles. Toyota also referenced the NHTSA theft rate data published for several years before and after the Nissan Altima was equipped with a standard immobilizer device. Specifically, Toyota stated the publication showed the average theft rate for the Nissan Altima dropped to 3.0 per 1,000 cars produced between MY's 2000–2006 compared to 5.3 per 1,000 cars produced between MY's 1996–1999. This represents approximately a 43% decrease in the theft rate for the Nissan Altima vehicle line installed with an immobilizer between MY's 2000–2006 as compared to the Nissan Altima vehicle line without an immobilizer between MY's 1996–1999. The theft rates for the Nissan Altima vehicle line using an average of three model years' data (2012–2014) are 2.4207, 1.7598 and 2.1212 respectively, all well below the median theft rate of 3.5826. Therefore, Toyota has concluded the antitheft device proposed for its C–HR vehicle line is no less effective than those devices on the lines for which NHTSA has already granted full exemption from the parts-marking requirements. Toyota stated it believes that installing the immobilizer device as standard equipment reduces the theft rate for the C–HR vehicle line and expects it to experience comparable effectiveness and ultimately be more effective than parts-marking labels.

Based on the supporting evidence submitted by Toyota on its device, the agency believes the antitheft device for the C–HR vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds Toyota has provided adequate reasons for its belief the antitheft device for the C–HR vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Toyota provided about its device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Toyota decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes if Toyota wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.10(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full Toyota's petition for exemption for the model year 2020 C–HR vehicle line from the parts-marking requirements of 49 CFR part 541.

Issued in Washington, DC, under authority delegated in 49 CFR part 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2019–05445 Filed 3–21–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Ford Motor Company

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full Ford Motor Company's (Ford) petition for exemption of the model year 2020 Lincoln Corsair vehicle line from the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with the 2020 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is 202–366–5222. Her fax number is 202–493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated November 16, 2018, Ford requested an exemption from the parts-marking requirements of the Theft Prevention Standard for the Lincoln Corsair vehicle line beginning with MY 2020. The petition requested exemption from parts-marking pursuant to 49 CFR part 543, ''Exemption from Vehicle Theft Prevention Standard'', based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Ford provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its Lincoln Corsair vehicle line. Ford stated that the Lincoln Corsair will be installed with its Intelligent Access with Push Button Start (IAwPB) system as standard equipment on the entire vehicle line. Ford also stated that on its signature trim level models it will offer phone as key (Paak) feature via of the LincolnWay app that can be used when paired with a smart phone instead of using a key fob to lock/unlock or remotely start/shutdown the vehicle. The IAwPB system is a passive, electronic engine immobilizer device that uses encrypted transponder technology. Key components of the IAwPB device will include an Intelligent Access electronic Push-Button Start key fob, keyless ignition system, radio transceiver module, body control module (BCM), powertrain control module (PCM), anti-lock braking system module (ABS) and an embedded secure modem (for Paak feature). Ford further stated that its Lincoln Corsair vehicle line will also be offered with a perimeter alarm system as standard equipment which will activate a visible and audible alarm whenever unauthorized access is attempted.

Ford stated that the device's integration of the transponder into the normal operation of the ignition key assures activation of the system. Ford also stated that its system is automatically activated when the ''StartStop'' button is pressed, shutting off the engine. Ford stated that the device is deactivated when a start sequence is completed and engine start is successful. Ford further stated that the vehicle engine can only be started when the key is present in the vehicle and the ''StartStop'' button inside the vehicle is pressed. Ford stated that when the ''StartStop'' button is pressed, the transceiver module will read a key code and transmit an encrypted message to the control module to determine key validity and engine start by sending a separate encrypted message to the BCM and the PCM. The powertrain will function only if the key code matches the unique identification key code previously programmed into the BCM. Ford stated that the two modules must be matched together in order for the vehicle to start. If the codes do not match, the powertrain engine will be inoperable. Ford further stated that any attempt to operate the vehicle without transmission of the correct code to the electronic control (*i.e.,* short circuiting the ''StartStop'' button) module will be ineffective.

Ford's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In addressing the specific content requirements of § 543.6, Ford provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Ford conducted tests based on its own specified standards. Ford provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its own specified requirements for each test.

Ford stated that incorporation of several features in the device further support the reliability and durability of the device. Specifically, some of those features include: encrypted communication between the transponder, BCM control function and the PCM; virtually impossible key duplication; and shared security data between the body control module/remote function actuator and the powertrain control module. Additionally, Ford stated that its antitheft device has no moving parts (*i.e.,* BCM, PCM, and electrical components) to perform system functions which eliminate the possibility for physical damage or deterioration from normal use; and mechanically overriding the device to start the vehicle is also impossible.

Ford stated that its MY 2019 Lincoln Corsair vehicle line will also be equipped with several other standard antitheft features common to Ford vehicles, (*i.e.,* hood release located inside the vehicle, counterfeit resistant VIN labels, secondary VINs, and cabin accessibility only with the use of a valid key fob).

Ford stated that it believes that the standard installation of its IAwPB device would be an effective deterrent against vehicle theft and compared its proposed device with other antitheft devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements.

Ford stated that the antitheft device was installed on all MY 1996 Ford Mustang GT and Cobra models as well as other selected models. Ford also stated that on its 1997 models, the installation of its antitheft device was extended to the entire Ford Mustang vehicle line as standard equipment and that according to the National Insurance Crime Bureau (NICB) theft statistics, MY 1997 Mustangs installed with the antitheft device showed a 70% reduction in theft rate compared to its MY 1995 Mustangs without an antitheft device.

Ford further stated that the proposed antitheft device is very similar to the system that was offered on its MY 2017 Lincoln MKC vehicle line. The Lincoln MKC vehicle line was granted a parts-marking exemption on September 30, 2015 by NHTSA (See 80 FR 60243, October 5, 2015) beginning with its MY 2017 vehicles.

Ford also reported that beginning with MY 2010, its antitheft device was

installed as standard equipment on all of its North American Ford, Lincoln and Mercury vehicles but was offered as optional equipment on its 2010 F-series Super Duty pickups, Econoline and Transit Connect vehicles. Ford further stated that beginning with MY 2010, the IAwPB device was installed as standard equipment on its Lincoln MKT vehicles. In MY 2011, the device was offered as standard equipment on its Lincoln MKX vehicle line, and as an option on the Lincoln MKS, Ford Taurus, Edge, Explorer and Focus vehicles. Beginning with MY 2013, the device was offered as standard equipment on the Lincoln MKZ and optionally on the Ford Fusion, C-Max and Escape vehicles.

Ford referenced the agency's published theft rate data for the Ford Escape vehicles and stated that the Lincoln Corsair will use the IAwPB device similar to the design and architecture of the Ford Escape. Ford also stated that the Lincoln Corsair is comparably similar to the Ford Escape in vehicle segment, size and equipment. The agency notes that current theft rate data for the Ford Escape vehicle line for MYs 2012 through 2014 are 0.8336, 0.8547 and 0.5051 respectively.

Based on the supporting evidence submitted by Ford on the device, the agency believes that the antitheft device for the Lincoln Corsair vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of Part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Ford has provided adequate reasons for its belief that the antitheft device for the Lincoln Corsair vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Ford provided about its device.

The agency concludes that the device will provide the five types of performance listed in 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Ford decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Ford wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.10(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full Ford's petition for exemption for the Lincoln Corsair vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its model year (MY) 2020 vehicles.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2019–05447 Filed 3–21–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Porsche Cars North America, Inc.

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Porsche Cars North America, Inc.'s (Porsche) petition for exemption of the 2020 model year Taycan vehicle line from the Federal Motor Vehicle Theft Prevention Standard (Theft Prevention Standard). The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with the 2020 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Standards, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated November 6, 2018, Porsche requested an exemption from the parts-marking requirements of the Theft Prevention Standard for its Taycan vehicle line beginning with MY 2020. The petition requested exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Porsche provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its Porsche Taycan

vehicle line. Porsche stated that the Taycan vehicle line will be installed with a passive antitheft device as standard equipment on the entire vehicle line. Porsche also stated that its vehicles will be installed with a keyless go system that will consists of two major subsystems: A microprocessor based immobilizer system that prevents the power unit from functioning when the system is engaged and a transmission control locking and alarm system. Key components of the antitheft device will include a passive immobilizer, electronic ignition switch, transponder key, remote control unit, alarm/central locking control unit, engine control unit, transmission control unit and an electronic parking brake. Porsche stated that it will offer a keyless entry system as an option for its Taycan vehicle line. Porsche also stated that its vehicle line will be installed with an audible and visible alarm as standard equipment. Additionally, Porsche stated that the central locking system works in conjunction with the audible and visible alarm by locking the doors with the ignition key or the remote control activating the audible and visible alarm. Porsche stated that an ultrasonic sensor in the alarm system will monitor the doors, rear luggage compartment, front deck lid, fuel filler door, and interior movement. The horn will sound and the lights will flash if there is any detection of unauthorized use.

Porsche stated that the immobilizer system cannot be disabled unless an original key sends the proper code to the immobilizer system instructing the engine management system via a code to begin functioning again. The immobilizer is automatically activated after the ignition is turned off from the dashboard control switch. The immobilizer then returns to its normal ''off'' state, where engine starting and transmission starting are not allowed. Starting the engine and operation of the vehicle will be allowed only when the correct code is sent to the control unit by using the correct key in the ignition switch, or by having the correct keyless entry key within the occupant compartment of the car. The ignition key contains a radio signal transponder, which signals the control unit to allow the engine to be started. With the keyless entry system, operation of the vehicle is allowed when the ignition key is substituted with the special key that contains a radio signal transmitter similar to the transponder in the standard ignition key.

Porsche's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

In addressing the specific content requirements of 543.6, Porsche provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Porsche conducted tests based on its own specified standards. Porsche provided a detailed list of the tests conducted (*i.e.,* extreme temperature tests, voltage spike tests, reverse polarity tests, electromagnetic interference tests, vibration test and endurance tests) and believes that the device is reliable and durable since the device complied with its specific requirements for each test. Additionally, Porsche stated that the antitheft device also features a built-in self-diagnostic that constantly checks for system failures. If a failure is detected, an alarm indicator will signal the driver.

Porsche further states that disablement of the immobilizer is virtually impossible. Disconnecting power to the antitheft device does not affect the operation of the device. Once the antitheft device is activated, the device stays activated until the correct key or optional keyless entry key is used to instruct the engine management system through the proper code to begin functioning again.

In further support of the reliability of its antitheft device, Porsche informed the agency that it will continue to use the ''off-board'' antitheft strategy that reduces the marketability of stolen electronic components and making the theft of vehicles unattractive. Specifically, Porsche stated that during the production of its vehicle, the initialization and registration of various antitheft electronic components are recorded in a central database. If the components have to be repaired or replaced, authorized access to the database must be obtained to receive authorization for the components. If authorized access to the central database is unavailable or the database indicates that the components are not authorized, further operation and use of the vehicle will be restricted or impossible to obtain.

Porsche stated that its central locking system works in conjunction with its audible and visible alarm. Locking the doors with the ignition key, the remote control or a door switch (with the keyless entry option) will also activate the audible and visible alarm. Porsche also stated that the immobilizer cannot be disabled by manipulation of the door locks or central-locking system because the locks/locking system are incapable of sending the code needed to disable the device.

As an additional feature, Porsche stated that it will also incorporate an electronically activated parking brake on the Taycan vehicle which is electronically activated and integrated into the vehicle's antitheft device. Porsche stated that if the control unit does not receive the correct code from the ignition key or keyless entry key, the parking brake will remain activated and the vehicle cannot be towed away.

Since the Porsche Taycan is a new vehicle line, there is currently no available theft rate data published by the agency for the vehicle line. However, Porsche provided data on the effectiveness of other similar antitheft devices that have been installed on its 911 and Boxster/Cayman vehicle lines in support of its belief that its proposed device will be at least as effective as those comparable devices previously granted exemptions by the agency. Porsche's data showed that the theft rate for the 911 and Boxster/Cayman vehicle lines remained consistently low over a three-year period. Using an average of 3 MYs' theft data (2012–2014), the theft rates for the Boxster/Cayman, Porsche 911 and Panamera vehicle lines are 0.4917, 0.6009 and 2.6518, respectively. Porsche stated that its off-board antitheft concept, similar in concept to parts-marking will further reduce the demand for stolen Porsche vehicle components. Based on the experience of these vehicle lines, Porsche has concluded that the antitheft device proposed for its Porsche Taycan vehicle line is no less effective than those devices in lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the supporting evidence submitted by Porsche, the agency believes that the antitheft device for the Taycan vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Porsche has provided adequate reasons for its belief that the antitheft device for the Porsche Taycan vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-

marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Porsche provided about its device.

The agency concludes that the device will provide the five types of performance listed in 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If Porsche decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Porsche wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.10(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full Porsche's petition for exemption for the Porsche Taycan vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with its model year (MY) 2020 vehicles.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2019–05446 Filed 3–21–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Nissan North America, Inc

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full Nissan North America, Inc.'s, (Nissan) petition for exemption of the model year 2020 Versa vehicle line from the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with the 2020 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Room W43–439, Washington, DC 20590. Ms. Ballard's telephone phone number is 202–366–5222.

SUPPLEMENTARY INFORMATION: In a petition dated October 1, 2018, Nissan requested an exemption from the parts-marking requirements of the Theft Prevention Standard for the Versa vehicle line beginning with MY 2020. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, ''Exemption from Vehicle Theft Prevention Standard'', based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Nissan provided a detailed description and diagram of the identity, design, and location of components of the antitheft device for the Versa vehicle line. Nissan stated the MY 2020 Versa vehicle line will be installed with a passive, electronic engine immobilizer antitheft device as standard equipment. Key components of the antitheft device will include an engine immobilizer, engine control module (ECM), body control module (BCM), security indicator light, immobilizer antenna, Key FOB, and a specially-designed key with a microchip. Nissan stated its vehicle's security indicator light will be a warning to a potential thief and an added deterrence to a thief's decision to enter the vehicle. However, Nissan will not provide any visible or audible indication of unauthorized vehicle entry (*i.e.,* flashing lights and horn alarm) on its Versa vehicle line.

Nissan's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In addressing the specific content requirements of § 543.6, Nissan provided information on the reliability and durability of its proposed device. Nissan stated its antitheft device is tested for specific parameters to ensure its reliability and durability. Nissan provided a detailed list of tests conducted and believes the device is reliable and durable since the device complied with its specified requirements for each test. Nissan further stated its immobilizer device satisfies the European Directive ECE R116, including requirements for tamper resistance. Nissan also stated all control units for the device are located inside the vehicle, providing further protection from unauthorized accessibility of the device from outside the vehicle.

Nissan stated activation of its immobilizer device occurs automatically when the ignition switch is turned to the ''OFF'' position, which then causes the security indicator light to flash notifying the operator that the immobilizer device is activated. Nissan stated the immobilizer device prevents normal operation of the vehicle without using a specially–designed microchip key with a pre-registered ''Key-ID.'' Nissan also stated that, when the brake

and clutch is on and the key FOB is near the engine start switch, the Key-ID is scanned via the immobilizer antenna. The microchip in the key transmits the Key-ID to the BCM, beginning an encrypted communication process. If the Key-ID and encrypted code are correct, the ECM will allow the engine to keep running and the driver to operate the vehicle. If the Key-ID and encrypted code are not correct, the ECM will cause the engine to shut down.

Nissan stated the proposed device is functionally equivalent to the antitheft device installed on the MY 2011 Nissan Cube vehicle line, which was granted a parts-marking exemption by the agency on April 14, 2010 (75 FR 19458).

Nissan provided data on the effectiveness of the antitheft device installed on its Versa vehicle line in support of the belief its antitheft device will be highly effective in reducing and deterring theft. Nissan referenced the National Insurance Crime Bureau's data, which it stated showed a 70% reduction in theft when comparing MY 1997 Ford Mustangs (with a standard immobilizer) to MY 1995 Ford Mustangs (without an immobilizer). Nissan also referenced the Highway Loss Data Institute's data, which reported BMW vehicles experienced theft loss reductions resulting in a 73% decrease in relative claim frequency and a 78% lower average loss payment per claim for vehicles equipped with an immobilizer. Additionally, Nissan stated theft rates for its Pathfinder vehicle line experienced reductions from MY 2000 to 2001 and subsequent years with implementation of an engine immobilizer device as standard equipment. Specifically, Nissan stated the agency's theft rate data for MY's 2001 through 2006 reported theft rates of 1.9146, 1.8011, 1.1482, 0.8102, 1.7298, and 1.3474 respectively for the Nissan Pathfinder.

Nissan compared its device to other similar devices previously granted exemptions by the agency. Specifically, it referenced the agency's grant of full exemptions to General Motors Corporation for its Buick Riviera and Oldsmobile Aurora vehicle lines (58 FR 44872, August 25, 1993) and its Cadillac Seville vehicle line (62 FR 20058, April 24, 1997) from the parts-marking requirements of the theft prevention standard. Nissan stated it believes since its device is functionally equivalent to other comparable manufacturer's devices that have been granted parts-marking exemptions by the agency, along with the evidence of reduced theft rates for vehicle lines equipped with similar devices and advanced technology of transponder electronic security, the Nissan immobilizer device will have the potential to achieve the level of effectiveness equivalent to those vehicles already exempted by the agency. The agency agrees the device is substantially similar to devices installed on other vehicle lines for which the agency has already granted exemptions.

Based on the supporting evidence submitted by Nissan, the agency believes the antitheft device for the Versa vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of Part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds Nissan has provided adequate reasons for its belief the antitheft device for the Versa vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Nissan provided about its device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Nissan decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for the model year 2020 Nissan Versa vehicle line from the parts-marking requirements of 49 CFR part 541.

Issued in Washington, DC, under authority delegated in 49 CFR part 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2019–05448 Filed 3–21–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0051]

Pipeline Safety: Information Collection Activities—Request for Extension of Existing Information Collections

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on two information collections that will be expiring in 2019. PHMSA will request

an extension, without change, for the information collections identified by OMB control number 2137–0578 and 2137–0605.

DATES: Interested persons are invited to submit comments on or before May 21, 2019.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov website: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2019–0051, at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2019–0051.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

FOR FURTHER INFORMATION, CONTACT: Angela Hill by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies two information collection requests that PHMSA will submit to OMB. PHMSA intends to request an extension, without change, of the information collection under OMB Control No. 2137–0578, which covers the reporting of safety-related conditions and OMB Control No. 2137–0605, which covers integrity management recordkeeping activities.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. PHMSA will request a three-year term of approval for each information collection activity. PHMSA requests comments on the following information collections:

1. Title: Reporting Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities.

OMB Control Number: 2137–0578.

Current Expiration Date: 8/31/2019.

Type of Request: Renewal of a currently approved information collection.

Abstract: Each operator of a pipeline facility (except master meter operators) must submit to DOT a written report on any safety-related condition that causes or has caused a significant change or restriction in the operation of a pipeline facility, or a condition that is a hazard to life, property or the environment.

Affected Public: Operators of pipeline facilities (except master meter operators).

Annual Reporting and Recordkeeping Burden:

Estimated Number of Responses: 146.

Estimated Annual Burden Hours: 876.

Frequency of Collection: On occasion.

2. Title: Integrity Management in High Consequence Areas for Operators of Hazardous Liquid Pipelines.

OMB Control Number: 2137–0605.

Current Expiration Date: 10/31/2019.

Type of Request: Renewal of a currently approved information collection.

Abstract: Operators of hazardous liquid pipelines are required to have continual assessment and evaluation of pipeline integrity through inspection or testing, as well as remedial, preventive, and mitigative actions. This includes both recordkeeping and certain reporting requirements.

Affected Public: Operators of Hazardous Liquid Pipelines that could affect High Consequence Areas.

Annual Reporting and Recordkeeping Burden:

Estimated Number of Responses: 203.

Estimated Annual Burden Hours: 325,470.

Frequency of Collection: Annually.

Comments are invited on:

(a) The need for the renewal of these collections of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on March 18, 2019, under authority delegated in 49 CFR 1.97.

John A. Gale,

Director, Standards and Rulemaking Division.

[FR Doc. 2019–05491 Filed 3–21–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated

Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On March 11, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authorities listed below.

Entity

1. EVROFINANCE MOSNARBANK (a.k.a. AKTSIONERNOE OBSHCHESTVO EVROFINANS MOSNARBANK; a.k.a. AKTSIONERNY KOMMERCHESKI BANK EVROFINANS MOSNARBANK; a.k.a. AO AKB EVROFINANS MOSNARBANK (Cyrillic: АО АКБ ЕВРОФИНАНС МОСНАРБАНК); f.k.a. EVROFINANS MOSNARBANK, AO; f.k.a. EVROFINANS MOSNARBANK, PAO), 29, ul. Novy Arbat, Moscow 121099, Russia; SWIFT/BIC EVRFRUMM; Registration ID 1027700565970 (Russia); Tax ID No. 7703115760 (Russia); Government Gazette Number 09610839 (Russia) [VENEZUELA–EO13850] (Linked To: PETROLEOS DE VENEZUELA, S.A.).

Designated pursuant to section 1(a)(i) of Executive Order 13850 of November 1, 2018, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela,'' as amended by Executive Order 13857, ''Taking Additional Steps to Address the National Emergency with Respect to Venezuela'' of January 25, 2019, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Petroleos de Venezuela S.A., a person designated on January 28, 2019, for operating in the oil sector of the Venezuelan economy.

Dated: March 18, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–05462 Filed 3–21–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On March 1, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. BERMUDEZ VALDERREY, Alberto Mirtiliano (a.k.a. MIRTILIANO BERMUDEZ, Alberto), Anaco, Anzoategui, Venezuela; DOB 17 Feb 1968; Gender Male; Cedula No. 9895508 (Venezuela) (individual) [VENEZUELA].

Designated pursuant to section 1(a)(ii)(C) of Executive Order 13692 of March 8, 2015, ''Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela'' (E.O. 13692), as amended by Executive Order 13857 of January 25, 2019, ''Taking Additional Steps To Address the National Emergency With Respect to Venezuela,'' (E.O. 13857) for being a current or former official of the Government of Venezuela.

2. LOPEZ VARGAS, Richard Jesus (a.k.a. LOPEZ VARGAS, Richard), Caracas, Capital District, Venezuela; DOB 24 Nov 1964; Gender Male; Cedula No. 6166221 (Venezuela) (individual) [VENEZUELA].

Designated pursuant to section 1(a)(ii)(C) of E.O. 13692, as amended by E.O. 13857, for being a current or former official of the Government of Venezuela.

3. MANTILLA OLIVEROS, Jesus Maria (a.k.a. MONTILLA OLIVEROS, Jesus Maria), Bolivar State, Venezuela; DOB 03 Sep 1963; Gender Male; Cedula No. 9215693 (Venezuela) (individual) [VENEZUELA].

Designated pursuant to section 1(a)(ii)(C) of E.O. 13692, as amended by E.O. 13857, for being a current or former official of the Government of Venezuela.

4. NORONO TORRES, Jose Leonardo, San Cristobal, Tachira, Venezuela; DOB 16 Sep 1969; Gender Male; Cedula No. 9931609 (Venezuela) (individual) [VENEZUELA].

5. DOMINGUEZ RAMIREZ, Jose Miguel (a.k.a. DOMINGUEZ, Miguel), Caracas, Venezuela; DOB 17 Oct 1979; Gender Male; Cedula No. 14444352 (Venezuela) (individual) [VENEZUELA].

Designated pursuant to section 1(a)(ii)(C) of E.O. 13692, as amended by E.O. 13857, for being a current or former official of the Government of Venezuela.

6. MORALES ZAMBRANO, Cristhiam Abelardo (a.k.a. MORALES ZAMBRANO, Christian; a.k.a. MORALES ZAMBRANO, Cristhian), Tachira, Venezuela; DOB 09 Mar 1970; Gender Male; Cedula No. 9656561 (Venezuela) (individual) [VENEZUELA].

Designated pursuant to section 1(a)(ii)(C) of E.O. 13692, as amended by E.O. 13857, for being a current or former official of the Government of Venezuela.

Dated: March 18, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–05471 Filed 3–21–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Voluntary Customer Surveys To Implement E.O. 12862 on Behalf of All IRS Operations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Voluntary Customer Surveys To Implement E.O. 12862 on Behalf of All IRS Operations.

DATES: Written comments should be received on or before May 21, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this notice should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Voluntary Customer Surveys To Implement E.O. 12862 on Behalf of All IRS Operations.

OMB Number: 1545–1432.

Abstract: This form is a generic clearance for an undefined number of customer satisfaction and opinion surveys and focus group interviews to be conducted over the next three years. Surveys and focus groups conducted under the generic clearance are used by the Internal Revenue Service to determine levels of customer satisfaction, as well as determining issues that contribute to customer burden. This information will be used to make quality improvements to products and services.

Current Actions: We will be conducting different customer satisfaction and opinion surveys and focus group interviews during the next three years than in the past. At the present time, it is not determined what these surveys and focus groups will be.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms and Federal, state, local or tribal governments.

Estimated Number of Respondents: 100,000.

Estimated Time per Respondent: 24 mins.

Estimated Total Annual Burden Hours: 40,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 18, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–05488 Filed 3–21–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans and Community Oversight and Engagement Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Veterans and Community Oversight and Engagement Board will meet on April 16–17, 2019 at 11301 Wilshire Boulevard, Building 500, Room 1281, Los Angeles. The meeting sessions will begin and end as follows:

Date	Time
April 16, 2019	8:30 a.m. to 5:30 p.m. (PDT).
April 17, 2019	8:00 a.m. to 4:30 p.m. (PDT).

The meetings are open to the public.

The Board was established by the West Los Angeles Leasing Act of 2016 on September 29, 2016. The purpose of the Board is to provide advice and make recommendations to the Secretary of Veterans Affairs on: Identifying the goals of the community and Veteran partnership; improving services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and on the implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and on the creation and implementation of any successor master plans.

On Tuesday, April 16, 2019, the Board will convene an open session. The agenda will include briefings from senior VA officials, to include comprehensive briefing on Whole Health initiatives ongoing in the Department of Veteran Affairs. The Board will receive an information briefing from the Greater Los Angeles Draft Master Plan Integrated Project Team, and a follow up briefing from Los Angeles Metro on the purple line extension efforts. A public comment session will occur from 3:00 p.m. to 4:00 p.m. followed by a wrap up of Public Comment session.

On Wednesday, April 17, 2019, Board will receive additional briefings on Greater Los Angeles Strategic Analysis for Improvement and Learning (SAIL) and Survey of Healthcare Experiences of Patient (SHEP) scores, follow up, Purple Line Expansion, and Greater Los Angeles Lease Revenue Funds account. The Board's subcommittees on Outreach and Community Engagement with Services and Outcomes, and Master Plan with Services and Outcomes will meet to finalize reports on activities since the last meeting, followed by an out brief to the full Committee and update on draft recommendations considered for forwarding to the SECVA. Individuals wishing to make public comments should contact Chihung Szeto at (562) 708–9959 or at *Chihung.Szeto@va.gov* and are requested to submit a 1–2-page summary of their comments for inclusion in the official meeting record. In the interest of time, each speaker will be held to a 5-minute time limit.

Any member of the public seeking additional information should contact Mr. Eugene W. Skinner Jr. at (202) 631–7645 or at *Eugene.Skinner@va.gov.*

Dated: March 19, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–05504 Filed 3–21–19; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of Labor

Wage and Hour Division

29 CFR Part 541

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Proposed Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 541

RIN 1235–AA20

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Proposed rule and request for comments.

SUMMARY: Using a longstanding and commonsense methodology and based on broad-based input, the Department of Labor (Department) proposes to update and revise the regulations issued under the Fair Labor Standards Act (FLSA or Act) implementing the exemption from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees.

DATES: Submit written comments on or before May 21, 2019.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA20, by either of the following methods: *Electronic Comments:* Submit comments through the Federal eRulemaking Portal *http://www.regulations.gov.* Follow the instructions for submitting comments. *Mail:* Address written submissions to Melissa Smith, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit only one copy of your comments by only one method. All submissions must include the agency name and RIN, identified above, for this rulemaking. Please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period as the Department continues to experience delays in the receipt of mail in our area. For additional information on submitting comments and the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. For questions concerning the interpretation and enforcement of labor standards related to the FLSA, individuals may contact the Wage and Hour Division (WHD) local district offices (see contact information below). *Docket:* For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this proposed rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website for a nationwide listing of WHD district and area offices at *http://www.dol.gov/whd/america2.htm.*

Electronic Access and Filing Comments

Public Participation: This proposed rule is available through the **Federal Register** and the *http://www.regulations.gov* website. You may also access this document via WHD's website at *http://www.dol.gov/whd/.* To comment electronically on Federal rulemakings, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* which will allow you to find, review, and submit comments on Federal documents that are open for comment and published in the **Federal Register**. You must identify all comments submitted by including ''RIN 1235–AA20'' in your submission. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period (11:59 p.m. on the date identified above in the **DATES** section); comments received after the comment period closes will not be considered. Submit only one copy of your comments by only one method. Please be advised that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

The Fair Labor Standards Act (FLSA or Act) requires covered employers to pay employees a minimum wage and, for employees who work more than 40 hours in a week, overtime premium pay at least 1.5-times their regular rate of pay. The FLSA provides a number of exemptions to these two requirements.

Section 13(a)(1) of the FLSA, commonly referred to as the ''white collar'' or ''EAP'' exemption, exempts ''bona fide'' executive, administrative,

professional, outside sales, and computer employees from the minimum wage and overtime requirements of the FLSA. The statute delegates to the Secretary of Labor (the Secretary) the authority to define and delimit the terms of this white collar exemption. Since 1940, the regulations implementing the exemption generally have required three things: (1) The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the ''salary basis test''); (2) the amount of salary paid must meet a minimum specified amount (the ''salary level test''); and (3) the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the ''duties test'').

The Department has long used the salary level test as a tool to help define the white collar exemption on the basis that employees paid less than the salary level are unlikely to be bona fide executives, administrators, or professionals, and, conversely, that nearly all bona fide executives, administrators, and professionals are paid at least that much. The salary level test provides certainty for employers and employees, as well as efficiency for government enforcement agencies. The salary level test's usefulness, however, diminishes as the wages of employees entitled to overtime increase and the real value of the salary threshold falls.

The Department increased the weekly salary level from $455 ($23,660 per year) to $913 ($47,476 per year) in a final rule published May 23, 2016 (''2016 final rule''). That rulemaking was challenged in court, and on November 22, 2016, the U.S. District Court for the Eastern District of Texas enjoined the Department from implementing and enforcing the rule. On August 31, 2017, the court granted summary judgment against the Department, invalidating the 2016 final rule. An appeal of that decision to the United States Court of Appeals for the Fifth Circuit, based on the salary threshold, is being held in abeyance. Currently, the Department is enforcing the regulations in effect on November 30, 2016, including the $455 per week standard salary level, which is the same level set in place during the 2004 final rule.

The Department has reconsidered the $913 per week standard salary level set in the 2016 final rule in light of the district court's decisions, public comments received in response to a July 26, 2017 Request for Information (RFI), and feedback received at public listening sessions the Department held around the country to receive additional public input on issues related to the salary level test.[1] The Department agrees with the vast majority of RFI commenters that the standard salary level needs to exceed $455 per week to more effectively serve its purpose. But the Department now also believes that increasing the standard salary level to $913 per week was inappropriate. The increase excluded from exemption 4.2 million employees whose duties would have otherwise qualified them for exemption, a result in significant tension with the text of section 13(a)(1). As the district court noted in its decision invalidating the 2016 final rule, the increase also untethered the salary level test from its historical justification: Setting a dividing line between nonexempt and potentially exempt employees by screening out from exemption a swath of employees who are unlikely to be bona fide executives, administrators, or professionals because of their compensation level.

To address the district court's and the Department's concerns with the 2016 final rule and set a more appropriate salary level, the Department proposes to rescind formally the 2016 final rule and simply to update the 2004 standard salary level by applying the same methodology to current data. The 2004 final rule set the standard salary level at approximately the 20th percentile of earnings of full-time salaried workers in the lowest-wage census region (then and now the South) and in the retail sector. This proposed rule would do the same. When this method is applied to 2017 data, and projected forward to January 2020 (the approximate date this rule is anticipated to be effective), it results in a proposed standard salary level of $679 per week ($35,308 per year). The Department anticipates using 2018 data in development of the final rule. The Department estimates that in 2020, 1.1 million currently exempt employees who earn at least $455 per week but less than the proposed standard salary level of $679 per week would, without some intervening action by their employers,[2] gain overtime eligibility.[3] In an attempt to align the regulations better with modern pay practices, the Department also proposes to allow employers to count nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level test, provided such bonuses are paid annually or more frequently. The Department is not proposing any changes to the standard duties test.

The Department believes that the proposed update to the standard salary level will maintain the traditional purposes of the salary level test, and will help employers more readily identify exempt employees. In proposing a new salary level, the Department considered the district court's conclusion that the salary level set in the 2016 final rule exceeded the Department's authority by ''exclud[ing] so many employees who perform exempt duties'' thereby making ''salary rather than an employee's duties determinative'' of the applicability of the EAP exemption.[4] The Department has also considered the comments received in response to the RFI and those presented by interested parties at the nationwide listening sessions.

The Department considered other methods for setting the standard salary level, as described in sections IV.A.v and VI.C. The Department seeks comments on these or other methods that would update the standard salary level to reflect wage growth, are consistent with the salary level's purposes, and are reasonable considering the interests of employers and employees.

In the 2004 final rule, the Department for the first time incorporated a Highly Compensated Employee (HCE) test, which paired a reduced duties requirement with a higher compensation level ($100,000). To update the HCE total annual compensation level (set to $100,000 in the 2004 final rule and increased to $134,004 in the 2016 final rule), the Department is adopting the same methodology used in the 2016 final rule. The Department proposes to set the level equivalent to the 90th percentile of full-time salaried workers nationally, similarly projected forward to 2020, which results in an increase in the annual compensation level to $147,414 per year. Without intervening action by their employers, an estimated 201,100 currently exempt workers who earn at least $100,000 per year but less than the

[1] Timely comments and listening session records may be reviewed at *www.regulations.gov,* docket ID: WHD–2017–0002.

[2] Employers may opt to raise salary levels, reorganize workloads, adjust work schedules, or spread work hours in order to avoid payment of overtime pay.

[3] The Department also estimates that an additional 2.0 million white collar workers who are currently nonexempt because they do not satisfy the EAP duties tests and currently earn at least $455 per week but less than $679 per week would have their overtime-eligible status strengthened in 2020 because these employees would now fail both the salary level and duties tests.

[4] *Nevada* v. *U.S. Dep't of Labor,* 275 F. Supp. 3d 795, 807 (E.D. Tex. 2017).

proposed HCE annual compensation level of $147,414 per year, and who meet the HCE duties test but not the standard duties test, would also gain overtime eligibility.

Additionally, the Department is proposing special salary levels for certain U.S. territories and an updated base rate for employees in the motion picture producing industry. Furthermore, to prevent the earnings threshold levels from becoming significantly outdated in the future and to provide predictability and certainty for the benefit of workers and employers, the Department intends to propose updates to these levels every four years through notice-and-comment rulemaking, and solicits comment from the public regarding that intention.

This proposed rule is expected to be an Executive Order 13771 deregulatory action. When the Department uses a perpetual time horizon to allow for cost comparisons under Executive Order 13771, and using the 2016 rule as the baseline, the annualized cost savings of this proposed rule is $224.0 million with 7 percent discounting. The net present value of the cost savings is $3.2 billion using a perpetual time horizon and a 7 percent discount rate.

Because the Department is currently enforcing the 2004 salary level, the economic analysis uses the 2004 rule as the baseline for calculating costs and transfers. The economic analysis quantifies three direct costs resulting from the proposal: (1) Regulatory familiarization costs; (2) adjustment costs; and (3) managerial costs. The Department estimates that annualized direct employer costs in the first 10 years following the rule's effective date will be $120.5 million, including $464.2 million in Year 1 and $67.8 million in Year 10. This proposed rulemaking will also give employees higher earnings in the form of transfers of income from employers to employees. Annualized transfers are estimated to be $429.4 million over the first ten years, including $526.9 million in Year 1. Details on the estimated reduced burdens and cost savings of this proposed rule are in the rule's economic analysis.

II. Background

A. The FLSA

On June 25, 1938, the FLSA was signed into law. The FLSA generally requires covered employers to pay their employees at least the federal minimum wage (currently $7.25 an hour) for all hours worked, and overtime premium pay of at least 1.5-times the regular rate of pay for all hours worked over 40 in a workweek.[5]

The FLSA exempts certain employees from its minimum wage and overtime requirements. Section 13(a)(1) exempts EAP employees from the minimum wage provisions of section 206[6] and the overtime pay provisions of section 207, and delegates to the Secretary the authority to define and delimit the terms of the exemption in regulations.[7]

Pursuant to Congress' grant of rulemaking authority, in 1938 the Department issued the first regulations at 29 CFR part 541, defining the scope of the section 13(a)(1) exemptions. Since 1940, the implementing regulations have generally imposed three requirements for the exemption to apply: (1) An employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the ''salary basis test''); (2) the amount of salary paid must meet a minimum specified amount (the ''salary level test''); and (3) the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the ''duties test'').

B. Regulatory History

The first version of part 541, establishing the criteria for exempt status under section 13(a)(1), was promulgated in October 1938.[8] The Department revised its regulations in 1940,[9] 1949,[10] 1954, 1958,[11] 1961, 1963, 1967, 1970, 1973, and 1975.[12] A final rule increasing the salary levels was published on January 13, 1981, but was stayed indefinitely on February 12, 1981.[13] In 1985, the Department published an Advance Notice of Proposed Rulemaking that was never finalized.[14] In 1992, the Department twice revised the part 541 regulations. First, the Department created a limited exception from the salary basis test for public employees.[15] The Department then implemented the 1990 law exempting employees in certain computer-related occupations.[16]

From 1949 until 2004, the part 541 regulations contained two different tests for exemption—a ''long'' test that paired a more rigorous duties test with a lower salary level, and a ''short'' test that paired a more flexible duties test with a higher salary level. On April 23, 2004, the Department issued a final rule (2004 final rule), which replaced the ''long'' and ''short'' test system for determining exemption status with a single ''standard'' salary level paired with a ''standard'' duties test. The Department set the standard salary level at $455 per week.[17]

On May 23, 2016, the Department issued another final rule (2016 final rule), which raised the standard salary level to $913 per week and instituted a mechanism to automatically update the salary level every three years.[18] The 2016 final rule also permitted employers, for the first time, to satisfy up to 10 percent of the standard salary requirement with nondiscretionary bonuses and incentive payments (including commissions), provided that those forms of compensation were paid at least quarterly. The rule set an effective date of December 1, 2016.

On November 22, 2016, the United States District Court for the Eastern District of Texas issued a preliminary injunction, enjoining the Department from implementing and enforcing the 2016 final rule, pending further review.[19] On August 31, 2017, the district court granted summary judgment against the Department of Labor.[20] The court held that the 2016 final rule's salary level exceeded the Department's authority and that the

[5] 29 U.S.C. 201, *et seq.*

[6] ''[E]xcept subsection (d) in the case of paragraph (1) of this subsection . . . .'' 29 U.S.C. 213(a).

[7] *Id.*

[8] 3 FR 2518 (Oct. 20, 1938).

[9] 5 FR 4077 (Oct. 15, 1940). The 1940 regulations were informed by what has come to be known as the Stein Report. *See* Executive, Administrative, Professional . . . Outside Salesman Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer [Harold Stein] at Hearings Preliminary to Redefinition (Oct. 10, 1940) (''Stein Report'').

[10] 14 FR 7705 (Dec. 24, 1949); 14 FR 7730 (Dec. 28, 1949). The 1949 regulations were informed by what has come to be known as the Weiss Report. *See* Report and Recommendations on Proposed Revisions of Regulations, Part 541, by Harry Weiss, Presiding Officer, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor (June 30, 1949) (''Weiss Report'').

[11] 23 FR 8962 (Nov. 18, 1958). The 1958 regulations were informed by what has come to be known at the Kantor Report. *See* Report and Recommendations on Proposed Revision of Regulations, Part 541, Under the Fair Labor Standards Act, by Harry S. Kantor, Assistant Administrator, Office of Regulations and Research, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor (Mar. 3, 1958) (''Kantor Report'').

[12] *See* 19 FR 4405 (July 17, 1954); 26 FR 8635 (Sept. 15, 1961); 28 FR 9505 (Aug. 30, 1963); 32 FR 7823 (May 30, 1967); 35 FR 883 (Jan. 22, 1970); 38 FR 11390 (May 7, 1973); 40 FR 7091 (Feb. 19, 1975).

[13] 46 FR 11972 (Feb. 12, 1981).

[14] 50 FR 47696 (Nov. 19, 1985).

[15] 57 FR 37677 (Aug. 19, 1992).

[16] 57 FR 46742 (Oct. 9, 1992); *see* Sec. 2, Public Law 101–583, 104 Stat. 2871 (Nov. 15, 1990), *codified at* 29 U.S.C. 213 Note.

[17] 69 FR 22122 (Apr. 23, 2004).

[18] 81 FR 32391 (May 23, 2016).

[19] *See Nevada* v. *U.S. Dep't of Labor,* 218 F. Supp. 3d 520 (E.D. Tex. 2016).

[20] *See Nevada* v. *U.S. Dep't of Labor,* 275 F. Supp. 3d 795 (E.D. Tex. 2017).

entire final rule was therefore invalid. The court determined that a salary level that excludes from exemption an unusually high number of employees who pass the duties test stands in tension with Congress's command to exempt bona fide EAP employees.

On July 26, 2017, the Department published a Request for Information (RFI) asking for public input on what changes the Department should propose in a new NPRM on the EAP exemption.[21] The Department received over 200,000 comments on the RFI, which are discussed below. On October 30, 2017, the Government appealed the district court's summary judgment decision to the United States Court of Appeals for the Fifth Circuit. On November 6, 2017, the Fifth Circuit granted the Government's motion to hold that appeal in abeyance while the Department undertook further rulemaking to redetermine the salary level. Further, between September 7 and October 17, 2018, the Department held listening sessions in all five Wage and Hour regions throughout the country to supplement feedback received as part of the RFI.[22]

C. Overview of Existing Regulatory Requirements

The regulations in part 541 contain specific criteria that define each category of exemption provided by section 13(a)(1) for bona fide executive, administrative, professional, and outside sales employees, as well as teachers and academic administrative personnel. The regulations also define those computer employees who are exempt under section 13(a)(1) and section 13(a)(17). The employer bears the burden of establishing the applicability of any exemption from the FLSA's pay requirements.[23] Job titles, job descriptions, or the payment of salary instead of an hourly rate are insufficient, standing alone, to confer exempt status on an employee.

To qualify for the EAP exemption, employees must meet certain tests regarding their job duties [24] and generally must be paid on a salary basis at least the amount specified in the regulations.[25] Some employees, such as doctors, lawyers, teachers, and outside sales employees, are not subject to salary tests.[26] Others, such as academic administrative personnel and computer employees, are subject to special, contingent earning thresholds.[27] In 2004, the standard salary level for EAP employees was set at $455 per week (equivalent to $23,660 per year for a full-time worker), and the total annual compensation level for highly compensated employees was set at $100,000.[28] In light of the district court's decision invalidating the 2016 final rule, these are the salary levels currently enforced by the Department.[29]

The 2004 final rule created the ''highly compensated employee'' (HCE) test for exemption. Under the HCE test, employees who receive at least a specified total annual compensation (which must include at least the standard salary amount per week paid on a salary or fee basis) are exempt from the FLSA's overtime requirements if they customarily and regularly perform at least one of the exempt duties or responsibilities of an executive, administrative, or professional employee identified in the standard tests for exemption.[30] The HCE test applies only to employees whose primary duty includes performing office or non-manual work.[31] Non-management production line workers and employees who perform work involving repetitive operations with their hands, physical skill, and energy are not exempt under this section.[32]

Finally, the FLSA does not preempt stricter state standards. If a State establishes a stricter standard to qualify for exemption from state overtime standards than the corresponding FLSA standard (*e.g.,* higher earnings thresholds or more rigorous duties tests), the stricter standard continues to apply for state law purposes.[33]

III. Need for Rulemaking

The primary goal of this rulemaking is to update the weekly salary amounts used by the Department to help define and delimit the EAP exemption, as required by the Act. In light of the district court's decision ruling that the 2016 final rule was invalid, the Department is currently enforcing the $455 per week standard salary level from the 2004 final rule. The Department recognizes that the $455 per week standard salary level, which the Department has enforced for nearly a decade and a half, should be updated to reflect current wages.

Therefore, the Department's proposed approach for this rulemaking is simple. It proposes to apply the same method used to calculate the salary threshold in 2004 to current data. The Department expects that this method will keep the standard salary level aligned with the intervening years' growth in wages. This approach has withstood the test of time, is familiar to employees and employers, and can be used without causing significant hardship or disruption to employers or the economy, while ensuring overtime-eligible workers continue to receive the protections intended by Congress.

The Department's proposed approach would also address concerns with the 2016 final rule identified by the district court. The salary level test has historically served as a dividing line between nonexempt and potentially exempt employees, excluding from exemption a large swath of employees on the reasoning that employees compensated below the salary level are very unlikely to be employed ''in a bona fide executive, administrative, or professional capacity.'' [34] Given these purposes, the salary level cannot be set too high, or it would unduly deny exemption to bona fide executive, administrative, and professional employees who, Congress has instructed, ''shall not'' be subject to the FLSA's overtime and minimum wage requirements.[35] The 2016 final rule went beyond the limited traditional purpose of setting a salary ''floor'' to identify certain obviously nonexempt employees, and instead excluded from exemption many employees who had previously been, and should have continued to be, exempt by reference to their duties. The Department's proposed

[21] 82 FR 34616 (July 26, 2017).

[22] Listening Session transcripts may be viewed at *www.regulations.gov,* docket ID WHD–2017–0002.

[23] *See, e.g., Idaho Sheet Metal Works, Inc.* v. *Wirtz,* 383 U.S. 190, 209 (1966); *Walling* v. *Gen. Indus. Co.,* 330 U.S. 545, 547–48 (1947).

[24] *See* §§ 541.100 (executive employees); 541.200 (administrative employees); 541.300, 541.303–.304 (teachers and professional employees); 541.400 (computer employees); 541.500 (outside sales employees).

[25] Alternatively, administrative and professional employees may be paid on a ''fee basis'' for a single job regardless of the time required for its completion as long as the hourly rate for work performed (*i.e.,* the fee payment divided by the number of hours worked) would total at least the weekly amount specified in the regulation if the employee worked 40 hours. *See* § 541.605.

[26] *See* §§ 541.303(d); 541.304(d); 541.500(c); 541.600(e). Such employees are also not subject to a fee-basis test.

[27] *See* § 541.600(c)–(d).

[28] 69 FR 22123.

[29] The current text of the Code of Federal Regulations (CFR) reflects the updates made in the 2016 final rule. Therefore, unless otherwise indicated, citations to part 541 refer to the current CFR, and the proposed amendments to the regulatory text reflect the current CFR's inclusion of the 2016 updates. However, because the Department is currently enforcing the 2004 standard salary and total annual compensation levels, the NPRM references the 2004 standard salary and total annual compensation levels.

[30] § 541.601.

[31] § 541.601(d).

[32] *Id.*

[33] *See* 29 U.S.C. 218.

[34] 29 U.S.C. 213(a)(1).

[35] 29 U.S.C. 213(a).

approach in this rulemaking would address that concern.

The proposed rule includes several additional updates. The Department proposes updating the HCE total annual compensation threshold to an amount of $147,414. The Department also proposes to allow the inclusion of nondiscretionary bonuses and incentive payments (including commissions) paid on an annual or more-frequent basis to satisfy up to 10 percent of the standard salary level, and to revise the special salary levels provided under part 541. The Department intends to propose an update to the part 541 earnings thresholds every four years to prevent the levels from becoming outdated. More regular updates would promote greater stability, avoiding the disruptive salary level increases that can result from lengthy gaps between updates, and provide appropriate wage protection for those under the threshold.

Summary of Comments on the Request for Information and at the Listening Sessions

On July 26, 2017, WHD published an RFI to solicit public input to inform the Department's work in developing a proposal to revise the part 541 regulations. The RFI solicited feedback on questions related to the salary level test, the duties test, the possibility of multiple salary levels, the inclusion of nondiscretionary bonuses and incentive payments to satisfy a portion of the salary level, the annual compensation test for highly compensated employees, and the automatic updating of the standard salary and HCE annual compensation level tests. The RFI was published in the **Federal Register** with a 60-day public comment period.[36]

Over 200,000 comments were received from a broad array of stakeholders, including small business owners, large companies, employer and employee associations, state and local governments, unions, higher education institutions, non-profit organizations, law firms, workers, and other interested members of the public.

In the RFI, the Department asked several questions about the standard salary level, seeking input on the appropriate level to fulfill the salary level's historical role in determining exemption status. In particular, the Department asked whether updating the 2004 salary level for inflation or applying the 2004 methodology to current salary data would be appropriate, whether differing standard salary levels should be set for different regions or employer sizes, and whether the Department should set different standard salary levels for the executive, administrative, and professional exemptions. The Department also sought information about the actions taken by employers in anticipation of the 2016 final rule, as well as the effect of increased salary levels on particular occupations.

Commenters expressed diverse views about the standard salary level, but mostly favored increasing the salary level above $455 per week, with only a small minority requesting that the salary level be eliminated or kept at its current amount. Nearly all commenters representing employers opposed the standard salary level of $913 per week set in the 2016 final rule. Many expressed the view that this level conflicted with the salary level's longstanding role of screening out obviously nonexempt employees, and would improperly deny exemption for millions of employees who passed the duties test. Several employers expressed concern that raising the standard salary level as high as $913 per week could lead to significant costs for employers. Many of these commenters also expressed concern that the salary level should account for salaries paid in lower-wage regions and industries. Commenters representing employers offered varied methodologies for setting the salary level, including adjusting the $455-per-week threshold to account for inflation since 2004 and applying the 2004 final rule's salary-setting methodology to contemporary earnings data. In contrast, most commenters who were employees or represented employees urged the Department to implement the $913 per week level adopted in the 2016 final rule, although some commenters urged an even higher threshold. For example, some commenters representing employee interests favored applying the pre-2004 short test methodology, or setting the salary level at the 50th percentile of earnings among full-time salaried workers nationwide.

Most commenters supported the continuation of a single nationwide salary level, and expressed concern that introducing multiple standard salary levels—whether differing by region, industry, employer size, or between the executive, administrative, and professional categories—would complicate the regulations. Some commenters representing employers supported region-specific salary levels, and some stated that regional salary levels would be appropriate if the alternative is a single salary level that is too high in low-wage regions or industries. Relatedly, the Department sought views on whether there should be multiple annual compensation levels (by region or by size of employer) for the HCE exemption. The Department received few comments on this subject, but those that addressed it generally favored a single HCE annual compensation level given its simplicity, and some stated that adding additional levels would increase litigation costs.

The Department also inquired whether it should periodically update the standard salary level and the HCE total annual compensation levels. Most commenters representing employers opposed automatic updating. Commenters in favor of periodic automatic updates, including most commenters representing employees, asserted that updating is needed to preserve a ''meaningful'' standard salary level. Commenters that opined on the frequency of potential periodic updates generally offered a range of 3 to 5 years for the updates, although some suggested more frequent updates.

In addition to questions regarding the salary level, the Department asked whether it should, as it did with the 2016 final rule, permit nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of an employee's salary for purposes of the salary level test, and whether this was an appropriate limit. Many commenters supported including at least a portion of nondiscretionary bonuses and incentive payments in the standard salary threshold calculation, but there was some disagreement among commenters about the amount of such payments that should be included and the frequency of the relevant bonus payments. Many commenters representing employees supported a 10-percent cap on inclusion of nondiscretionary bonuses (the same cap was part of the 2016 final rule), or alternatively, not counting bonuses toward the salary level at all. Conversely, many commenters representing employers advocated that a higher percentage of nondiscretionary bonuses, or all types of bonuses and incentive payments, should be counted, in part because they asserted that such a cap disadvantages industries that rely on incentive compensation. But not all employers agreed. In particular, some public sector employers and smaller non-profits, whose funding restrictions may preclude them from awarding nondiscretionary bonuses and incentive payments, expressed their view that permitting nondiscretionary bonuses to count toward an employee's salary creates a competitive disadvantage for them.

[36] 82 FR 34616.

Finally, the Department inquired whether a test for exemption based solely on employee duties is preferable to the current standard test. Most commenters opposed instituting a duties-only test for the section 13(a)(1) exemptions or returning to the long and short duties test combination that existed before the 2004 final rule. Some of these commenters worried that a duties-only test would result in a more rigid test that includes quantitative limits on the performance of nonexempt work, which they felt would unduly burden business operations and increase litigation costs.

As follow-up to the RFI, between September 7 and October 17, 2018, the Department broadened its outreach and conducted listening sessions in diverse locations around the country.[37] A wide range of stakeholders attended the listening sessions, including higher education, employees, employers, business associations, non-profit organizations, small businesses, employee advocates, unions, state and local government representatives, and members of Congress. At the listening sessions, the Department requested input on the following issues:

1. What is the appropriate salary level (or range of salary levels) above which the overtime exemptions for bona fide executive, administrative, or professional employees may apply? Why?

2. What benefits and costs to employees and employers might accompany an increased salary level? How would an increased salary level affect real wages (*e.g.,* increasing overtime pay for employees whose current salaries are below a new level but above the current threshold)? Could an increased salary level reduce litigation costs by reducing the number of employees whose exemption status is unclear? Could this additional certainty produce other benefits for employees and employers?

3. What is the best methodology to determine an updated salary level? Should the update derive from wage growth, cost-of-living increases, actual wages paid to employees, or some other measure?

4. Should the Department more regularly update the standard salary level and the total-annual-compensation level for highly compensated employees? If so, how should these updates be made? How frequently should updates occur? What benefits, if any, could result from more frequent updates? [38]

For the most part, feedback provided at the listening sessions was consistent with and reinforced the comments received in response to the RFI. Stakeholders expressed a wide variety of views on the appropriate salary level and salary level methodology, timing for implementing changes, review of the duties tests, and potential impacts of the Department's rulemaking. Stakeholders overwhelmingly supported increasing the salary level. Many commenters expressed concerns about the size of the increase in the 2016 final rule, while others supported the level set in that rule. While the HCE exemption was not a primary focus of any of the listening sessions, a number of business stakeholders supported retaining the $100,000 total annual compensation requirement set in the 2004 final rule.

The Department appreciates and has considered the views of all those who submitted comments in response to the RFI and participated in the listening sessions, and welcomes further input from the public in response to this NPRM. The comments to the RFI and the input from the listening sessions have informed the development of this NPRM and the Department's understanding of the effect of the part 541 regulations in the workplace.

IV. Proposed Regulatory Revisions

The Department proposes to rescind formally the 2016 final rule, replacing it with a new rule that updates the standard salary and HCE annual compensation levels under part 541 by setting the standard salary level using the 2004 methodology applied to current data and setting the HCE annual compensation level using the 2016 methodology applied to current data, and projecting both levels to January 2020. In addition, the Department proposes to apply a special salary level to Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands, a separate special salary level to American Samoa, and an updated special weekly ''base rate'' to the motion picture producing industry. The Department also proposes that nondiscretionary bonuses and incentive payments (including commissions) paid on an annual or more frequent basis may be used to satisfy up to 10 percent of the standard salary level. Finally, moving forward, the Department intends to propose updates to the salary and compensation levels every four years to ensure that these levels continue to provide useful tests for exemption. The Department believes that this proposal addresses the legal concerns that led to the invalidation of the 2016 final rule, and appropriately updates the part 541 regulations.

Given the recent history of litigation in this area, the Department here explains for the benefit of commenters the operative effects of the proposed rule. If finalized, the proposed rule would replace the 2016 final rule functionally by revising the part 541 regulatory text in the Code of Federal Regulations. But a final rule based on this proposal would also formally rescind the 2016 final rule. That rescission would operate independently of the new content in the final rule, as the Department intends it to be severable from the substantive proposal for revising part 541. As explained more fully below, the Department believes that rescission of the 2016 final rule is appropriate, regardless of the new content proposed for its replacement. Thus, even if the substantive provisions of a new final rule revising part 541 were invalidated, enjoined, or otherwise not put into effect, the Department would intend the 2004 final rule to remain operative, not the enjoined 2016 final rule that it now proposes to rescind.

A. Standard Salary Level

i. History of the Standard Salary Level

The first version of part 541, issued in October 1938, set a salary level of $30 per week for executive and administrative employees.[39] The Department updated the salary levels in 1940, maintaining the salary level for executive employees, increasing the salary level for administrative employees, and establishing a salary level for professional employees. In setting those rates, the Department considered surveys of private industry by federal and state government agencies, experience gained under the National Industrial Recovery Act, and Federal Government salaries to identify a salary level that reflected a reasonable ''dividing line'' between employees performing exempt and nonexempt work.[40] The Department set the salary level for each exemption slightly below the average salary dividing exempt from nonexempt employees, taking into account salaries paid in numerous industries and the percentage of employees earning below these amounts.

[37] The Department conducted listening sessions in a representative city from each of WHD's five regions to get diverse input from stakeholders across the country and assess the impact to each region.

[38] 83 FR 49869 (Oct. 3, 2018); 83 FR 43825 (Aug. 28, 2018).

[39] 3 FR 2518 (Oct. 20, 1938).

[40] Stein Report at 9, 20–21, 31–32.

In 1949, the Department evaluated salary data from state and federal agencies, including the Bureau of Labor Statistics (BLS). The Department considered wages in small towns and low-wage industries, wages of federal employees, average weekly earnings for exempt employees, starting salaries for college graduates, and salary ranges for different occupations such as bookkeepers, accountants, chemists, and mining engineers.[41] The Department also looked at data showing increases in exempt employee salaries since 1940, and supplemented it with nonexempt employee earnings data to approximate the ''prevailing minimum salaries of exempt employees.'' [42] Recognizing that the ''increase in wage rates and salary levels'' since 1940 had ''gradually weakened the effectiveness of the present salary tests as a dividing line between exempt and nonexempt employees,'' the Department considered the increase in weekly earnings from 1940 to 1949 for various industries, and then adopted new salary levels at ''figure slightly lower than might be indicated by the data'' to protect small businesses.[43] Also in 1949, the Department established a second, less-stringent duties test for each exemption, which applied to employees paid at or above a higher ''short test'' salary level. The original, more-rigorous duties test became known as the ''long test.'' Apart from the differing salary requirements, the most significant difference between the short test and the long test was that the long test limited the amount of time an exempt employee could spend on nonexempt duties.[44] The short duties tests did not include a specific limit on nonexempt work.

In 1958, the Department set the long test salary levels using data collected by WHD on salaries paid to employees who met the applicable salary and duties tests, grouped by geographic region, broad industry groups, number of employees, and city size, and supplemented with BLS and Census data to reflect income increases for white collar and manufacturing employees during the period not covered by the Department's investigations.[45] The Department then set the long test salary levels for exempt employees ''at about the levels at which no more than about 10 percent of those in the lowest-wage region, or in the smallest size establishment group, or in the smallest-sized city group, or in the lowest-wage industry of each of the categories would fail to meet the tests.'' [46] Thus, the Department set the long test salary levels so that about 10 percent of workers performing EAP duties in the lowest-wage regions and industries would not meet the salary level test and would therefore be nonexempt based on their salary level alone.

The Department followed a similar methodology when determining the salary level increase in 1963. The Department examined data on salaries paid to exempt workers collected in a 1961 WHD survey.[47] The salary level for executive and administrative employees was increased to $100 per week, for example, when the 1961 survey data showed that 13 percent of establishments paid one or more exempt executives less than $100 per week, and 4 percent of establishments paid one or more exempt administrative employees less than $100 per week.[48] The professional salary level was increased to $115 per week when the 1961 survey data showed that 12 percent of establishments surveyed paid one or more professional employees less than $115 per week.[49] The Department noted that these salary levels approximated the same percentages used to update the salary level in 1958.[50]

The Department applied a similar methodology when adopting salary level increases in 1970. After examining data from WHD investigations, BLS wage data, and information provided in a report issued by the Department in 1969 that included salary data for executive, administrative, and professional employees, the Department increased the long test salary level for executive employees to $125 per week when the salary level data showed that 20 percent of executive employees from all regions and 12 percent of executive employees in the West earned less than $130 a week.[51] The Department also increased the long test salary levels for administrative and professional employees to $125 and $140 per week, respectively.

In 1975, rather than follow the prior approaches, the Department updated the 1970 salary levels based on increases in the Consumer Price Index, but adjusted downward ''to eliminate any inflationary impact.'' [52] This resulted in a long test salary level for the executive and administrative exemptions of $155 per week, and $170 per week for the professional exemption. The short test salary level increased to $250 per week in 1975.[53] The salary levels adopted were intended as interim levels ''pending the completion and analysis of a study by [BLS] covering a six-month period in 1975.'' [54] Although the Department intended to increase the salary levels based on that study of actual salaries paid to employees, the process was never completed, and the ''interim'' salary levels remained in effect for the next 29 years.

In 2004, the Department replaced the separate long and short tests with a single ''standard'' salary level test of $455 per week, which was paired with a ''standard'' duties test for executive, administrative, and professional employees, respectively. The Department noted, in accord with numerous comments received during that rulemaking, that as a result of the outdated salary level, ''the 'long' duties tests [had], as a practical matter, become effectively dormant'' because relatively few salaried employees earned below the short test salary level.[55] The Department estimated that 1.3 million workers earning between $155 and $455 per week would become nonexempt under the new standard salary level.[56]

In setting the new standard salary level in 2004, the Department used Current Population Survey (CPS) Merged Outgoing Rotation Group (MORG) data collected by BLS that encompassed most salaried employees, including nonexempt salaried employees. The Department selected a standard salary level roughly equivalent to earnings at the 20th percentile of two subpopulations: (1) Salaried employees in the South and (2) salaried employees in the retail industry nationwide. Although prior salary levels had been based on salaries of approximately the lowest 10 percent of exempt salaried employees in low-wage regions and industries, the Department explained that the change in methodology was

[41] Weiss Report at 10, 14–17, 19–20.

[42] *Id.* at 12.

[43] *Id.* at 8, 14–20. The Department also justified its modest increases by noting evidence of slow wage growth for executive employees ''in some areas and some industries.'' *Id.* at 14.

[44] The Department instituted a 20 percent cap on nonexempt work as part of the long duties test for executive and professional employees in 1940, and for administrative employees in 1949. By statute, beginning in 1961, retail employees could spend up to 40 percent of their hours worked performing nonexempt work and still be found to meet the duties tests for the EAP exemption. *See* 29 U.S.C. 213(a)(1).

[45] Kantor Report at 6.

[46] *Id.* at 6–7.

[47] 28 FR 7002 (July 9, 1963).

[48] *Id.* at 7004.

[49] *Id.*

[50] *See id.*

[51] 35 FR 884–85.

[52] 40 FR 7091.

[53] Each time the short test was increased between 1949 and 1975, it was set significantly higher than the long test salary levels.

[54] *Id.*

[55] 69 FR 22126.

[56] *Id.* at 22123.

warranted in part to account for the elimination of the short and long tests, and because the data sample included nonexempt salaried employees, as opposed to only exempt salaried employees.[57] As in the past, the Department used lower-salary data sets to accommodate businesses for which salaries were generally lower due to geographic- or industry-specific reasons.

The Department published a final rule updating the salary level twelve years later, in 2016.[58] The Department set the standard salary level at an amount that would exclude from exemption the bottom 40 percent of full-time salaried workers (exempt and nonexempt) in the lowest-wage Census Region (the South).[59] The Department estimated that increasing the standard salary level from $455 per week to $913 per week would make 4.2 million workers earning between those levels newly nonexempt, absent other changes by their employers.[60] The Department made no changes to the standard duties test. As previously discussed, on August 31, 2017, the U.S. District Court for Eastern District of Texas declared the 2016 final rule invalid, and the Department's appeal of that decision has been held in abeyance. Until the Department issues a new final rule, it is enforcing the part 541 regulations in effect on November 30, 2016, including the $455 per week standard salary level.

ii. Purpose of the Salary Level Requirement

The FLSA states that its minimum wage and overtime requirements ''shall not apply with respect to . . . any employee employed in a bona fide executive, administrative, or professional capacity . . . (as such terms are defined and delimited from time to time by regulations of the Secretary . . .).'' [61] The Department has long used a salary level test as part of its method for defining and delimiting that exemption.

In 1949, the Department summarized the role of the salary level tests over the preceding decade. The Department explained:

In this long experience, the salary tests, even though too low in the later years to serve their purpose fully, have amply proved their effectiveness in preventing the misclassification by employers of obviously nonexempt employees, thus tending to reduce litigation. They have simplified enforcement by providing a ready method of screening out the obviously nonexempt employees, making an analysis of duties in such cases unnecessary. The salary requirements also have furnished a practical guide to the inspector as well as to employers and employees in borderline cases. In an overwhelming majority of cases, it has been found by careful inspection that personnel who did not meet the salary requirements would also not qualify under other sections of the regulations as the Divisions and the courts have interpreted them.[62]

The Department again referenced these principles in the Kantor Report, reiterating, for example, that the salary level tests ''provide[ ] a ready method of screening out the obviously nonexempt employees,'' and that employees ''who do not meet the salary test are generally also found not to meet the other requirements of the regulations.'' [63] The Department's 2004 final rule likewise referenced these principles.[64] The Department now proposes to update the standard salary level in light of increased employee earnings, so that it maintains its usefulness in ''screening out the obviously nonexempt employees.''

For over 75 years the Department has used a salary level test as a criterion for identifying bona fide executive, administrative, and professional employees. Some statements in the Department's regulatory history have at times, however, suggested a greater role for the salary level test. The statements include, for instance, from the 1940 Stein Report, that salary is '' 'the best single test of the employer's good faith in characterizing the employment as of a professional nature.' '' [65] The Stein Report even went so far as to state that ''if an employer states that a particular employee is of sufficient importance . . . to be classified as an 'executive' employee and thereby exempt from the protection of the [A]ct, the best single test of the employer's good faith in attributing importance to the employee's services is the amount he pays for them.'' [66]

The district court's invalidation of the 2016 final rule has prompted the Department to clarify these and similar statements in light of the salary level test's purposes and regulatory history. The concept of a ''dividing line'' should not be misconstrued to suggest that the Department views the salary level test as an effort to divide all exempt white collar employees from all nonexempt employees. A salary level is helpful to determine who is not an exempt executive, administrative or professional employee—the employees who fall beneath it. But the salary level has significantly less probative value for the employees above it. They may be exempt or nonexempt. Above the threshold, the Department evaluates an employee's status as exempt or nonexempt based on an assessment of the duties that employee performs. An approach that emphasizes salary alone, irrespective of employee duties, would stand in significant tension with the Act. Section 13(a)(1) directs the Department to define and delimit employees based on the ''capacity'' in which they are employed. Salary is a helpful indicator of the capacity in which an employee is employed, especially among lower-paid employees. But it is not ''capacity'' in and of itself.

The district court's summary judgment decision endorsed the Department's historical approach to setting the salary level and held the 2016 final rule unlawful because it departed from it. The district court approvingly cited the Weiss Report and explained that setting ''the minimum salary level as a floor to 'screen[ ] out the obviously nonexempt employees' '' is ''consistent with Congress's intent.'' [67] Further endorsing the Department's earlier rulemakings, the district court stated that prior to the 2016 final rule, ''the Department ha[d] used a permissible minimum salary level as a test for *identifying* categories of employees Congress intended to exempt.'' [68] The court then explained that in contrast to these acceptable past practices, the 2016 standard salary level of $913 per week was unlawful because

[57] *Id.* at 22167.

[58] 81 FR 32391.

[59] *Id.* at 32408.

[60] *Id.* at 32393.

[61] 29 U.S.C. 213(a)–(a)(1).

[62] Weiss Report at 8.

[63] Kantor Report at 2–3; *see also* U.S. Dep't of Labor, *28th Annual Report of the Secretary of Labor for the Fiscal Year Ended June 30, 1940* (1940), at 236 (''the power to define is the power to exclude'').

[64] *See* 69 FR 22165; 2003 NPRM, 68 FR 15560, 15570 (Mar. 31, 2003).

[65] 81 FR 32413 (quoting Stein Report at 42); *see also* 69 FR 22165 (quoting Stein Report at 42).

[66] Stein Report at 19; *see also id.* at 5 (''the good faith specifically required by the [A]ct is best shown by the salary paid''); *id.* at 19 (salary provides ''a valuable and easily applied index to the 'bona fide' character of the employment for which exemption is claimed''); *cf.* Weiss Report at 9 (''salary is the best single indicator of the degree of importance involved in a particular employee's job''); Kantor Report at 2 (''[Salary] is an index of the status that sets off the bona fide executive from the working squad-leader, and distinguishes the clerk or sub-professional from one who is performing administrative or professional work.''). The Department ''is not bound by the [Stein, Weiss, and Kantor] reports,'' though they have been carefully considered. 69 FR 22124.

[67] 275 F. Supp. 3d at 806 (quoting Weiss Report at 7–8); *see also id.* at 807 at n.6 (supporting salary level that operates ''as more of a floor'') (internal quotation marks and citation omitted).

[68] *Id.* at 806 (emphasis in opinion).

it would exclude from exemption ''so many employees who perform exempt duties.'' [69] In support, the court cited the Department's estimate that, without some intervening action by their employers, the new salary level would result in 4.2 million workers becoming nonexempt.[70] The court also emphasized the magnitude of the salary level increase, stating that the 2016 final rule ''more than double[d] the previous minimum salary level'' and that ''[b]y raising the salary level in this manner, the Department effectively eliminate[d] a consideration of whether an employee performs 'bona fide executive, administrative, or professional capacity duties.' '' [71] The district court declared the final rule invalid because the Department had unlawfully excluded from exemption ''entire categories of previously exempt employees who perform 'bona fide executive, administrative, or professional capacity' duties.'' [72]

The Department has reexamined the 2016 final rule in light of the district court's decision. That rule contained language suggesting that the salary level test had a greater role to play than its modest historical function. For example, the Department stated that in light of the new, single standard duties test, ''the salary threshold must play a greater role in protecting overtime-eligible employees,'' and specifically that ''it is necessary to set the salary level higher . . . because the salary level must perform more of the screening function previously performed by the long duties test.'' [73] Such language is inconsistent with the salary level's historical purpose of setting a floor for exemption.

The 2016 final rule's approach—under which salary alone would determine exempt status in many more instances—also led to a result in tension with the Act. As the district court recognized, the 2016 final rule removed the EAP exemption from 4.2 million workers who would have otherwise been exempt because they passed the salary basis and duties tests established under the 2004 final rule. In contrast, had the Department simply applied the 2004 methodology to set the standard salary level, the 2016 final rule would have resulted in approximately 683,000 workers who satisfied the duties test becoming nonexempt.[74] The Department has long recognized that the salary level test is ''a dividing line [that] cannot be drawn with great precision but can at best be only approximate,'' [75] and so any salary level set by the Department will exclude from exemption some employees who pass the duties test. But a salary level that exempts an unusually high number of those employees—as occurred with the 2016 final rule [76]—stands in tension with Congress's command to exempt bona fide EAP employees. A salary level set that high does not further the purpose of the Act, and is inconsistent with the salary level test's useful, but limited, role in defining the EAP exemption.

The Department justified the change in the 2016 final rule in part by explaining that when the salary level increases, ''it is inevitable that 'some employees who have been classified as exempt under the present salary tests will no longer be within the exemption under any new tests adopted.' '' [77] However, this consequence (which follows any salary level increase) does not itself inform what salary level the Department should set. The Department also stated in 2016 that the new salary level would narrow the gap between the number of workers who are nonexempt because they fail only the salary level test and those who are nonexempt because they fail only the duties test.[78] But the Department has never compared the number of employees who are nonexempt based exclusively on the salary or duties tests, respectively, to determine the effectiveness of the salary level. To the contrary, parity between these groups would create tension with the salary level's historical purpose of ''screening out the obviously nonexempt employees.''

The Department also justified the 2016 final rule's salary level by stating that it was correcting a ''mismatch'' between the 2004 final rule's salary level and the standard duties test. The Department stated that while it historically had paired a more rigorous duties test (the long test) with a lower salary level and a less rigorous duties test (the short test) with a higher salary level, the 2004 final rule paired a less rigorous duties test with a lower salary level:

Because the long duties test included a limit on the amount of nonexempt work that could be performed, it could be paired with a low salary that excluded few employees performing EAP duties. In the absence of such a limitation in the duties test, it is necessary to set the salary level higher (resulting in the exclusion of more employees performing EAP duties) because the salary level must perform more of the screening function previously performed by the long duties test. Accordingly the salary level set in this Final Rule corrects for the mismatch in the 2004 Final Rule between a low salary threshold and a less rigorous duties test.[79]

The Department's solution to the purported mismatch, however, introduced a new issue. The 2016 final rule's salary level, which was ''at the low end of the historical salary range of short test salary levels,'' [80] failed to account for the absence of a long test that employers could use to claim the exemption for lower-paid white collar workers who were traditionally exempt. The Department's analysis did not sufficiently account for this change, and as a result, the $913 per week standard salary level deviated from the Department's longstanding policy of setting a salary level that does not ''disqualify[ ] any substantial number of'' bona fide executive, administrative, and professional employees from exemption.[81]

More fundamentally, except at the relatively low levels of compensation where EAP employees are unlikely to be found, the salary level is not a substitute for an analysis of an employee's duties. It is, at most, an indicator of those duties. For most white collar, salaried employees, the exemption should turn on an analysis of their actual functions, not their salaries, as Congress commanded. The salary level test's primary and modest purpose is to identify potentially exempt employees by screening out obviously nonexempt employees.

The mismatch rationale also failed to account fully for the Department's part 541 exemption history. The standard duties test was introduced by the 2004 final rule and has been in effect for 15 years. The short duties test, which it is similar to, was functionally the

[69] *Id.* at 807.

[70] *Id.* at 806.

[71] *Id.* at 807 (quoting 29 U.S.C. 213(a)(1)).

[72] *Id.* at 806 (quoting 29 U.S.C. 213(a)(1)).

[73] 81 FR 32412, 32465–66.

[74] *See* 81 FR 32504 (Table 32).

[75] Weiss Report at 11.

[76] The Department explained that (at the time of the analysis) 12.2 million salaried white collar workers earned more than $455 per week but were overtime eligible because they failed the duties test, while 838,000 salaried white collar workers were overtime eligible because even though they passed the standard duties test they earned below $455 per week. The Department then estimated that a $913-per-week salary level would result in 6.5 million salaried white collar workers who failed only the duties test, and increase to 5.0 million the number of salaried white collar workers who passed the duties test but would be overtime eligible because they failed the salary level test. *See* 81 FR 32464–65; *see also id.* at 32413.

[77] *Id.* at 32413 (quoting Kantor Report at 5).

[78] *See supra* n.76 (citing 81 FR 32464–65; 81 FR 32413).

[79] 81 FR 32409.

[80] *Id.* at 32414.

[81] Kantor Report at 5.

predominant test in use for the preceding 13 years, since the 1975 long test salary levels were equaled or surpassed by the FLSA minimum wage in 1991.[82] Altogether, most employers and employees have effectively been covered by this one-test system for over 25 years. This practice is highly relevant to any update by the Department's approach.

In light of the considerations above, the Department concludes that, while an increase in the standard salary level from $455 per week was warranted, the increase to $913 per week was inappropriate. As the district court stated, that increase departed from the salary level's purpose as a floor to '' 'screen[ ] out the obviously nonexempt employees.' '' [83] The Department is engaging in this rulemaking to realign the salary level with its appropriate limited purpose, to address the concerns about the 2016 final rule identified by the district court, and to update the salary level in light of increased employee earnings.

iii. Salary Level Methodology

The Department, nearly all RFI commenters, and almost all those who spoke during the Department's listening sessions agree that the salary level must exceed $455 per week to achieve its intended purpose. Most commenters to the RFI and in the listening sessions favored the simplicity of a single nationwide salary level over varying region-specific levels, and urged the Department not to return to its past practice of setting different salary levels for executive, administrative, and professional employees. However, some commenters representing employers supported establishing multiple salary levels based on region, industry, or employer size. Nearly all commenters opposed reinstating separate long and short tests with corresponding salary levels and duties tests.

After considering the issues at length, reviewing public comments responding to the RFI, and considering comments provided in the listening sessions, the Department is proposing simply to update the standard salary level set in 2004 using current data. The Department believes that adherence to the 2004 final rule's methodology is reasonable and appropriate. The Department has enforced the 2004 final rule's salary level for nearly 15 years—the second-longest period (after the salary levels set in 1975) for any part 541 salary level. The Department paired that level with the standard duties test when it was enacted, and revisions to the standard duties test are not proposed as part of this rulemaking. After so many years, workers and employers are familiar with a single standard weekly salary level and a single standard duties test. Notably, the 2004 final rule has never been challenged in court. Using the 2004 salary level methodology as the basis for determining an updated salary level thus promotes familiarity and stability for the workplace, ensures workers the important wage protections contained in the Act, and minimizes the uncertainty and potential legal vulnerabilities that could accompany a novel and untested approach.

There are other reasons for this simple approach. The method proposed here is straightforward and avoids new regulatory burdens. It is consistent with the Department's established belief that adopting different salary levels for different areas of the country would create significant administrative difficulties ''because of the large number of different salary levels this would require,'' [84] and would create undue regulatory complexity. Furthermore, as discussed below, the Department believes that the proposed salary level accounts for nationwide differences in employee earnings and would work appropriately with the standard duties test.The proposed standard salary level also addresses the concerns raised in the district court's summary judgment decision. The $913 per week standard salary level set in the 2016 final rule more than doubled the 2004 final rule's salary level of $455 per week, which the district court concluded resulted in ''entire categories of previously exempt employees'' being disqualified from exemption ''based on salary alone.'' [85] The Department proposes to address this problem by setting a salary level that would more appropriately identify obviously nonexempt employees, without including too great a proportion of employees who would otherwise be exempt. This is consistent with the Department's understanding that salary may be used to identify a category of employees who are not bona fide executive, administrative, and professional employees without unduly excluding employees from the exemption. The proposed $679 per week standard salary level would preserve the 2004 methodology—which was based on salaries in the South and in the low-wage retail industry—while updating that salary level to reflect the growth of nominal wages and salaries.

The appropriateness of the proposed salary level is further supported by the number of workers it would affect—*i.e.,* the number of employees who currently pass the standard duties test and earn between $455 and $679 per week, and thus would become nonexempt absent some intervening action by their employers. The district court's decision raised concerns regarding the large number of exempt workers—4.2 million—who earned between $455 and $913 per week and thus would ''automatically become eligible'' for overtime under the $913 per week standard salary level.[86] The district court noted that this relatively high number indicated that the salary level was displacing the role of the duties test in determining exemption status. The Department acknowledges these concerns and, additionally, in this proposal seeks to update the standard salary level in a manner that does not unduly disrupt employers' operations; dramatically shift employee salaries, hours, or morale; or result in adverse economic effects.

As for the details of the methodology, the Department has followed the methodology it used in 2004. In 2004, the Department set the standard salary level at approximately the 20th percentile of earnings for full-time salaried workers in the lowest-wage Census region (the South) and in the retail sector. The Department set the salary level using the 2002 CPS MORG dataset (the most recent CPS dataset practically available), after excluding from the dataset certain classes of workers that are exempt from the FLSA or its salary-level test.[87]

In this proposed rulemaking, the Department used pooled CPS MORG data for 2015–2017, adjusted to reflect 2017 (hereafter referred to as pooled CPS MORG data; *see* Section VI.B.ii for full description). This is the most recently available data. If this approach is adopted in the final rule, the Department anticipates using 2018 CPS data. The Department believes the CPS dataset would be the most appropriate dataset to use to ascertain worker earnings because of its size (approximately 60,000 households

[82] In 1975, the Department set a long test salary level of $155 per week for executive and administrative employees, and of $170 per week for professional employees. *See* 40 FR 7092. On April 1, 1991, the federal minimum wage increased to $4.25 per hour, which equals $170 for a 40-hour workweek. *See* Sec. 2, Public Law 101–157, 103 Stat. 938 (Nov. 17, 1989).

[83] *Nevada* v. *U.S. Dep't of Labor,* 275 F. Supp. 3d at 806 (quoting Weiss Report at 7–8).

[84] 69 FR 22171.

[85] 275 F. Supp. 3d at 806. Moreover, the Department estimated in the 2016 final rule that the salary level would rise to $984 per week in January 2020. 81 FR 32393.

[86] 275 F. Supp. 3d at 806–07.

[87] *See* 69 FR 22168.

monthly; 15,000 in the MORG dataset) and its breadth of detail (*e.g.,* occupation classifications, salary, hours worked, and industry). Consistent with its proposal to update the salary levels for workers subject to them, the Department analyzed a subset of this CPS MORG data, composed of employed workers age 16 years and older who are covered by the FLSA; subject to the part 541 salary tests; not in ''named occupations'' [88]; and not exempt from the FLSA due to the agricultural or transportation exemptions. Thus, the subset excluded 27.9 million workers.

Using this subset of the CPS MORG data, the Department proposes to set the standard salary level at approximately the 20th percentile of earnings for full-time salaried workers in the lowest-wage Census region, again the South in this case, and/or in the retail sector.[89] Normally, this would result in a weekly salary level of $641 per week ($33,332 annually), which is also approximately the 20th percentile of both: (1) Earnings for full-time salaried workers in the South, and (2) earnings for full-time salaried workers in the retail sector. However, the Department proposes to inflate this figure to reflect anticipated wage growth through January 2020. This results in the standard salary level proposed in this NPRM, which is $679 per week ($35,308 annually).

The Department proposes this small adjustment to better reflect employees' anticipated compensation at the time the rule becomes effective. In the 2004 final rule, the Department set the salary level using earning percentiles as they were two years earlier (2002) than the rule's effective date (2004), since the 2002 data was the most recent practically available data. In contrast, this proposed rule would set its salary level with a projection to January 2020, the approximate date this proposed rule is expected to become effective. The projection would ensure that the standard salary level reflects the 20th percentile of salaried workers in the South and/or in retail when the rule becomes effective, rather than the 20th percentile as of a year or two earlier. The Department acknowledges that the projected number may differ slightly from the results of comprehensive salary data when that data becomes available, but the Department believes that a modest projection is preferable to relying on data that could be a year or two old by the time the final rule becomes effective.

The Department has inflated the salary level by estimating the compound annual growth rate from the standard salary level set in 2004 ($455) to the standard salary level as it would be using the same methodology in 2017 ($641), then used that growth rate to project the standard salary level forward to January 2020. The Department considered alternative indices for inflation. The reasons for not using them are described below.

v. Alternatives Considered

In determining a proposed salary level, the Department considered the methodologies applied in past rulemakings and other alternatives such as using an index to inflate the 2004 salary level to 2017 and to project it forward to 2020.

The Department considered using price indices such as the Personal Consumption Expenditures Price Index (PCEPI), the Consumer Price Index for All Urban Consumers (CPI–U), and the Chained CPI–U; as well as a wage-based measure such as the Employment Cost Index (ECI). The PCEPI measures the change in the nominal prices of goods and services (1) purchased directly by U.S. households and by nonprofit institutions serving U.S. households and (2) purchased by firms and governments on behalf of U.S. households (*e.g.,* medical expenditures paid by Medicare, Medicaid, or private insurance plans). The Consumer Price Index for All Urban Consumers (CPI–U) measures the change in nominal prices for a constant-quality market basket of goods and services purchased by urban consumers, who represent 93 percent of the U.S. population.[90] The Bureau of Labor Statistics also developed the Chained CPI–U in 2002 as an alternative to the CPI–U that would provide a better approximation of cost-of-living for all urban consumers by accounting for a substitution effect.[91]

The Department considered the Employment Cost Index (ECI) for wages and salaries of either all civilian workers or just for private sector workers.[92] The ECI is calculated on a quarterly basis by the BLS using the results of the National Compensation Survey (NCS), a survey of non-Federal employers that gathers comprehensive data on employee salaries, wages, and benefits.[93] The ECI measures changes over time in wages and salaries across the overall non-Federal civilian workforce generally and among different subgroups.

The Department has decided against proposing these alternatives for three reasons. The paramount reason is that none is as straightforward, consistent, or accurate as using current salary data. Each is a projection of what current costs are likely to be; however, such costs can be more readily ascertained simply by measuring them. Second, each is a cost index, (albeit to measure wages) rather than a measure of actual salaries. Third, each of the alternatives (and this would hold for any other alternative as well) would be a significant departure from the methodology that served well in 2004—the methodology the Department is proposing to employ again here with minor adjustments and improvements. For the reasons stated earlier—including familiarity, stability, and the standard duties test that accompanied the standard salary level set in 2004—the Department believes an approach that simply updates the 2004 level with current data is preferable to an entirely new methodology.

The Department also considered these same indices for inflating a 2017 salary level (set using the 2004 final rule's methodology and current data) to January 2020. So used, PCEPI would result in a salary level of $671 per week, the C–CPI–U would result in $671 per week, the CPI–U would result in $675 per week, the ECI for civilian workers would result in $678 per week, and the ECI for private sector workers would result in $679 per week.

The Department did not choose to propose any of these alternatives for two reasons. First, the approach being proposed is the most straightforward

[88] This includes teachers, physicians, lawyers, judges, and outside sales workers who pass the standard duties test.

[89] In the 2004 final rule the Department selected a standard salary level roughly equivalent to earnings at the 20th percentile of two subpopulations: (1) Full-time salaried employees in the South and (2) full-time salaried employees in the retail industry nationwide. In this rulemaking, the Department is setting the standard salary level at the 20th percentile of the combined subpopulations of full-time salaried employees in the South and full-time salaried employees in the retail industry nationwide. This is a change from how the Department modeled the 2004 methodology in the 2016 final rule, when it used combined subpopulations of full-time salaried employees in the South and full-time salaried employees in leisure and hospitality, other services, and public administration. 81 FR 32462.

[90] *See* the Bureau of Labor Statistics Handbook of Methods, updated February 14, 2018, p. 2, at *https://www.bls.gov/opub/hom/pdf/homch17.pdf* (''A unifying framework for dealing with practical questions that arise in the construction of the CPI is provided by the concept of the cost-of-living index (COLI).'').

[91] *See* Cage et al., *Introducing the Chained Consumer Price Index. https://www.bls.gov/cpi/additional-resources/chained-cpi-introduction.pdf.*

[92] *See generally* Bureau of Labor Statistics, Employment Cost Trends, How to Use the Employment Cost Index for Escalation, *https://www.bls.gov/ncs/ect/escalator.htm.*

[93] *See* Bureau of Labor Statistics, National Compensation Survey, *https://www.bls.gov/ncs/.*

and consistent using current salary data. It measures the actual wage growth between the 2004 final rule salary level and the 2017 salary level and applies that growth rate to current data; essentially assuming that wage growth will continue at the same pace. Second, there are disadvantages to some of the other indices described above. The PCEPI, CPI–U, and Chained CPI–U, for example, measure the nominal prices of goods and services to consumers, whereas the standard salary level is meant to demarcate worker salaries. It seems more sensible to use data that measures worker compensation than consumers' cost of living to set such a level. Additionally, the Department notes that use of the ECI for all private sector workers comes to the same result as the methodology chosen.

The salary level increase proposed here would, as discussed in detail in the economic analysis, section VI, result in approximately 1.1 million affected workers losing exempt status (absent other action from their employers). The Department recognizes that any increase to the standard salary level would increase the number of workers who pass the duties test but are paid below the standard salary level; however, the $679-per-week salary level, while necessarily imprecise, would identify a large number of obviously nonexempt employees ''without disqualifying any substantial number of'' bona fide executive, administrative, and professional employees from exemption.[94] Additionally, the 1.1 million workers likely to be affected by this rule's proposed increase to the standard salary level is close to the 1.3 million workers who were affected by the 2004 final rule's salary level increase.[95] The Department also anticipates that 3.6 million employees paid between $455 and $679 per week who fail the standard duties test (*i.e.,* that are and will remain nonexempt)—2.0 million salaried white collar workers and 1.6 million salaried blue collar workers—will have their nonexempt status made clearer because their salary will fall below the proposed threshold.

vi. Summary of Standard Salary Level Proposal

For the reasons discussed above, the Department proposes to set the standard salary level to qualify for exemption from the FLSA's minimum wage and overtime requirements as an executive, administrative, or professional employee at $679 per week. The Department believes that the proposed standard salary level would help employers identify a large group of employees who perform nonexempt duties, would aid in identifying bona fide EAP employees, and would address the legal concerns that led to the invalidation of the salary level set in the 2016 final rule. The Department invites comments on this proposed salary level and on any alternative salary level or methodology, including but not limited to whether the use of the indices described above, would be more appropriate.

B. Special Salary Tests

i. Puerto Rico, Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands [96]

Since 2004, the Department has applied the standard salary level to Puerto Rico.[97] After the Department published the 2016 final rule, Congress passed the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).[98] Section 404 of PROMESA states that ''any final regulations issued related to'' the Department's 2015 overtime rule NPRM—*i.e.,* the 2016 final rule—''shall have no force or effect'' in Puerto Rico until the Comptroller General of the Unites States completes and transmits a report to Congress assessing the impact of applying the final regulations to Puerto Rico, and the Secretary of Labor, ''taking into account the assessment and report of the Comptroller General, provides a written determination to Congress that applying such rule to Puerto Rico would not have a negative impact on the economy of Puerto Rico.'' [99]

The Department believes that PROMESA does not apply to this NPRM because it is a new rulemaking and thus is not ''related to'' the 2015 overtime rule NPRM within the meaning of PROMESA. Nonetheless, section 404 reflects Congress' concern with increasing the salary level in Puerto Rico, and Puerto Rico's current economic climate reinforces the importance of the Department exercising caution on this issue. Accordingly, the Department proposes to set a special salary level in Puerto Rico of $455 per week—the level that currently applies under PROMESA. The Department seeks comments on this proposal.

The Department currently applies the standard salary level to the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI).[100] The Department understands that U.S. territories face their own economic challenges and that an increase in the salary level affects them differently than the States. In recognition of these challenges and to promote special salary level consistency across U.S. territories, the Department is proposing to also set a special salary level of $455 per week for the Virgin Islands, Guam, and the CNMI. The Department seeks comment on whether this special salary level is appropriate, or whether instead the Department should continue applying the standard salary level to these U.S. territories.

ii. American Samoa

The Department has historically applied a special salary level test to employees in American Samoa because minimum wage rates there have remained lower than the federal minimum wage.[101] The Fair Minimum Wage Act of 2007, as amended, provides that industry-specific minimum wages rates in American Samoa will increase every three years until each equals the federal minimum wage.[102] The disparity with the federal minimum wage is expected to remain for the foreseeable future. Accordingly, the Department proposes to maintain a special salary level for employees in American Samoa.

The special salary level test for employees in American Samoa has historically equaled approximately 84 percent of the standard salary level.[103] The Department proposes to maintain this percentage and considered whether to set the special salary level in American Samoa equal to 84 percent of the proposed standard salary level ($679 per week)—resulting in a special salary level of $570 per week—or to set it equal to approximately 84 percent of the proposed special salary level applicable to the other U.S. territories ($455 per week)—resulting in a special salary

[94] Kantor Report at 5.

[95] 69 FR 22213. The 2004 rule estimated that 1,297,855 workers would, without some intervening action by their employers, lose exempt status as a result of the $455 standard salary level set at that time. *See* 69 FR 22213, 22253.

[96] Under the proposal, the special salary tests would not apply to employees of the Federal government employed in Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

[97] *See* 69 FR 22172.

[98] *See* Public Law 114–187, 130 Stat. 549 (June 30, 2016).

[99] *See* 48 U.S.C. 2193(a)–(b). The Comptroller General's report was published on June 29, 2018 and is available at: *https://www.gao.gov/products/GAO-18-483.*

[100] In Guam and the CNMI, the Department has applied the salary level test(s) applicable to the States. In the Virgin Islands, the Department applied a special salary level test prior to 2004, but applied the standard salary level beginning in 2004.

[101] *See* 69 FR 22172.

[102] *See* Sec. 1, Public Law 114–61, 129 Stat. 545 (Oct. 7, 2015).

[103] *See, e.g.,* 69 FR 22172.

level of $380 per week. The Department is proposing to set a special salary level of $380 per week in American Samoa. This approach not only maintains the special salary level that the Department is currently enforcing in American Samoa, but also ensures that American Samoa, which has a lower minimum wage than the other U.S. territories, does not have a higher special salary level. The Department seeks comments on this proposal.

iii. Motion Picture Producing Industry

The Department has permitted employers to classify as exempt employees in the motion picture producing industry who are paid a specified base rate per week (or a proportionate amount based on the number of days worked), so long as they meet the duties tests for the EAP exemption.[104] This exception from the ''salary basis'' requirement was created in 1953 to address the ''peculiar employment conditions existing in the [motion picture producing] industry,'' and applies, for example, when a motion picture producing industry employee works less than a full workweek and is paid a daily base rate that would yield the weekly base rate if 6 days were worked.[105] Consistent with its practice since the 2004 final rule, the Department proposes to increase the required base rate proportionally to the proposed increase in the standard salary level test, resulting in a proposed base rate of $1,036 per week (or a proportionate amount based on the number of days worked).[106] The Department seeks comments on this proposal.

C. Inclusion of Nondiscretionary Bonuses, Incentive Payments, and Commissions in the Salary Level Requirement

Since 1940, the part 541 regulations have required that exempt EAP employees be paid on a salary basis. Historically, the Department assessed compliance with the salary level test by looking only at the salary or fee payments made to employees and, with the exception of the total annual compensation requirement of the highly compensated employee (HCE) test introduced in 2004, did not include bonus payments of any kind in this calculation. The Department's longstanding position has been to allow employers to pay additional compensation in the form of bonuses, but those payments did not count toward the payment of the required minimum salary.

During public listening sessions held by the Department prior to issuing the 2015 proposal, stakeholders encouraged the Department to consider including nondiscretionary bonuses in determining whether the salary level is met.[107] The stakeholders noted that such bonuses can be a significant part of exempt employees' compensation, and therefore supported the inclusion of bonuses in determining whether the salary level is met.[108] In the 2016 final rule, the Department for the first time allowed employers to use nondiscretionary bonuses and incentive payments that were paid quarterly or more frequently to satisfy up to 10 percent of the standard salary level.[109] Although the 2016 final rule was invalidated,[110] the Department believes that there are benefits to this approach because such bonuses and incentives are an important part of many employers' compensation systems.

In the 2017 RFI and the listening sessions, many commenters reiterated the view that nondiscretionary bonuses and incentive payments should count toward the salary threshold to some degree, although commenters disagreed about the percentage allowance, and some opposed counting such payments toward the salary level at all. Some RFI commenters also expressed concern about the 2016 final rule's requirement that such bonuses be paid at least quarterly to count toward the salary level. These commenters explained that annual bonuses can be substantial, and employers would be penalized if those bonuses were only creditable in the quarter in which they were paid. Having considered these comments, and consistent with its goal of modernizing the part 541 regulations, the Department proposes to permit nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level test for the executive, administrative, and professional exemptions, provided that such bonuses or payments are paid annually or more frequently.[111] Such payments may include, for example, nondiscretionary incentive bonuses tied to productivity and profitability.[112]

The Department believes this approach is appropriate because such payments have become associated with EAP duties, such as the exercise of independent judgment and management skills. However, the Department received information during the 2016 rulemaking from State and local governments and nonprofits stating that they do not traditionally use such pay methods and might be at a competitive disadvantage if the overtime rule allowed a significant portion of the salary level to be met through such bonus payments. The Department accordingly determined that limiting the amount of the salary requirement that may be satisfied through such payments to 10 percent would help maintain parity between industries that use such pay methods and those that traditionally have not done so, such as nonprofit organizations, and ensure that exempt employees are paid regularly, as required by regulation. The Department did receive comments in the 2016 rulemaking that bonuses are an important part of compensation for some exempt employees. But the standard salary level test is meant to identify a class of nonexempt employees. The Department believes that employees with wages below the proposed standard salary level, who would be nonexempt by definition, also do not typically receive a substantial portion of their wages through bonuses. While the Department proposes to allow employers up to one year to apply nondiscretionary bonus or incentive payments to satisfy 10 percent of the standard salary level, the remaining 90 percent must be paid on a salary or fee basis in accordance with the regulations.

Finally, the Department proposes to permit employers to make a final ''catch-up'' payment within one pay period after the end of each 52-week period to bring an employee's

[104] *See* § 541.709.

[105] 18 FR 2881 (May 19, 1953).

[106] The Department calculated this figure by dividing the proposed weekly salary level ($679) by $455, and then multiplying this result (rounded to the nearest hundredth) by the base rate set in the 2004 final rule ($695 per week). This produces a new base rate of $1,036 (per week), when rounded to the nearest whole dollar.

[107] 80 FR 38516, 38521 (July 6, 2015).

[108] *Id.*

[109] 81 FR 32423–27.

[110] *See* 275 F. Supp. 3d at 808. The nondiscretionary bonuses provision was not discussed in the decision.

[111] The employer may use any 52-week period, such as a calendar year, a fiscal year, or an anniversary of the hire year. The Department recognizes that some businesses pay significantly larger bonuses. Where larger bonuses are paid, the amount attributable toward the EAP standard salary level requirement would be capped at 10 percent of the salary level.

[112] The Department notes that nonexempt employees may also receive such bonuses. Where nondiscretionary bonuses or incentive payments are made to nonexempt employees, the payments must be included in the regular rate when calculating overtime pay. The Department's regulations at §§ 778.208—.210 explain how to include nondiscretionary bonuses in the regular rate calculation. One way to calculate and pay such bonuses is as a percentage of the employee's total earnings. Under this method, the payment of the bonus includes the simultaneous payment of overtime due on the bonus payment. *See* § 778.210.

compensation up to the required level. Under the proposal, each pay period an employer must pay the exempt executive, administrative, or professional employee 90 percent of the standard salary level ($611.10 per week), and if at the end of the 52-week period the salary paid plus the nondiscretionary bonuses and incentive payments (including commissions) paid does not equal the standard salary level for 52 weeks ($35,308), the employer would have one pay period to make up for the shortfall (up to 10 percent of the standard salary level, $3,530.80). Any such catch-up payment would count only toward the prior year's salary amount and not toward the salary amount in the year in which it was paid.[113]

The Department seeks comments on its proposal to permit nondiscretionary bonuses and incentive payments (including commissions) to satisfy part of the standard salary level. The Department further requests comment on whether the proposed 10 percent cap is appropriate, or if a higher or lower cap is preferable.[114]

D. Highly Compensated Employees

The 2004 final rule created a new test under the EAP exemption, known as the highly compensated employee (HCE) test. The HCE test is based on the rationale that it is unnecessary to apply the standard duties test to employees who earn at least a certain amount annually—an amount substantially higher than the annual equivalent of the weekly standard salary level—because such employees ''have almost invariably been found to meet all the other requirements of the regulations for exemption.'' [115] Thus, the HCE test combines a high compensation requirement with a less-stringent, more-flexible duties test.

To be exempt under the HCE test, an employee must earn at least the amount specified in the regulations in total annual compensation and must customarily and regularly perform any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee.[116] The HCE test applies ''only to employees whose primary duty includes performing office or non-manual work.'' [117] Additionally, such an employee must receive at least the standard salary level per week on a salary or fee basis, while the remainder of the employee's total annual compensation may include commissions, nondiscretionary bonuses, and other nondiscretionary compensation.[118] Total annual compensation does not include board, lodging, and other facilities, and does not include payments for medical insurance, life insurance, retirement plans, or other fringe benefits.[119] An employer is permitted to make a final ''catch-up'' payment ''during the last pay period or within one month after the end of the 52-week period'' to bring an employee's compensation up to the required level.[120] If an employee works for less than a full year, the employee may still qualify for exemption under the HCE test if the employee receives a pro rata portion of the required annual compensation, based upon the number of weeks of employment.[121]

The 2004 final rule set the HCE total annual compensation amount at $100,000. In the 2016 final rule, the Department reaffirmed the appropriateness of the HCE test, and increased the total annual compensation requirement to reflect increases in salaries.[122] The Department explained that like the standard salary level, the 2004 HCE total annual compensation value had ''eroded over time'' and that the share of full-time salaried workers with salaries exceeding $100,000 in fiscal year 2017 was predicted to be about three times the share who earned that amount in 2004.[123] In response, the Department increased the total annual compensation requirement for the HCE test to the annualized weekly earnings of the 90th percentile of full-time salaried workers nationally, which was $134,004 based on the fourth quarter of 2015.[124] As a result of the district court's decision invalidating the 2016 final rule, the Department is currently enforcing the 2004 final rule, including its $100,000 total annual compensation level and the requirement that $455 per week must be paid on a salary or fee basis.[125]

The Department continues to believe that the HCE test is a useful alternative to the standard salary level and duties tests for highly compensated employees. The Department also believes that the HCE compensation level set in 2004, $100,000 per year, was an appropriate level at the time, given that only roughly 10 percent of likely exempt employees who were subject to the salary tests earned at least that amount annually.[126] However, as with the standard salary level, the HCE total annual compensation level must be updated to ensure that it remains a meaningful and appropriate standard when paired with the more-flexible HCE duties test. In 2004, the Department concluded that the HCE compensation level was appropriate because ''white collar'' employees who earn such high salaries would nearly always satisfy any duties test, and ''in the rare instances when these employees do not meet all other requirements of the regulations, a determination that such employees are exempt would not defeat the objectives of section 13(a)(1) of the Act.'' [127] Accordingly, it is important to ensure that the HCE total annual compensation level keeps pace with growth in nominal wages and salaries so that it applies only to those employees for whom it was originally intended, namely, those ''at the very top of [the] economic ladder.'' [128] Additionally, setting an appropriately high total annual compensation level for highly compensated employees ensures that employers continue to apply the standard duties test to employees whose exemption status is less clear.

The Department proposes to update the HCE test by setting it at the 90th percentile of all full-time salaried workers nationally using 2017 CPS data, then inflated to January 2020. This is similar to the method used in the 2016 final rule, which likewise set the HCE threshold at the 90th percentile of all full-time salaried workers. The inflation

[113] Because employers may use nondiscretionary bonuses to satisfy the vast majority of the total annual compensation paid to HCEs, such bonuses will not be permitted to satisfy the standard salary level portion of their compensation.

[114] The Department is not considering changing the exclusion of board, lodging, or other facilities from the salary calculation, a position that it has held consistently since the salary requirement was first adopted. *See* § 541.600. Similarly, the Department also declines to consider including in the salary requirement payments for medical, disability, or life insurance, or contributions to retirement plans or other fringe benefits. *See* § 541.601(b)(1).

[115] 69 FR 22174 (quoting Weiss Report at 22); *see* § 541.601(c) (''A high level of compensation is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed analysis of the employee's job duties.'').

[116] § 541.601(a).

[117] § 541.601(d).

[118] § 541.601(b)(1).

[119] *Id.*

[120] § 541.601(b)(2).

[121] § 541.601(b)(3). Similar to employees who work for a full year, one final ''catch-up'' payment may be made ''within one month after the end of employment.'' *Id.*

[122] 81 FR 32428–29.

[123] *Id.* at 32429. Whereas approximately 6.3 percent of full-time salaried workers had salaries exceeding $100,000 in 2004, *see* 69 FR 22169, this number was predicted to be approximately 20 percent by fiscal year 2017, *see* 81 FR 32429. By January 2021, this number is expected to be approximately 26 percent.

[124] 81 FR 32429.

[125] The district court's decision did not specifically discuss the HCE test; however, the decision invalidated the entire 2016 final rule.

[126] 69 FR 22174.

[127] *Id.* (quoting Weiss Report at 22–23).

[128] *Id.*

to January 2020 is proposed for the same reason as inflating the standard salary level: To more accurately reflect the salaries of employees at the time the rule becomes effective, rather than at the time data was collected. This results in a proposed HCE total annual compensation level of $147,414, of which $679 must be paid weekly on a salary or fee basis.[129] Notably, this proposed HCE threshold is slightly lower in relative terms than when the HCE threshold was initially adopted in 2004, when it covered 93.7 percent of all full-time salaried workers.[130] But the Department continues to believe that this simpler approach—*i.e.,* pegging the HCE threshold to the 90th percentile of all full-time salaried earnings nationwide—would result in a threshold high enough to ''ensure that virtually every salaried white collar employee [above it] would satisfy any duties test.'' [131]

Additionally, as with the standard salary level, to ensure that the Department regularly reviews the appropriateness of the HCE total annual compensation amount, the Department intends to propose an update to the level every four years, as discussed further in section IV.E below. The Department estimates that 201,100 workers—those who earn between $100,000 and the proposed HCE total annual compensation level and pass the HCE duties test, but not the standard duties test—would, without some intervening action by their employers, be affected by the increase in the HCE compensation level.

E. Future Updates to the Earnings Thresholds

Congress has instructed the Department to define and delimit the overtime and minimum wage exemptions ''from time to time.'' [132] The rationale for updating the standard salary and HCE total compensation levels is straightforward: As employees' earnings rise over time, they begin surpassing the earnings thresholds set in the past; the earnings thresholds thus become a less useful measure of employees' relative earnings, and a less useful method for identifying exempt employees. As the Department noted in 2004, outdated regulations ''allow unscrupulous employers to avoid their overtime obligations and can serve as a trap for the unwary but well-intentioned employer''; they can also lead increasing numbers of nonexempt employees to ''resort to lengthy court battles to receive their overtime pay.'' [133] Moreover, lengthy delays between updates to the earnings thresholds may necessitate disruptively large increases when the thresholds are updated.

While the need to update the part 541 earnings thresholds on a regular basis is clear, the method and frequency of doing so has been contested. The Department has historically used notice-and-comment rulemaking to update the salary level tests, but various stakeholders throughout the years have submitted comments asking the Department to establish a mechanism to update the thresholds automatically. In the 1970 final rule, the Department remarked that one commenter's suggestion to implement automatic annual updates to the salary tests based on BLS earnings data ''appear[ed] to have some merit'' given the delays between some of the Department's earlier updates, but ultimately concluded that ''such a proposal [would] require further study.'' [134] In the 2004 final rule, the Department declined commenter requests to create an automatic updating mechanism. Instead, the Department expressed its intent ''in the future to update the salary levels on a more regular basis.'' [135]

When the Department next revisited the part 541 regulations in 2016, however, it adopted a mechanism to automatically update the earnings thresholds every three years, applying the same methodology used to initially set each threshold in that rulemaking.[136] The stated purpose of the 2016 final rule's updating mechanism was to ''ensure that the salary test level is based on the best available data (and thus remains a meaningful, bright-line test), produce more predictable and incremental changes in the salary required for the EAP exemption, and therefore provide certainty to employers, and promote government efficiency.'' [137] The district court's summary judgment decision invalidating the 2016 final rule stated that because the standard salary level established by the 2016 final rule was unlawful, the mechanism to automatically update that standard salary level was ''similarly . . . unlawful.'' [138]

In light of the district court's decision and the concerns about lengthy delays between updates to the part 541 earnings thresholds, the Department asked for feedback in the 2017 RFI on how the salary and compensation levels should be updated going forward.[139] Responses to this question were mixed. Proponents of an automatic updating mechanism cited lengthy delays between earlier salary level updates, disruptively large increases necessitated by such delays, and the desire for added certainty. Other stakeholders, however, argued that the Department lacked the authority to update the salary level automatically, that an automatic updating mechanism might not be sufficiently flexible to account for unique economic circumstances, and that affected members of the public would not have any influence over the magnitude or timing of future salary level updates. Commenters generally agreed that the earning thresholds should be updated more frequently than to date, but some commenters were concerned that frequent updating would be unduly disruptive.

After considering the feedback provided in response to the RFI and at the listening sessions, the Department is committing to evaluate more frequently the part 541 earnings thresholds going forward. Specifically, the Department believes that the standard salary level and the HCE total annual compensation threshold should be proposed to be updated on a quadrennial basis (*i.e.,* once every four years) through an NPRM published in the **Federal Register**, followed by notice-and-comment rulemaking. The Department intends to propose such updates using the same

[129] Although the Department is proposing that employers may use nondiscretionary bonuses to satisfy up to 10 percent of the weekly standard salary level when applying the standard salary and duties tests, the Department's proposal does not permit employers to use nondiscretionary bonuses to satisfy the weekly standard salary level requirement for HCE workers. Employers may use commissions, nondiscretionary bonuses, and other nondiscretionary compensation to satisfy the remaining portion of the HCE total annual compensation amount. Because employers may use nondiscretionary bonuses to satisfy the vast majority of the total annual compensation paid to HCE employees, it is not necessary to permit the use of such bonuses to satisfy the standard salary level portion of their compensation.

[130] The $100,000 annual compensation level set in 2004 corresponded to approximately 89.8 percent of likely exempt employees and 93.7 percent of full-time salaried workers. *See* 69 FR 22169–70 (Tables 3 and 4).

[131] 81 FR 32429.

[132] 29 U.S.C. 213(a)(1); *see also* FLSA Amendments of 1961, Public Law 87–30; 75 Stat. 65 (May 5, 1961).

[133] 69 FR 22122.

[134] 35 FR 884.

[135] 69 FR 22171–72.

[136] Specifically, the mechanism provided for using the 40th percentile of non-hourly earnings in the lowest-wage Census Region to automatically update the standard salary level, the 90th percentile of non-hourly earnings nationwide to automatically update the HCE total annual compensation threshold, and making proportionate increases to the special salary levels provided elsewhere in part 541.

[137] 81 FR 32430.

[138] 275 F. Supp. 3d at 808.

[139] 82 FR 34619.

methodology as the most recent final rule, meaning, in the first instance, the methodology employed by the final rule for which this NPRM is providing notice and opportunity to comment. In these future rulemakings, the Department also intends to seek comment on whether to update the special salary levels that apply to the U.S. territories. Proposed quadrennial updates would ensure public input on how earning thresholds could continue to be up-to-date, while giving businesses sufficient time to adjust to these more frequent (and thus smaller) increases. The Secretary, however, may forestall proposing updates if economic or other factors so indicate. Accordingly, the Department proposes to delete the current (though not enforced) § 541.607, while affirming its intention to propose increasing the earnings thresholds every four years.[140] The Department seeks comment from the public regarding this proposal.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8. Persons are not required to respond to the information collection requirements until the Office of Management and Budget (OMB) approves them under the PRA. This NPRM would revise the existing information collection requirement previously approved under OMB control number 1235–0018 (Records to be Kept by Employers—Fair Labor Standards Act) and OMB control number 1235–0021 (Employment Information Form) in that employers would need to maintain records of hours worked for more employees and more employees may file complaints to recover back wages under the overtime pay provision. As required by the PRA, the Department has submitted the information collection revisions to OMB for review to reflect changes that would result from this proposed rule were it to be adopted.

Summary: FLSA section 11(c) requires all employers covered by the FLSA to make, keep, and preserve records of employees and of wages, hours, and other conditions of employment. An FLSA-covered employer must maintain the records for such period of time and make such reports as prescribed by regulations issued by the Secretary of Labor. The Department has promulgated regulations at 29 CFR part 516 to establish the basic FLSA recordkeeping requirements. This NPRM, if adopted, would not impose any new information collection requirements; rather, using the currently enforced 2004 salary level as the baseline, burdens under existing requirements are expected to increase as more employees receive minimum wage and overtime protections. More specifically, the proposed changes in this NPRM may cause an increase in burden on employers because they will have additional employees to whom certain long-established recordkeeping requirements apply (*e.g.,* maintaining daily records of hours worked by employees who are not exempt from the both minimum wage and overtime provisions). Additionally, the proposed changes in this NPRM may cause an increase in burden if more employees file a complaint with WHD to collect back wages under the overtime pay requirements. The Department anticipates that this increased burden will wane over time as employers adjust to the new rule.

Purpose and Use: WHD and employees use employer records to determine whether covered employers have complied with various FLSA requirements. Employers use the records to document compliance with the FLSA, including showing qualification for various FLSA exemptions. Additionally, WHD uses the Employment Information form to document allegations of non-compliance with labor standards the agency administers.

Technology: The regulations prescribe no particular order or form of records, and employers may preserve records in forms of their choosing provided that facilities are available for inspection and transcription of the records.

Minimizing Small Entity Burden: Although the FLSA recordkeeping requirements do involve small businesses, including small state and local government agencies, the Department minimizes respondent burden by requiring no specific order or form of records in responding to this information collection. Burden is reduced on complainants by providing a template to guide answers.

Public Comments: As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Department seeks public comments regarding the burdens imposed by the information collections associated with this NPRM. Commenters may send their views about this information collection to the Department in the same manner as all other comments (*e.g.,* through the *regulations.gov* website). All comments received will be made a matter of public record and posted without change to *http://www.regulations.gov,* including any personal information provided.

As previously noted, an agency may not conduct an information collection unless it has a currently valid OMB approval, and the Department has submitted information collection requests under OMB control numbers 1235–0018 and 1235–0021 in order to update them to reflect this rulemaking and provide interested parties a specific opportunity to comment under the PRA. *See* 44 U.S.C. 3507(d); 5 CFR 1320.11. Interested parties may receive a copy of the full supporting statements by sending a written request to the mailing address shown in the **ADDRESSES** section at the beginning of this preamble. In addition to having an opportunity to file comments with the Department, comments about the paperwork implications may be addressed to OMB. Comments to OMB should be directed to: Office of Information and Regulatory Affairs, Attention OMB Desk Officer for the Wage and Hour Division, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; Telephone: 202–395–5806 (this is not a toll-free number). OMB will consider all written comments that the

[140] Were the Department to codify this commitment in the final rule, the codified provision could have the following two features. First, it could provide that the Department publish a Notice of Proposed Rulemaking in the **Federal Register** in January 2023, and every four years thereafter, proposing an update to the standard salary level and highly compensated employee threshold in accord with the same methodology in the Department's most recent final rule establishing that salary level and threshold (the Notice would propose to retain the most recent levels set for the special salary levels applicable to U.S. territories, while inviting comment on whether to change them). And second, it could provide that the Secretary may, in his or her sole discretion, decline to publish the Notice of Proposed Rulemaking due to economic or other factors, with an accompanying notice published in the **Federal Register** giving the reason or reasons for declining.

agency receives within 30 days of publication of this proposed rule. Commenters are encouraged, but not required, to send the Department a courtesy copy of any comments sent to OMB. The courtesy copy may be sent via the same channels as comments on the rule.

OMB and the Department are particularly interested in comments that:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Total annual burden estimates, which reflect both the existing and new responses for the recordkeeping and complaint process information collections, are summarized as follows:

Type of Review: Revisions to currently approved information collections.

Agency: Wage and Hour Division, Department of Labor.

Title: Records to be Kept by Employers—Fair Labor Standards Act.

OMB Control Number: 1235–0018.

Affected Public: Private sector businesses or other for-profits, farms, not-for-profit institutions, state, local and tribal governments, and individuals or households.

Estimated Number of Respondents: 5,588,627 (unaffected by this rulemaking).

Estimated Number of Responses: 48,101,522 (2,583,333 added by this rulemaking).

Estimated Burden Hours: 3,631,819 hours (2,583,333 added by this rulemaking).

Estimated Time per Response: Various (unaffected by this rulemaking).

Frequency: Various (unaffected by this rulemaking).

Other Burden Cost: 0.

Title: Employment Information Form.

OMB Control Number: 1235–0021.

Affected Public: Businesses or other for-profit, farms, not-for-profit institutions, state, local and tribal governments, and individuals or households.

Total Respondents: 35,819 (242 added by this rulemaking).

Estimated Number of Responses: 35,819 (242 added by this rulemaking).

Estimated Burden Hours: 11,940 (81 hours added by this rulemaking).

Estimated Time per Response: 20 minutes (unaffected by this rulemaking).

Frequency: Once.

Other Burden Cost: 0.

VI. Analysis Conducted in Accordance With Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of a regulation and to adopt a regulation only upon a reasoned determination that the regulation's net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity) justify its costs. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether a regulatory action is a ''significant regulatory action,'' which includes an action that has an annual effect of $100 million or more on the economy. Significant regulatory actions are subject to review by OMB. As described below, this proposed rule is economically significant. Therefore, the Department has prepared a Preliminary Regulatory Impact Analysis (RIA) [141] in connection with this NPRM as required under section 6(a)(3) of Executive Order 12866, and OMB has reviewed the rule.

When the Department uses a perpetual time horizon to allow for cost comparisons under Executive Order 13771,[142] the annualized cost savings of the proposed rule is $224.0 million with 7 percent discounting. This proposed rule is accordingly expected to be an Executive Order 13771 deregulatory action.

A. Introduction

i. Background

The FLSA requires covered employers to: (1) Pay employees who are covered and not exempt from the Act's requirements not less than the federal minimum wage for all hours worked and overtime premium pay at a rate of not less than one and one-half times the employee's regular rate of pay for all hours worked over 40 in a workweek, and (2) make, keep, and preserve records of their employees and of the wages, hours, and other conditions and practices of employment. It is widely recognized that the general requirement that employers pay a premium rate of pay for all hours worked over 40 in a workweek is a cornerstone of the Act, grounded in two policy objectives. The first policy objective is to reduce overwork and its detrimental effect on the health and well-being of workers. The second is to spread employment (or, in other words, reduce involuntary unemployment) by incentivizing employers to hire more employees rather than requiring existing employees to work longer hours.

The FLSA provides a number of exemptions from the Act's minimum wage and overtime pay provisions, including one for bona fide executive, administrative, and professional (EAP) employees. Such employees perform work that cannot easily be spread to other workers after 40 hours in a week and that is difficult to standardize to any timeframe. They also typically receive more monetary and non-monetary benefits than most blue collar and lower-level office workers. The exemption applies to employees employed in a bona fide executive, administrative, or professional capacity and to outside sales employees, as those terms are ''defined and delimited'' by the Department.[143] The Department's regulations implementing these ''white collar'' exemptions are codified at 29 CFR part 541.

In 2004, the Department determined that two earnings level tests should be used to help employers distinguish nonexempt employees from exempt employees: The standard salary test, which it set at $455 a week, and the highly compensated employee (HCE) total-compensation test, which it set at $100,000 per year (see II.C. for further discussion). In 2016, the Department published a final rule setting the standard salary level at $913 per week and the HCE annual compensation level at $134,004. As previously discussed, the U.S. District Court for Eastern District of Texas declared the 2016 final rule invalid.

The standard salary level should be an appropriate dividing-line between employees who are nonexempt and employees who may be performing exempt duties. The threshold essentially

[141] The terms ''regulatory impact analysis'' and ''economic impact analysis'' are used interchangeably throughout this Proposed Rule.

[142] 82 FR 9339 (Feb. 3, 2017).

[143] 29 U.S.C. 213(a)(1).

screens out obviously nonexempt employees whom Congress intended the FLSA's minimum wage and overtime provisions to protect. Therefore, employers are not burdened with conducting a duties analysis to determine nonexempt status for the employees who fall below the threshold, as those employees are unlikely to pass the duties test for exemption.

ii. Need for Rulemaking

The Department has updated the salary level test seven times since its implementation in 1938. Table 1 presents the weekly salary levels associated with the EAP exemptions since 1938, organized by exemption and long/short/standard duties tests.[144] The Department has revised the levels once in the 44 years since 1975.[145] In contrast, in the 37 years between 1938 and 1975, the Department increased salary test levels approximately every five to nine years.

TABLE 1—HISTORICAL SALARY LEVELS FOR THE EAP EXEMPTIONS

Date enacted	Long test			Short test (all)
	Executive	Administrative	Professional	
1938	$30	$30		
1940	30	50	$50	
1949	55	75	75	$100
1958	80	95	95	125
1963	100	100	115	150
1970	125	125	140	200
1975	155	155	170	250
Standard Test				
2004	$455			

Since the update in 2004, the purchasing power, or real value, of the standard-salary level test has eroded substantially, and as a result, increasingly more workers earn above the salary threshold. Between 2004 and 2017, the real value of the standard-salary level declined 22.9 percent, calculated using the Consumer Price Index for all urban consumers (CPI–U).[146]

As a result of the erosion of the real value of the standard-salary level, more and more workers earn above the standard salary level. Each year that the salary level is not updated, its utility as a distinguishing mechanism between nonexempt and potentially exempt workers declines. For example, the annualized equivalent of the standard salary level set in 2004 ($23,660, or $455 per week for 52 weeks) is now below the 2017 poverty threshold for a family of four ($24,858).[147] Similarly, in 2017, approximately 23 percent of full-time salaried workers earned at least $100,000 annually, more than three times the share who earned that amount (6.3 percent) when the HCE test was created in 2004.[148]

In the 2004 rulemaking, the Department stated the intention to ''update the salary levels on a more regular basis, as it did prior to 1975,'' and added that the ''salary levels should be adjusted when wage survey data and other policy concerns support such a change.'' [149] In the 2016 final rule, the Department recognized that the salary level had become outdated and that an update was needed. As previously discussed, the U.S. District Court for Eastern District of Texas declared the 2016 final rule invalid because the standard salary level excluded from exemption too many employees who perform exempt duties.

Now, to restore the value of the standard salary level as a line of demarcation between those workers for whom Congress clearly intended to provide minimum wage and overtime protections and other workers who may be bona fide EAPs, and to maintain the salary level's continued validity, the Department proposes to update standard salary level using the 2004 methodology with current CPS data. Using pooled 2017 CPS MORG data, a salary level of $641 ($33,332 annually) corresponds to the 20th percentile of earnings for full-time salaried workers in the South Census region and/or in the retail industry.[150] To account for expected changes between 2017 and January 2020, and to make it so that the salary level will accurately reflect compensation at the approximate effective date, the salary level was inflated using the compound annual growth rate that increased the standard salary level from $455 to $641 over 15 years (2.31 percent = (($641/$455)$^{1/15} - 1$).[151] Applying this growth rate for an additional 2.5 years (assuming 2017 data represents mid-2017 on average) results in a January 2020 salary level of $679 ($641 × $1.0231^{2.5}$). Similarly, to update the HCE total compensation requirement, the Department used CPS MORG data to ascertain the 90th percentile of all full-time salaried workers in 2017 ($139,464), calculated the compound annual growth rate from 2002 to 2017 (2.24 percent), then applied that rate over 2.5 years to inflate the 2017 level to $147,414 for January 2020.

Additionally, as just discussed, in this proposed rule the Department commits

[144] From 1949 until 2004 the regulations contained two different tests for exemption—a long test for employees paid a lower salary that included a more rigorous examination of employees' duties, and a short test for employees paid at a higher salary level that included a more flexible duties test.

[145] The Department revised the EAP salary levels in 2004. In 2016, the Department also issued a final rule revising the EAP salary levels; however, on August 31, 2017, the U.S. District Court for Eastern District of Texas held that the 2016 final rule's standard salary level exceeded the Department's authority and was therefore invalid. *See Nevada* v. *U.S. Dep't of Labor,* 275 F. Supp. 3d 795 (E.D. Tex. 2017). Until the Department issues a new final rule, it is enforcing the part 541 regulations in effect on November 30, 2016, including the $455 per week standard salary level set in the 2004 final rule.

[146] CPI–U data available at: *https://www.bls.gov/data/inflation_calculator.htm.*

[147] This is the 2017 poverty threshold for a family of four with two related people under 18 in the household. Available at: *https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html.*

[148] Calculated using pooled CPS MORG data.

[149] 69 FR 22171.

[150] Excluding workers who are not subject to FLSA, not subject to the salary level test, or in agriculture or transportation.

[151] The standard salary level of $455 per week became effective in 2004. However, this level was determined using 2002 CPS MORG data. We therefore calculated the compound annual growth rate over 15 years, from 2002 to 2017.

to evaluate more frequently the part 541 earnings thresholds going forward. Specifically, the Department intends to update the earnings thresholds once every four years (*see* section IV.E for further discussion). Such proposed quadrennial updates would preserve the effectiveness of the salary level as a dividing line between nonexempt workers and workers who may be exempt, eliminate the volatility associated with previous changes in the thresholds, and increase certainty for employers with respect to future changes.

iii. Summary of Affected Workers, Costs, Benefits, and Transfers

The Department estimated the number of affected workers and quantified costs and transfer payments associated with this proposed rule, using the currently enforced 2004 salary level as the baseline. To produce these estimates, the Department used data from the pooled CPS MORG data. *See* section VI.B. Most critically, the Department estimates that 1.1 million workers who would otherwise be exempt under the currently enforced standard salary level of $455 per week would become eligible for overtime, and that 3.6 million employees paid between $455 and $679 per week who fail the standard duties test (*i.e.,* that are and will remain nonexempt) would have their overtime eligibility made clearer because their salary would fall below the proposed threshold.

The Department estimated that in Year 1, there would be 46.2 million white collar salaried employees whom a change to the Department's part 541 regulations may affect.[152] Of these workers, the Department estimated that 31.9 million would be exempt from the minimum wage and overtime pay provisions under the part 541 EAP regulations promulgated in 2004 (*i.e.,* in the baseline scenario without the rule taking effect). The other 14.3 million workers would not satisfy the duties tests for EAP exemption and/or earn less than $455 per week.[153] However, of the 31.9 million workers, 7.6 million were in ''named occupations'' and thus only needed to pass the duties tests to be subject to the standard EAP exemptions.[154] Therefore, these workers were not considered in the analysis, leaving 24.3 million EAP exempt workers potentially affected by this proposed rule.

In Year 1, an estimated 1.1 million workers would be affected by the proposed increase in the standard salary level test (Table 2). This figure consists of currently exempt workers subject to the salary level test who earn at least $455 per week but less than $641 per week (the Department analyzed the economic effects of a standard salary level of $641 per week using pooled 2017 CPS MORG data as the best representation of the likely economic effects of the proposed standard salary level of $679 per week taking effect in 2020).[155] Additionally, an estimated 201,100 workers would be affected by the increase in the HCE compensation test from $100,000 per year to $139,464 per year (the Department analyzed the economic effects of an HCE compensation level of $139,464 per year using pooled 2017 CPS MORG data as the best representation of the likely economic effects of the proposed HCE compensation level of $147,414 per year taking effect in 2020). By Year 10,[156] the Department estimates that 625,000 workers would be affected by the change in the standard salary level test and 426,000 workers would be affected by the change in the HCE total annual compensation test, compared to a baseline assuming the currently enforced earnings thresholds (*i.e.,* $455 per week and $100,000 per year) remain unchanged.[157]

This analysis quantifies three direct costs to employers: (1) Regulatory familiarization costs; (2) adjustment costs; and (3) managerial costs (*see* section VI.D.iii for further discussion on costs). The costs presented here are the combined costs for both the change in the standard salary level test and the HCE total compensation level (these will be disaggregated in section VI.D.iii). Total annualized direct employer costs over the first 10 years were estimated to be $120.5 million, assuming a 7 percent discount rate [158] (Table 2).

In addition to the costs described above, this proposed rule will also transfer income from employers to employees in the form of wages. The Department estimated annualized transfers would be $429.4 million. The majority of these transfers would be attributable to the FLSA's overtime provision; a smaller share would be attributable to the FLSA's minimum wage requirement. Transfers also include salary increases for some affected EAP workers to preserve their exempt status. Employers may incur additional costs, such as hiring new workers. These other potential costs are discussed in section VI.D.iii. The proposed rulemaking could provide some benefits; however, these benefits could not be quantified due to data limitations, requiring the Department to discuss such benefits qualitatively. *See* VI.D.v.

[152] This excludes workers who are exempt under another FLSA exemption and thus would remain exempt from minimum wage and overtime pay protections without qualifying for the EAP exemption.

[153] Here and elsewhere in this analysis, numbers are reported at varying levels of aggregation, and are generally rounded to a single decimal point. However, calculations are performed using exact numbers. Therefore, some numbers may not match the reported total or the calculation shown due to rounding of components.

[154] Workers not subject to the EAP salary level test include teachers, physicians, lawyers, judges, and outside sales workers. Additionally, academic administrative personnel are not subject to the EAP salary level test if they are paid on a salary basis equivalent to an entry level teacher in their institution.

[155] The Department performed a preliminary check of an analogous three-year gap that indicates that 2014 data would yield a prediction of more potentially affected workers than the 2017 data. This result may be driven by the late 2016 and 2017 data showing the effects of employers adjusting workers' salaries, implicit wages, and hourly/salaried status in anticipation of the 2016 rule taking effect.

[156] Although the Department anticipates proposing to update the standard salary and HCE compensation level requirements periodically, the proposed updates are not required under this rulemaking and therefore are not included in this RIA. Future updates will be proposed and promulgated through notice and comment rulemaking and will be accompanied by their own RIA.

[157] In later years, earnings growth will cause some workers to no longer be affected because their earnings will exceed the new salary threshold. Additionally, some workers will become newly affected because their earnings will exceed $455 per week, and in the absence of this Proposed Rule would have lost their overtime protections. To estimate the total number of affected workers over time, the Department accounts for both of these effects.

[158] Hereafter, unless otherwise specified, annualized values will be presented using the 7 percent real discount rate.

TABLE 2—SUMMARY OF REGULATORY COSTS AND TRANSFERS, STANDARD AND HCE SALARY LEVELS

[Millions in 2017$]

Impact	Year 1	Future years [a]		Annualized value	
		Year 2	Year 10	3% Real discount rate	7% Real discount rate
Affected Workers (1,000s)					
Standard	1,070	1,027	625		
HCE	201	215	426		
Total	1,271	1,241	1,051		
Costs and Transfers (Millions in 2017$) [b]					
Direct employer costs	$464.2	$74.2	$67.8	$112.6	$120.5
Transfers [c]	526.9	421.3	447.1	428.0	429.4

[a] These cost and transfer figures represent a range over the nine-year span.
[b] Costs and transfers for affected workers passing the standard and HCE tests are combined.
[c] This is the net transfer from employers to workers. There may also be transfers of hours and income from some workers to others.

iv. Terminology and Abbreviations

The following terminology and abbreviations will be used throughout this RIA.

Affected EAP workers: The population of potentially affected EAP workers who either pass the standard duties test and earn at least $455 but less than the new salary level (for this analysis modeled as $641 in Year 1), or pass only the HCE duties test and earn at least $100,000 but less than the new HCE compensation level (for this analysis modeled as $139,464 in Year 1). This was estimated to be 1.3 million workers.

Baseline EAP exempt workers: The projected number of workers who would be EAP exempt if the rulemaking did not take effect.

BLS: Bureau of Labor Statistics.

CPI–U: Consumer Price Index for all urban consumers.

CPS: Current Population Survey.

Duties test: To be exempt from the FLSA's minimum wage and overtime requirements under section 13(a)(1), the employee's primary job duty must involve bona fide executive, administrative, or professional duties as defined by the regulations. The Department distinguishes among four such tests:

Standard duties test: The duties test used in conjunction with the standard salary level test, as set in 2004 and applied to date, to determine eligibility for the EAP exemptions. It replaced the short and long tests in effect from 1949 to 2004, but its criteria closely follow those of the former short test.

HCE duties test: The duties test used in conjunction with the HCE total annual compensation requirement, as set in 2004 and applied to date, to determine eligibility for the HCE exemption. It is much less stringent than the standard and short duties tests to reflect that very highly paid employees are much more likely to be properly classified as exempt.

Long duties test: One of two duties tests used from 1949 until 2004; this more restrictive duties test had a greater number of requirements, including a limit on the amount of nonexempt work that could be performed, and was used in conjunction with a lower salary level to determine eligibility for the EAP exemptions (*see* Table 1).

Short duties test: One of two duties tests used from 1949 to 2004; this less restrictive duties test had fewer requirements, did not limit the amount of nonexempt work that could be performed, and was used in conjunction with a higher salary level to determine eligibility for the EAP exemptions (*see* Table 1).

EAP: Executive, administrative, and professional.

HCE: Highly compensated employee; a category of EAP exempt employee, established in 2004 and characterized by high earnings and a minimal duties test.

Hourly wage: For the purpose of this PRIA, the amount an employee is paid for an hour of work.

Base hourly wage: The hourly wage excluding any overtime payments. Also used to express the wage rate without accounting for benefits.

Implicit hourly wage: Hourly wage calculated by dividing reported weekly earnings by reported hours worked.

Straight time wage: Another term for the hourly wage excluding any overtime payments.

MORG: Merged Outgoing Rotation Group supplement to the CPS. Conducted on approximately one-fourth of the CPS sample monthly to obtain information on weekly hours worked and earnings.

Named occupations: Workers in named occupations are not subject to the salary level or salary basis tests. These occupations include teachers, academic administrative personnel,[159] physicians,[160] lawyers, judges,[161] and outside sales workers.

Overtime workers: The Department distinguishes between two types of overtime workers in this analysis.

Occasional overtime workers: The Department uses two steps to identify occasional overtime workers. First, all workers who report they usually work 40 hours or less per week (identified with variable PEHRUSL1 in CPS MORG) but in the survey (or reference) week worked more than 40 hours (variable PEHRACT1 in CPS MORG) are classified as occasional overtime workers. Second, some additional workers who do not report usually working overtime and did not report working overtime in the reference week

[159] Academic administrative personnel (including admissions counselors and academic counselors) need to be paid either (1) the salary level or (2) a salary that is at least equal to the entrance salary for teachers in the educational establishment at which they are employed. *See* § 541.204(a)(1). Entrance salaries at the educational establishment of employment cannot be distinguished in the data and so this alternative is not considered (thus these employees were excluded from the analysis, the same as was done in the 2004 final rule).

[160] The term physician includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or with a Bachelor of Science in optometry). *See* § 541.304(b).

[161] Judges may not be considered ''employees'' under the FLSA definition. However, since this distinction cannot be made in the data, all judges are excluded (the same as was done in the 2004 final rule). Including these workers in the model as FLSA employees would not impact the estimate of affected workers.

are randomly selected to be classified as occasional overtime workers so that the proportion of workers who work overtime in our sample matches the proportion of workers, measured using SIPP data, who work overtime at some point in the year.

Regular overtime workers: Workers who report they usually work more than 40 hours per week (identified with variable PEHRUSL1 in CPS MORG).

Pooled 2017 CPS MORG data: CPS MORG data from 2015–2017 with earnings inflated to 2017 dollars and sample observations weighted to reflect employment in 2017. Pooled data were used to increase sample size. The analytic database will be updated to pool CPS MORG data from 2016–2018 for the final rulemaking.

Potentially affected EAP workers: EAP exempt workers who are not in named occupations and are included in the analysis (*i.e.,* white collar, salaried, not eligible for another (non-EAP) overtime pay exemption). This is estimated to be 24.3 million workers.

Price elasticity of demand (with respect to wage): The percentage change in labor hours demanded in response to a one percent change in wages.

Real dollars (2017$): Dollars adjusted using the CPI–U to estimate the purchasing power they would have in 2017.

Salary basis test: The EAP exemptions' requirement that workers be paid on a salary basis, that is, a pre-determined amount that cannot be reduced because of variations in the quality or quantity of the employee's work.

Salary level test: The salary a worker must earn to be subject to the EAP exemptions. The Department distinguishes among four such tests:

Standard salary level: The weekly salary level associated with the standard duties test that determines eligibility for the EAP exemptions. The standard salary level was set at $455 per week in the 2004 final rule.

HCE compensation level: Workers who meet the standard salary level requirement but not the standard duties test nevertheless are exempt if they pass a minimal duties test and earn at least the HCE total annual compensation required amount. The HCE required compensation level was set at $100,000 per year in the 2004 final rule, of which at least $455 per week must be paid on a salary or fee basis.

Short test salary level: The weekly salary level associated with the short duties test (eliminated in 2004).

Long test salary level: The weekly salary level associated with the long duties test (eliminated in 2004).

SIPP: Survey of Income and Program Participation.

Workers covered by the FLSA and subject to the Department's part 541 regulations: Includes all workers except those excluded from the analysis because they are not covered by the FLSA or subject to the Department's requirements. Excluded workers include: Members of the military, unpaid volunteers, the self-employed, many religious workers, and federal employees (with a few exceptions).[162]

The Department also notes that the terms *employee* and *worker* are used interchangeably throughout this analysis.

B. Methodology To Determine the Number of Potentially Affected EAP Workers

i. Overview

This section explains the methodology used to estimate the number of workers who are subject to the part 541 regulations and the number of potentially affected EAP workers. In this proposed rule, as in the 2004 final rule, the Department estimated the number of EAP exempt workers because there is no data source that identifies workers as EAP exempt. Employers are not required to report EAP exempt workers to any central agency or as part of any employee or establishment survey.[163] The methodology described here is largely based on the approach the Department used in the 2004 and 2016 final rules.[164]

ii. Data

The estimates of EAP exempt workers were based on data drawn from the CPS MORG, which is sponsored jointly by the U.S. Census Bureau and the BLS. The CPS is a large, nationally representative sample of the labor force. Households are surveyed for four months, excluded from the survey for eight months, surveyed for an additional four months, then permanently dropped from the sample. During the last month of each rotation in the sample (month 4 and month 16), employed respondents complete a supplementary questionnaire in addition to the regular survey.[165] This supplement contains the detailed information on earnings necessary to estimate a worker's exemption status. Responses are based on the reference week, which is always the week that includes the 12th day of the month.

Although the CPS MORG is a large scale survey, administered to approximately 15,000 households monthly representing the entire nation, it is still possible to have relatively few observations when looking at subsets of employees, such as exempt workers in a specific occupation employed in a specific industry, or workers in a specific geographic location. To increase the sample size, the Department pooled together three years of CPS MORG data (2015 through 2017). Earnings for each 2015 and 2016 observation were inflated to 2017 dollars using the CPI–U. The Department requests comments on whether there are better options for projecting salary growth than the application of a broad inflation index, and if a broad index is used, whether it should be CPI–U, or whether another inflation measure such as the GDP Deflator or the Personal Consumption Expenditures (PCE) price index would be more appropriate. The weight of each observation was adjusted so that the total number of potentially affected EAP workers in the pooled sample remained the same as the number for the 2017 CPS MORG. Thus, the pooled CPS MORG sample uses roughly three times as many observations to represent the same total number of workers in 2017. The additional observations allow the Department to better characterize certain attributes of the potentially affected labor force. This pooled dataset is used to estimate all impacts of the proposed rulemaking. For the analyses supporting the final rule, the Department anticipates using pooled CPS–MORG data updated to include 2016 through 2018.

Some assumptions were necessary to use these data as the basis for the analysis. For example, the Department eliminated workers who reported that their weekly hours vary and provided no additional information on hours

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[162] Employees of firms with annual revenue less than $500,000 who are not engaged in interstate commerce are also not covered by the FLSA. However, these workers are not excluded from this analysis because the Department has no reliable way of estimating the size of this worker population, although the Department believes it composes a small percent of workers. These workers were also not excluded from the 2004 final rule.

[163] In 2015, RAND released results from a survey conducted to estimate EAP exempt workers. However, this survey does not have the variables or sample size necessary for the Department to base the RIA on this analysis. Rohwedder, S. and Wenger, J.B. (2015). The Fair Labor Standards Act: Worker Misclassification and the Hours and Earnings Effects of Expanded Coverage. RAND Labor and Population.

[164] *See* 69 FR 22196–209; 81 FR 32453–60. Where the proposal follows the methodology used to determine affected workers in both the 2004 and 2016 final rules citations to both rules are not always included.

[165] This is the outgoing rotation group (ORG); however, this analysis uses the data merged over twelve months and thus will be referred to as MORG.

worked. This was done because the Department cannot estimate effects for these workers since it is unknown whether they work overtime and therefore unknown whether there would be any need to pay for overtime if their status changed from exempt to nonexempt. The Department reweighted the rest of the sample to account for this change (*i.e.,* to keep the same total employment estimates).[166] This adjustment assumes that the distribution of hours worked by workers whose hours do not vary is representative of hours worked by workers whose hours do vary. The Department believes that without more information this is an appropriate assumption.[167]

iii. Number of Workers Covered by the Department's Part 541 Regulations

To estimate the number of workers covered by the FLSA and subject to the Department's part 541 regulations, the Department excluded workers who are not subject to its regulations or whom the FLSA does not cover. This may happen, for instance, if a worker is not an employee under the FLSA. These workers include military personnel, unpaid volunteers, self-employed individuals, clergy and other religious workers, and federal employees (with a few exceptions described below).

Many of these workers are excluded from the CPS MORG, including members of the military on active duty and unpaid volunteers. Self-employed and unpaid workers are included in the CPS MORG, but have no earnings data reported and thus are excluded from the analysis. The analysis excluded religious workers identified by their occupation codes: 'clergy' (Census occupational code 2040), 'directors, religious activities and education' (2050), and 'religious workers, all other' (2060). Most employees of the federal government are covered by the FLSA but not the Department's part 541 regulations because the Office of Personnel Management (OPM) regulates their entitlement to minimum wage and overtime pay.[168] Exceptions exist for U.S. Postal Service employees, Tennessee Valley Authority employees, and Library of Congress employees.[169] The analysis identified and included these covered federal workers using occupation and/or industry codes.[170] The FLSA also does not cover employees of firms that have annual revenue of less than $500,000 and who are not engaged in interstate commerce. The Department does not exclude them from the analysis, however, because it has no reliable way of estimating the size of this worker population, although the Department believes it is a small percentage of workers. The 2004 final rule analysis similarly did not adjust for these workers.

The Department estimated that in Year 1 there would be 160.7 million wage and salary workers in the United States (Figure 1). Of these, 135.9 million would be covered by the FLSA and subject to the Department's regulations (84.6 percent). The remaining 24.8 million workers would be excluded from FLSA coverage for the reasons described above. Figure 1 illustrates how the Department analyzed the U.S. civilian workforce through successive stages to estimate the number of potentially affected EAP workers.

[166] The Department also reweighted for workers reporting zero earnings. In addition, the Department eliminated, without reweighting, workers who both reported usually working zero hours and working zero hours in the past week.

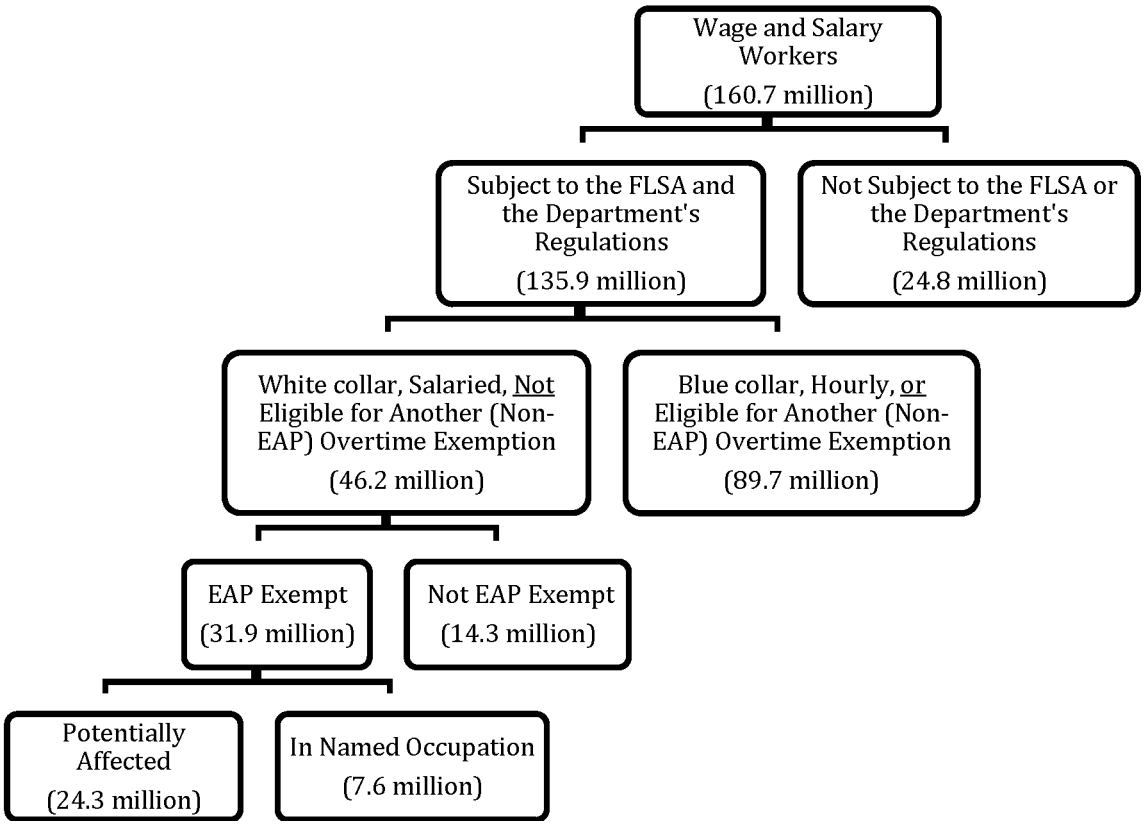
[167] This is justifiable because demographic and employment characteristics are similar across these two populations (*e.g.,* age, gender, education, distribution across industries, share paid nonhourly). The share of all workers who stated that their hours vary (but provided no additional information) is 5.2 percent. To the extent these excluded workers are exempt, if they tend to work more overtime than other workers, then transfer payments and costs may be underestimated. Conversely, if they work fewer overtime hours, then transfer payments and costs may be overestimated.

[168] *See* 29 U.S.C. 204(f). Federal workers are identified in the CPS MORG with the class of worker variable PEIO1COW.

[169] *See id.*

[170] Postal Service employees were identified with the Census industry classification for postal service (6370). Tennessee Valley Authority employees were identified as federal workers employed in the electric power generation, transmission, and distribution industry (570) and in Kentucky, Tennessee, Mississippi, Alabama, Georgia, North Carolina, or Virginia. Library of Congress employees were identified as federal workers under Census industry 'libraries and archives' (6770) and residing in Washington DC.

Figure 1: Flow Chart of FLSA Exemptions and Estimated Number of Potentially Affected Workers



iv. Number of Workers in the Analysis

After limiting the analysis to workers covered by the FLSA and subject to the Department's part 541 regulations, several other groups of workers were identified and excluded from further analysis since this proposed rule is unlikely to affect them. These include blue collar workers, workers paid on an hourly basis, and workers who are exempt under certain other (non-EAP) exemptions.

The Department excluded a total of 89.7 million workers from the analysis for one or more of these reasons, which often overlapped (*e.g.,* many blue collar workers are also paid hourly). The Department estimated that in 2017 there were 49.0 million blue collar workers. These workers were identified in the CPS MORG data following the methodology from the U.S. Government Accountability Office's (GAO) 1999 white collar exemptions report [171] and the Department's 2004 regulatory impact analysis. *See* 69 FR 22240–44. Supervisors in traditionally blue collar industries were classified as white collar workers because their duties are generally managerial or administrative, and therefore they were not excluded as blue collar workers. Using the CPS variable indicating a respondent's hourly wage status, the Department determined that 79.9 million workers were paid on an hourly basis in 2017.[172]

Also excluded from further analysis were workers who were exempt under certain other (non-EAP) exemptions. Although some of these workers may also be exempt under the EAP exemptions, they would independently remain exempt from the minimum wage and/or overtime pay provisions based on the non-EAP exemptions. The Department excluded an estimated 4.9 million workers, including some agricultural and transportation workers, from further analysis because they would be subject to another (non-EAP) overtime exemption. *See* Appendix A: Methodology for Estimating Exemption Status, contained in the rulemaking docket, for details on how this population was identified.

Agricultural and transportation workers are two of the largest groups of workers excluded from the population of potentially affected EAP workers in the current analysis, and with some exceptions, they were similarly excluded in 2004. The 2004 final rule excluded all workers in agricultural industries from the analysis,[173] while the current analysis, similar to the 2016 analysis, only excludes agricultural workers from specified occupational-industry combinations since not all workers in agricultural industries qualify for the agricultural overtime pay exemptions. The exclusion of transportation workers matched the method for the 2004 final rule. Transportation workers were defined as those who are subject to the following FLSA exemptions: Section 13(b)(1), section 13(b)(2), section 13(b)(3), section 13(b)(6), or section 13(b)(10). The Department excluded 1.0 million agricultural workers and 2.1 million transportation workers from the analysis. In addition, the Department excluded another 1.8 million workers who fall within one or more other FLSA minimum wage and overtime exemptions. The criteria for determining exempt status for agricultural and transportation workers are detailed in

[171] GAO/HEHS. (1999). Fair Labor Standards Act: White Collar Exemptions in the Modern Work Place. GAO/HEHS–99–164, 40–41.

[172] CPS MORG variable PEERNHRY.

[173] 69 FR 22197.

Appendix A. However, of these 1.8 million workers, all but 23,700 are either blue collar or hourly, and thus the effect of excluding these workers is negligible.

v. Number of Potentially Affected EAP Workers

After excluding workers not subject to the Department's FLSA regulations and workers who are unlikely to be affected by this proposed rule (*i.e.,* blue collar workers, workers paid hourly, workers who are subject to another (non-EAP) overtime exemption), the Department estimated there would be 46.2 million salaried white collar workers for whom employers might claim either the standard EAP exemption or the HCE exemption. To be exempt under the standard EAP test, the employee must:

- Be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the salary basis test); [174]
- earn at least a designated salary amount (the 2004 final rule set the salary level at $455 per week (the standard salary level test)); and
- primarily perform exempt work, as defined by the regulations (the standard duties test).

The 2004 final rule's HCE test allows certain highly-paid employees to qualify for exemption as long as they customarily and regularly perform one or more exempt job duties. The HCE annual compensation level set in the 2004 final rule was $100,000, including at least $455 per week paid on a salary or fee basis. The CPS annual earnings variable is topcoded at $150,000 (*i.e.,* workers earning above $2,884.61 ($150,000/52 weeks) per week are reported as earning $2,884.61 per week). Topcoding helps protect respondent confidentiality. Because the proposed HCE salary level is close to the topcoded value, the Department imputed earnings for topcoded workers in the CPS data to adequately estimate affected workers when the HCE compensation level exceeds $150,000.[175] [176] Earnings were not imputed for previous rulemakings because the HCE salary level was significantly below the topcoded value.

Salary Basis

The Department included only nonhourly workers in the analysis based on CPS data.[177] For this rulemaking, the Department considered data representing compensation paid to nonhourly workers to be an appropriate proxy for compensation paid to salaried workers. The Department notes that it made the same assumption regarding nonhourly workers in the 2004 final rule.[178]

The CPS population of ''nonhourly'' workers includes workers who are paid on a piece-rate, a day-rate, or largely on bonuses or commissions. Data in the CPS are not available to distinguish between salaried workers and these other nonhourly workers. However, the Panel Study of Income Dynamics (PSID) provides additional information on how nonhourly workers are paid. In the PSID, respondents are asked how they are paid on their main job and are also asked for more detail if their response is other than salaried or hourly. Possible responses include piecework, commission, self-employed/farmer/profits, and by the job/day/mile. The Department analyzed the PSID data and found that relatively few nonhourly workers were paid by methods other than salaried. The Department is not aware of any statistically robust source that more closely reflects salary as defined in its regulations.

Salary Level

Weekly earnings are available in the CPS MORG data, which allowed the Department to estimate how many nonhourly workers pass the salary level tests.[179] However, the CPS earnings variable does not perfectly reflect the Department's definition of earnings. First, the CPS includes all nondiscretionary bonuses and commissions, which may be used to satisfy up to 10 percent of the new standard salary level under this proposed rule. This discrepancy between the earnings variable used and the FLSA definition of salary may cause a slight overestimation of the number of workers estimated to meet the standard salary level test. Second, CPS earnings data includes overtime pay, commissions, and tips. The Department notes that employers may factor into an employee's salary a premium for expected overtime hours worked. To the extent they do so, that premium would be reflected in the data. Similarly, the Department believes tips will be an uncommon form of payment for these workers since tips are uncommon for white collar workers. The Department also believes that commissions make up a relatively small share of earnings among nonhourly employees.[180]

Duties

The CPS MORG data do not capture information about job duties; therefore, the Department used occupational titles, combined with probability estimates of passing the duties test by occupational title, to estimate the number of workers passing the duties test. This methodology is very similar to the methodology used in the 2004 rulemaking, and the Department believes it is the best available methodology. In 2004, to determine whether a worker met the duties test, the Department used an analysis performed by WHD in 1998 in response to a request from the GAO. Because WHD enforces the FLSA's overtime requirements and regularly assesses workers' exempt status, WHD was uniquely qualified to provide the analysis. The analysis was used in both the GAO's 1999 white collar exemptions report [181] and the Department's 2004 regulatory impact analysis.[182]

WHD examined 499 occupational codes, excluding nine that were not relevant to the analysis for various reasons (one code was assigned to unemployed persons whose last job was in the Armed Forces, some codes were assigned to workers who are not FLSA covered, others had no observations). Of the remaining occupational codes, WHD

[174] Some computer employees may be exempt even if they are not paid on a salary basis. Hourly computer employees who earn at least $27.63 per hour and perform certain duties are exempt under section 13(a)(17) of the FLSA. These workers are considered part of the EAP exemptions but were excluded from the analysis because they are paid hourly and will not be affected by this Proposed Rule (these workers were similarly excluded in the 2004 analysis). Salaried computer workers are exempt if they meet the salary and duties tests applicable to the EAP exemptions, and are included in the analysis since they will be impacted by this Proposed Rule. Additionally, administrative and professional employees may be paid on a fee basis, as opposed to a salary basis. § 541.605(a). Although, the CPS MORG does not identify workers paid on a fee basis, they are considered nonhourly workers in the CPS and consequently are correctly classified as ''salaried'' (as was done in the 2004 final rule).

[175] We used the standard Pareto distribution approach to impute earnings above the topcoded value as described in Armour, P. and Burkhauser, R. (2013). Using the Pareto Distribution to Improve Estimates of Topcoded Earnings. Center for Economic Studies (CES).

[176] Earnings exceeding the topcoded value only affect the analyses regarding potential updates.

[177] The CPS variable PEERNHRY identifies workers as either hourly or nonhourly.

[178] *See* 69 FR 22197.

[179] The CPS MORG variable PRERNWA, which measures weekly earnings, is used to identify weekly salary.

[180] In the PSID, relatively few nonhourly workers were paid by commission. Additionally, according to the BLS ECI, about 5 percent of the private workforce is incentive-paid workers (incentive pay is defined as payment that relates earnings to actual individual or group production). *See* William J. Wiatrowski, Bureau of Labor Statistics, The Effect of Incentive Pay on Rates of Change in Wages and Salaries (November 24, 2009), *http://www.bls.gov/opub/mlr/cwc/the-effect-of-incentive-pay-on-rates-of-change-in-wages-and-salaries.pdf,* at 1.

[181] Fair Labor Standards Act: White Collar Exemptions in the Modern Work Place, *supra note* 171, at 40–41, *https://www.gao.gov/assets/230/228036.pdf.*

[182] *See* 69 FR 22198.

determined that 251 occupational codes likely included EAP exempt workers and assigned one of four probability codes reflecting the estimated likelihood, expressed as ranges, that a worker in a specific occupation would perform duties required to meet the EAP duties tests. The Department supplemented this analysis in the 2004 final rule regulatory impact analysis when the HCE exemption was introduced. The Department modified the four probability codes for highly paid workers based upon our analysis of the provisions of the highly compensated test relative to the standard duties test (Table 3). To illustrate, WHD assigned exempt probability code 4 to the occupation ''first-line supervisors/managers of construction trades and extraction workers'' (Census code 6200), which indicates that a worker in this occupation has a 0 to 10 percent likelihood of meeting the standard EAP duties test. However, if that worker earned at least $100,000 annually, he or she was assigned a 15 percent probability of passing the shorter HCE duties test.

The occupations identified in GAO's 1999 report and used by the Department in the 2004 final rule map to an earlier occupational classification scheme (the 1990 Census occupational codes). For this proposed rule, the Department used occupational crosswalks to map the previous occupational codes to the 2002 Census occupational codes and then to the 2010 Census occupational codes, which are used in the CPS MORG 2015 through 2017 data.[183] If a new occupation comprises more than one previous occupation, then the new occupation's probability code is the weighted average of the previous occupations' probability codes, rounded to the closest probability code.

TABLE 3—PROBABILITY WORKER IN CATEGORY PASSES THE DUTIES TEST

Probability code	The standard EAP test		The HCE test	
	Lower bound (%)	Upper bound (%)	Lower bound (%)	Upper bound (%)
0	0	0	0	0
1	90	100	100	100
2	50	90	94	96
3	10	50	58.4	60
4	0	10	15	15

These codes provide information on the likelihood that an employee in a category met the duties test but they do not identify the workers in the CPS MORG who actually passed the test. Therefore, the Department designated workers as exempt or nonexempt based on the probabilities. For example, for every ten public relations managers, between five and nine were estimated to pass the standard duties test (based on probability category 2). However, it is unknown which of these ten workers are exempt; therefore, the Department must determine the status for these workers. Exemption status could be randomly assigned with equal probability, but this would ignore the earnings of the worker as a factor in determining the probability of exemption. The probability of qualifying for the exemption increases with earnings because higher paid workers are more likely to perform the required duties, an assumption to which both the Department in the 2004 final rule and the GAO in its 1999 Report adhered.[184]

The Department estimated the probability of exemption for each worker as a function of both earnings and the occupation's exempt probability category using a gamma distribution.[185] Based on these revised probabilities, each worker was assigned exempt or nonexempt status based on a random draw from a binomial distribution using the worker's revised probability as the probability of success. Thus, if this method is applied to ten workers who each have a 60 percent probability of being exempt, six workers would be expected to be designated as exempt.[186] However, which particular workers are designated as exempt may vary with each set of ten random draws. For details see Appendix A, (in the rulemaking docket).

The Department acknowledges that the probability codes used to determine the share of workers in an occupation who are EAP exempt are 21-years old. However, the Department believes the probability codes continue to estimate exemption status accurately given the fact that the standard duties test is not substantively different from the former short duties tests reflected in the codes. For the 2016 rulemaking, the Department looked at O*NET[187] to determine the extent to which the 1998 probability codes reflected current occupational duties. The Department's review of O*NET verified the continued appropriateness of the 1998 probability codes.

Potentially Affected Exempt EAP Workers

The Department estimated that of the 46.2 million salaried white collar workers considered in the analysis, 31.9 million qualified for the EAP exemption under the current regulations. Some of these workers were excluded from further analysis because the proposed rule would not affect them. This excluded group contains workers in named occupations who are not required to pass the salary requirements

[183] References to occupational codes in this analysis refer to the 2002 Census occupational codes. Crosswalks and methodology available at: *https://www.census.gov/topics/employment/industry-occupation/guidance/code-lists.html.*

[184] For the standard exemption, the relationship between earnings and exemption status is not linear and is better represented with a gamma distribution. For the HCE exemption, the relationship between earnings and exemption can be well represented with a linear function because the relationship is linear at high salary levels (as determined by the Department in the 2004 final rule). Therefore, the gamma model and the linear model would produce similar results. *See* 69 FR 22204–08, 22215–16.

[185] The gamma distribution was chosen because, during the 2004 revision, this non-linear distribution best fit the data compared to the other non-linear distributions considered (*i.e.,* normal and lognormal). A gamma distribution is a general type of statistical distribution that is based on two parameters that control the scale (alpha) and shape (in this context, called the rate parameter, beta).

[186] A binominal distribution is frequently used for a dichotomous variable where there are two possible outcomes; for example, whether one owns a home (outcome of 1) or does not own a home (outcome of 0). Taking a random draw from a binomial distribution results in either a zero or a one based on a probability of ''success'' (outcome of 1). This methodology assigns exempt status to the appropriate share of workers without biasing the results with manual assignment.

[187] The O*NET database contains hundreds of standardized and occupation-specific descriptions. *See http://www.onetcenter.org.*

(although they must still pass a duties test) and therefore whose exemption status does not depend on their earnings. These occupations include physicians (identified with Census occupation codes 3010, 3040, 3060, 3120), lawyers (2100), teachers (occupations 2200–2550 and industries 7860 or 7870), academic administrative personnel (school counselors (occupation 2000 and industries 7860 or 7870) and educational administrators (occupation 0230 and industries 7860 or 7870)), and outside sales workers (a subset of occupation 4950). Out of the 31.9 million workers who were EAP exempt, 7.6 million, or 23.9 percent, were expected to be in named occupations in 2017. Thus, changes in the standard salary level and HCE compensation tests would not affect these workers. The 24.3 million EAP exempt workers remaining in the analysis are referred to in this proposed rule as ''potentially affected.''

Based on analysis of the occupational codes and CPS earnings data (described above), the Department has concluded that in Year 1, in the baseline scenario in which the rule does not change, of the 24.3 million potentially affected EAP workers, approximately 15.8 million will pass only the standard EAP test, 8.2 million will pass both the standard and the HCE tests, and approximately 310,000 will pass only the HCE test.

C. Determining the Revised Salary and Compensation Levels

For the reasons discussed in section IV.A.iii, the Department has decided to update the 2004 standard salary level by reapplying the 2004 methodology. Using pooled 2017 CPS MORG data, the 20th percentile of earnings for full-time salaried workers in the South and/or in the retail industry roughly corresponds to a standard salary level of $641.[188] The proposed rule then inflates this standard salary level to January 2020 by applying 2.5 years of growth, calculated as the compound annual growth rate between a weekly salary level of $455 (based on 2002 data) and a weekly salary level of $641 (based on 2017 data) (2.31 percent).[189] Applying this rate to the $641 salary level results in a January 2020 salary level of $679.

For the HCE compensation level, the Department used 2017 CPS MORG data to ascertain the earnings for the 90th percentile of all full-time salaried workers ($139,464),[190] which, when inflated to January 2020 using the compound annual growth rate between 2002 and 2017 in the HCE compensation level (2.24 percent), results in a proposed HCE annual compensation level of $147,414.[191]

i. Rationale for the Methodologies Chosen

As explained in greater detail earlier in sections IV.A.iii and IV.D, upon further consideration, the Department believes that the earnings thresholds and methodology established in the 2004 final rule—*i.e.,* the $455 per week standard salary level and the $100,000 per year HCE total annual compensation requirement—were appropriate at the time they were adopted. Those thresholds have never been challenged in court, and their use promotes familiarity and stability. The Department accordingly believes that reapplying the 2004 method to update the salary levels set in 2004 to account for earnings growth in the intervening years is also appropriate. The Department proposes to use the same methodology used in 2004 for the standard salary level, setting it at the 20th percentile of full-time salaried workers in the South and/or in the retail sector nationally. The Department proposes to set the HCE total annual compensation requirement using the 2016 final rule methodology, *i.e.,* equivalent to the earnings of the 90th percentile of all full-time salaried workers nationally. The Department proposes to then inflate the salary levels to their anticipated value in January 2020.

As an alternative, the Department also considered setting the standard salary level by adjusting the 2004 earnings threshold levels for inflation, that is, a sustained increase in the general price level of goods and services over time that can undermine the effectiveness of the part 541 earnings thresholds. The Department considered using price indices such as the Personal Consumption Expenditures Price Index (PCEPI), the Consumer Price Index for All Urban Consumers (CPI–U), and the Chained CPI–U; as well as a wage-based measure such as the Employment Cost Index (ECI).

The Department decided against using an index to adjust the 2004 salary level for inflation, because it is not as straightforward, consistent, or accurate as using current salary data. The Department believes that an approach that simply updates the 2004 methodology with current data is preferable to an entirely new methodology. Table 4 presents possible 2017 standard salary levels as calculated using each alternative approach considered:

- Alternative 0: Maintain the average minimum wage protection in place since 2004.
- Alternative 1: Inflate the 2004 weekly salary level using the PCEPI.
- Alternative 2: Inflate the 2004 weekly salary level using Chained CPI–U.
- Alternative 3: Inflate the 2004 weekly salary level using CPI–U.
- Alternative 4: Inflate the 2004 weekly salary level using the ECI for wages and salaries for civilian workers.
- Alternative 5: Inflate the 2004 weekly salary level using the ECI for wages and salaries for private sector workers.

Table 5 projects the selected 2017 standard salary level of $641 to January 2020 using each of the inflation indices considered above.

Section VI.D details the transfers, costs, and benefits of the proposed new salary level and the above alternatives.

TABLE 4—STANDARD SALARY LEVEL AND ALTERNATIVES IN 2017

Alternative	2017 salary level (weekly/annually)	Total increase [a]	
		$	%
Alt. #0: Maintain average minimum wage protection since 2004 [d]	$503/$26,156	48	10.5
Alt. #1: Inflate 2004 level using PCEPI [b]	597/31,044	142	31.2
Alt. #2: Inflate 2004 level using Chained CPI [b]	599/31,148	144	31.6

[188] Excluding workers who are not subject to FLSA, not subject to the salary level test, or in some agriculture or transportation occupations.

[189] The standard salary level of $641 per week was calculated from 2017 CPS MORG data that included the entire 2017 calendar year. Thus, the value reflects an average over the entire calendar year, and is best characterized as representing the salary level at the midpoint of 2017 (*i.e.,* July 1). Therefore, the Department inflated both the 2017 standard salary and HCE earnings levels 2.5 years to estimate the value for January 1, 2020.

[190] BLS. Available at: *https://www.bls.gov/cps/research_nonhourly_earnings_2017.htm.*

[191] The Department used 2002 data to determine the 2004 HCE earnings level.

TABLE 4—STANDARD SALARY LEVEL AND ALTERNATIVES IN 2017—Continued

Alternative	2017 salary level (weekly/annually)	Total increase [a]	
		$	%
Alt. #3: Inflate 2004 level using CPI–U [b]	620/32,240	165	36.3
Alt. #4: Inflate 2004 level using ECI civilian [b]	639/33,228	184	40.4
Proposed rule: 2004 method [c]	641/$33,332	186	40.9
Alt. #5: Inflate 2004 level using ECI private [b]	643/$33,436	188	41.3

[a] Change between salary level or alternative and the salary level set in 2004 ($455 per week).
[b] Inflated using growth in the index from 2002 to 2017.
[c] Calculated using pooled 2015–2017 CPS MORG data.
[d] When the $455 weekly threshold was established in 2004, the federal minimum wage was $5.15, so the salary threshold was equivalent to the earnings of an employee working 72.2 hours at the minimum wage (including time-and-a-half for hours beyond the fortieth in a week). That amount fell with increases in the minimum wage and is now 55.2 hours. The weighted average across the 15 years since the overtime threshold was last changed is 59.6 hours, and a threshold that would provide 59.6 hours of $7.25 minimum wage protection and overtime pay for hours over 40 would be $503.

TABLE 5—ALTERNATIVES FOR PROJECTING THE 2017 EARNINGS LEVELS TO JANUARY 2020

Alternative	Standard salary level		HCE level	
	January 2020 levels	Annual growth rate (%)	January 2020 levels	Annual growth rate (%)
Inflate 2017 levels using PCEPI	$671	1.83	$145,919	1.83
Inflate 2017 levels using Chained CPI–U	671	1.86	146,023	1.86
Inflate 2017 levels using CPI–U	675	2.08	146,843	2.08
Inflate 2017 levels using ECI civilian	678	2.29	147,593	2.29
Proposed rule: Inflate 2017 levels using growth in earnings levels	679	2.31	147,414	2.24
Inflate 2017 levels using ECI private	679	2.33	147,742	2.33

iii. Methodology for the HCE Total Annual Compensation Level and Alternative Methods

For the reasons described above, the Department proposes to update the HCE compensation level using earnings for the 90th percentile of all full-time salaried workers nationally ($139,464 in 2017), inflated to January 2020 by applying the average growth in the HCE compensation levels between 2002 and 2017 (2.24 percent annually). The proposed HCE compensation level is $147,414 in January 2020.

The Department also evaluated the following alternative HCE compensation levels:

- HCE alternative 1: Leave the HCE compensation level unchanged at $100,000 per year.
- HCE alternative 2: Inflate the 2004 level using the PCEPI.
- HCE alternative 3: Inflate the 2004 level using Chained CPI–U
- HCE alternative 4: Inflate the 2004 level using CPI–U.
- HCE alternative 5: Inflate the 2004 level using the ECI for wages and salaries for civilian workers.
- HCE alternative 6: Inflate the 2004 level using the ECI for wages and salaries for private sector workers.

Table 6 presents possible 2017 HCE levels as calculated using each alternative approach considered.

TABLE 6—HCE COMPENSATION LEVELS AND ALTERNATIVES IN 2017

Alternative	Salary level (weekly/annually)	Total increase [a]	
		$	%
HCE alt. #1: No change	$1,923/$100,000	0	0.0
HCE alt. #2: Inflate 2004 level using PCEPI [b]	2,523/131,189	31,189	31.2
HCE alt. #3: Inflate 2004 level using Chained CPI [b]	2,534/131,750	31,750	31.8
HCE alt. #4: Inflate 2004 level using CPI–U [b]	2,620/136,253	36,253	36.3
Proposed rule: 90th percentile of full-time salaried workers [c]	2,682/139,464	39,464	39.5
HCE alt. #5: Inflate 2004 level using ECI civilian	2,702/140,480	40,480	40.5
HCE alt. #6: Inflate 2004 level using ECI private	2,718/141,337	41,337	41.3

[a] Change between updated/alternative compensation level and the compensation level set in 2004 ($100,000 annually).
[b] Inflated using growth in the index from 2002 to 2017.
[c] 2017 salary level available at: *https://www.bls.gov/cps/research_nonhourly_earnings_2017.htm.*

D. Effects of Revised Salary and Compensation Levels

i. Overview and Summary of Quantified Effects

The economic effects of increasing the EAP salary and compensation levels will depend on how employers respond. Employer response is expected to vary by the characteristics of the affected EAP workers. Transfers from employers to employees and between employees, and direct employer costs depend on how employers respond to finalization of the proposed rule.

The Department anticipates that the proposed rule, once finalized, will become effective in 2020. Its proposed standard salary level is derived using the 2004 methodology, and the HCE compensation level is derived using the 2016 methodology, in both cases using 2017 CPS data, then projecting these levels to January 2020.

Given that the Department is using 2017 CPS MORG employment and earnings data—the most recent data available at the time of analysis—to estimate the economic effects of the proposed rule taking effect in 2020, and given that such data will change between now and 2020, there are two options to measure the economic effects of the proposed rule upon taking effect. One option would be to use the proposed standard salary and HCE total compensation levels and project the CPS MORG data forward to 2020. However, such a projection would add ''noise'' to the CPS MORG data, making an analysis using such projections less accurate. A second option would be to measure the economic effects of the proposed rule by using the most recent CPS MORG data to determine the 2017 standard salary and HCE compensation levels as if the rule were to be promulgated in 2017. The potential impacts of the rule are then assessed using 2017 population characteristics. When measuring the number of workers affected, using a 2017 salary level on the 2017 CPS MORG data is a good approximation of a 2020 level on the earnings data of workers in 2020, so the second option better reflects the economic effects of the proposed rule than the first option. Therefore, the Department chose to analyze the economic effects of a standard salary level of $641 per week and an annual HCE compensation level of $139,464 using 2017 CPS MORG data as the best representation of likely economic effects of the proposed standard salary level of $679 per week and an annual HCE compensation level of $147,414 taking effect in 2020.

Table 7 presents the estimated number of affected workers, costs, and transfers associated with increasing the salary and compensation levels. The Department estimated that the direct employer costs of this proposed rule would total $464.2 million in the first year, with 10-year annualized direct costs of $112.6 million per year using a 3 percent real discount rate and $120.5 million per year using a 7 percent real rate.

In addition to these direct costs, this proposed rule would transfer income from employers to employees. Year 1 transfers would equal $526.9 million, with annualized transfers estimated at $428.0 million and $429.4 million per year using the 3-percent and 7-percent real discount rates, respectively. Potential employer costs due to reduced profits and additional hiring were not quantified but are discussed in section VI.D.iii.

TABLE 7—SUMMARY OF AFFECTED WORKERS AND REGULATORY COSTS AND TRANSFERS, STANDARD AND HCE EARNINGS THRESHOLDS

Impact [a]	Year 1	Future years [b]		Annualized value	
		Year 2	Year 10	3% Real Discount Rate	7% Real Discount Rate
Affected Workers (1000s)					
Standard	1,070	1,027	625	.....	.....
HCE	201	215	426	.....	.....
Total	1,271	1,241	1,051	.....	.....
Direct Employer Costs (Millions in 2017$)					
Regulatory familiarization	$324.9	$0.0	$0.0	$37.0	$43.2
Adjustment [c]	66.6	1.5	3.6	10.0	11.2
Managerial	72.7	72.7	64.2	65.6	66.0
Total direct costs [d]	464.2	74.2	67.8	112.6	120.5
Transfers from Employers to Workers (Millions in 2017) [e]					
Due to minimum wage	57.0	30.4	17.6	27.7	28.6
Due to overtime pay	469.9	390.9	429.5	400.3	400.7
Total transfers [d]	526.9	421.3	447.1	428.0	429.4

[a] Additional costs and benefits of the rule that could not be quantified or monetized are discussed in the text.

[b] These costs/transfers represent a range over the nine-year span.

[c] Adjustment costs occur in all years when there are newly affected workers. Adjustment costs may occur in years without updated earnings thresholds because some workers' projected earnings are estimated using negative earnings growth.

[d] Components may not add to total due to rounding.

[e] This is the net transfer from employers to workers. There may also be transfers between workers.

ii. Affected EAP Workers

1. Overview

The Department estimated there are 24.3 million potentially affected EAP workers—that is, EAP workers who either (1) passed the salary basis test, the standard salary level test, and the standard duties test, or (2) passed the salary basis test, the standard salary level test, the HCE total compensation level test, and the HCE duties test (but not the standard duties test). This number excluded workers in named occupations, who are not subject to the salary tests, or those who qualify for another (non-EAP) exemption.

Using the proposed method described above, the Department estimated that if the rule were promulgated today, the standard salary level would increase from $455 per week to $641 per week and would affect 1.1 million exempt workers in Year 1 (Figure 2).[192] Based on currently available data, the Department projects that if the final rule becomes effective in 2020, the standard salary level will be $679 per week. The Department also estimated that the HCE annual compensation level would increase from $100,000 to $139,464 if the rule went into effect today, and 201,100 workers would be affected in Year 1 (the number of workers who earn at least $100,000 but less than $139,464 and pass the minimal HCE duties test but not the standard duties test).[193] The Department projects that if the final rule takes effect in 2020, the HCE compensation level will be $147,414. In total, the Department expects that 1.3 million workers will be affected in Year 1 by the proposed earnings threshold increases, composing about 5.2 percent of the pool of potentially affected EAP workers.

Figure 2: Number of Affected Workers in Year 1

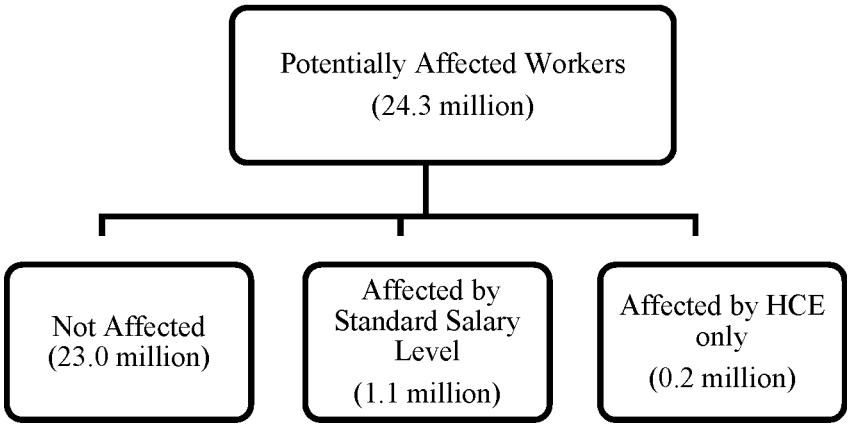


Table 8 presents the number of affected EAP workers, the mean number of overtime hours they work per week, and their average weekly earnings. The 1.1 million workers affected by the increase in the standard salary level work on average 1.6 usual hours of overtime per week and earn on average $564 per week.[194] However, the majority of these workers (about 86 percent) work zero usual hours of overtime. The 14 percent of affected workers who regularly work overtime average 11.4 hours of overtime per week. The 201,100 EAP workers affected by the change in the HCE compensation level average 4.9 hours of overtime per week and earn an average of $2,179 per week ($113,327 per year). About 60 percent of these workers work zero usual hours of overtime while the 40 percent who work usual hours of overtime average 12.4 hours of overtime per week.

Although most affected EAP workers who typically do not work overtime are unlikely to experience significant changes in their daily work routine, those who regularly work overtime may experience significant changes. Moreover, affected EAP workers who routinely work overtime and earn less than the minimum wage are most likely to experience significant changes because of the revised standard salary level.[195] Employers might respond by paying overtime premiums; reducing or eliminating overtime hours; reducing employees' regular wage rates (provided that the reduced rates still exceed the minimum wage); increasing employees' salary to the updated salary level to preserve their exempt status (although this will be less common for affected workers earning below the minimum wage); or using some combination of these responses.

[192] This group includes workers who may currently be nonexempt under more protective state EAP laws and regulations, such as some workers in Alaska, California, and New York.

[193] The 2016 final rule applied joint probabilities to estimate the number of affected HCE workers (*i.e.,* the number of HCE workers who pass the HCE duties test but fail the standard duties test). In order to provide a more accurate estimate, this NPRM applies conditional probabilities to determine the number of affected HCE workers.

[194] CPS defines ''usual hours'' as hours worked 50 percent or more of the time.

[195] A small proportion (1.4 percent) of affected EAP workers earn implicit hourly wages that are less than the applicable minimum wage (the higher of the state or federal minimum wage). The implicit hourly wage is calculated as an affected EAP employee's total weekly earnings divided by total weekly hours worked. For example, workers earning the currently enforced $455 per week standard salary level would earn less than the federal minimum wage if they work 63 or more hours in a week ($455/63 hours = $7.22 per hour).

TABLE 8—NUMBER OF AFFECTED EAP WORKERS, MEAN OVERTIME HOURS, AND MEAN WEEKLY EARNINGS, YEAR 1

Type of affected EAP worker	Affected EAP Workers [a]		Mean overtime hours	Mean usual weekly earnings
	Number (1,000s)	% of total		
Standard Salary Level				
All affected EAP workers	1,070	100	1.6	$564
Earn less than the minimum wage [b]	15	1.4	24.1	516
Regularly work overtime	152	14.2	11.4	562
CPS occasionally work overtime [c]	41	3.8	8.2	566
HCE Compensation Level				
All affected EAP workers	201	100	4.9	2,179
Earn less than the minimum wage [b]	.....	.....	.....	.....
Regularly work overtime	80	39.8	12.4	2,198
CPS occasionally work overtime [c]	10	4.9	9.3	2,140

Note: Pooled data for 2015–2017 adjusted to reflect 2017.
[a] Estimated number of workers exempt under the EAP exemptions who would be entitled to overtime protection under the updated salary levels (if their weekly earnings do not increase to the new salary levels).
[b] The applicable minimum wage is the higher of the federal minimum wage and the state minimum wage. HCE workers will not be affected by the minimum wage provision. These workers all regularly work overtime and are also included in that row.
[c] Workers who do not usually work overtime but did in the CPS reference week. Mean overtime hours are actual overtime hours in the reference week. Other workers may occasionally work overtime in other weeks. These workers are identified later.

The Department considered two types of overtime workers in this analysis: Regular overtime workers and occasional overtime workers.[196] Regular overtime workers typically worked more than 40 hours per week. Occasional overtime workers typically worked 40 hours or less per week, but they worked more than 40 hours in the week they were surveyed. The Department considered these two populations separately in the analysis because labor market responses to overtime pay requirements may differ for these two types of workers.

In a representative week, the increases in the standard salary level and the HCE compensation level affected an estimated 51,000 occasional overtime workers (4.0 percent of all affected EAP workers). They averaged 8.4 hours of overtime in the weeks they worked overtime. This group represents the number of workers with occasional overtime hours in the week the CPS MORG survey was conducted. Because the survey week is a representative week, the Department believes the prevalence of occasional overtime in the survey week, and the characteristics of these workers, is representative of other weeks (even though a different group of workers would be identified as occasional overtime workers in a different week).

2. Characteristics of Affected EAP Workers

In this section, the Department examined the characteristics of EAP workers whom the proposed rule would affect. Table 9 presents the distribution of affected EAP workers by industry and occupation, using Census industry and occupation codes. The industry with the most affected EAP workers would be education and health services (293,000), while the industry with the highest percentage of affected EAP workers would be leisure and hospitality (about 10 percent). The occupation category with the most affected EAP workers would be management, business, and financial (484,000), while the occupation category with the highest percentage of affected EAP workers would be in services (about 14 percent).

Finally, approximately 7 percent of potentially affected workers in private nonprofits would be affected compared with about 5 percent in private for-profit firms. However, as discussed in section VI.B.iii, our estimates of workers subject to the FLSA include workers employed by enterprises that do not meet the enterprise coverage requirements because there is no reliable way of estimating that population. Although failing to exclude workers who work for non-covered enterprises would only affect a small percentage of workers generally, it may have a larger effect (and result in a larger overestimate) for workers in nonprofits because when determining enterprise coverage only revenue derived from business operations, not charitable activities, is included.

TABLE 9—ESTIMATED NUMBER OF EXEMPT WORKERS WITH THE CURRENT AND UPDATED SALARY LEVELS, BY INDUSTRY AND OCCUPATION, YEAR 1

Industry/occupation/nonprofit	Workers subject to FLSA (millions)	Potentially affected EAP workers (millions) [a]	Not-affected (millions) [b]	Affected (millions) [c]	Affected as share of potentially affected (%)
Total	135.92	24.29	23.02	1.27	5.2
By Industry [d]					
Agriculture, forestry, fishing, & hunting	1.28	0.04	0.04	0.00	5.7

[196] Regular overtime workers were identified in the CPS MORG with variable PEHRUSL1. Occasional overtime workers were identified with variables PEHRUSL1 and PEHRACT1.

TABLE 9—ESTIMATED NUMBER OF EXEMPT WORKERS WITH THE CURRENT AND UPDATED SALARY LEVELS, BY INDUSTRY AND OCCUPATION, YEAR 1—Continued

Industry/occupation/nonprofit	Workers subject to FLSA (millions)	Potentially affected EAP workers (millions) [a]	Not-affected (millions) [b]	Affected (millions) [c]	Affected as share of potentially affected (%)
Mining	0.81	0.21	0.20	0.01	2.7
Construction	7.92	0.91	0.88	0.04	4.2
Manufacturing	15.34	3.50	3.39	0.11	3.1
Wholesale & retail trade	19.18	2.55	2.37	0.18	6.9
Transportation & utilities	7.30	0.88	0.84	0.05	5.3
Information	2.73	0.95	0.90	0.05	5.2
Financial activities	9.46	3.65	3.48	0.17	4.6
Professional & business services	15.02	5.24	5.05	0.19	3.7
Education & health services	33.26	3.98	3.69	0.293	7.4
Leisure & hospitality	12.96	0.86	0.78	0.08	9.5
Other services	5.44	0.61	0.56	0.05	8.5
Public administration	5.24	0.90	0.84	0.05	6.1
By Occupation [d]					
Management, business, & financial	20.29	12.23	11.75	0.48	4.0
Professional & related	31.48	8.34	7.93	0.41	4.9
Services	23.71	0.20	0.18	0.03	14.5
Sales and related	13.77	2.34	2.13	0.21	9.0
Office & administrative support	17.72	0.96	0.84	0.12	12.3
Farming, fishing, & forestry	0.96	0.00	0.00	0.00	0.0
Construction & extraction	6.41	0.02	0.02	0.00	6.8
Installation, maintenance, & repair	4.58	0.04	0.04	0.00	7.5
Production	8.43	0.10	0.09	0.01	8.0
Transportation & material moving	8.57	0.04	0.03	0.01	13.3
By Nonprofit and Government Status					
Nonprofit, private	9.46	1.93	1.80	0.13	6.6
For profit, private	107.97	20.36	19.35	1.01	5.0
Government (state, local, and federal)	18.49	2.00	1.86	0.13	6.6

Note: Pooled data for 2015–2017 adjusted to reflect 2017.
[a] Exempt workers who are white collar, salaried, not eligible for another (non-EAP) overtime exemption, and not in a named occupation.
[b] Workers who continue to be exempt after the increases in the salary levels (assuming affected workers' weekly earnings do not increase to the new salary level).
[c] Estimated number of workers exempt under the EAP exemptions who would be entitled to overtime protection under the updated salary levels (if their weekly earnings do not increase to the new salary levels).
[d] Census industry and occupation categories.

Table 10 presents the distribution of affected EAP workers based on Census Regions and divisions, and metropolitan statistical area (MSA) status. The region with the most affected workers would be the South (544,000), but the South's percentage of affected workers is similar to other regions (6.4 percent as compared to 4.4 to 5.0 percent elsewhere). Although 89 percent of affected EAP workers would reside in MSAs (1.14 of 1.27 million), so do a corresponding 88 percent of all workers subject to the FLSA.[197]

Employers in low-wage industries, regions, and non-metropolitan areas may be more affected because they typically pay lower wages and salaries. However, the Department believes the salary level adopted in this proposed rule is appropriate for these lower-wage sectors because the methodology used in 2004, and applied for this rulemaking, used earnings data in the low-wage retail industry and the low-wage Southern region. Effects by region and industry are considered in section VI.D.vi.

TABLE 10—ESTIMATED NUMBER OF POTENTIALLY AFFECTED EAP WORKERS WITH THE CURRENT AND UPDATED SALARY LEVELS, BY REGION, DIVISION, AND MSA STATUS, YEAR 1

Region/division/metropolitan status	Workers subject to FLSA (millions)	Potentially affected EAP workers (millions) [a]	Not-affected (millions) [b]	Affected (millions) [c]	Affected as share of potentially affected
Total	135.92	24.29	23.02	1.27	5.2

[197] Identified with CPS MORG variable GTMETSTA.

TABLE 10—ESTIMATED NUMBER OF POTENTIALLY AFFECTED EAP WORKERS WITH THE CURRENT AND UPDATED SALARY LEVELS, BY REGION, DIVISION, AND MSA STATUS, YEAR 1—Continued

Region/division/metropolitan status	Workers subject to FLSA (millions)	Potentially affected EAP workers (millions) [a]	Not-affected (millions) [b]	Affected (millions) [c]	Affected as share of potentially affected
By Region/Division					
Northeast	*24.99*	*5.09*	*4.86*	*0.23*	*4.4*
New England	6.81	1.46	1.40	0.06	3.9
Middle Atlantic	18.18	3.63	3.46	0.17	4.7
Midwest	*30.05*	*5.03*	*4.78*	*0.25*	*5.0*
East North Central	20.38	3.43	3.26	0.17	5.0
West North Central	9.67	1.60	1.51	0.08	5.0
South	*49.36*	*8.53*	*7.99*	*0.54*	*6.4*
South Atlantic	25.88	4.80	4.49	0.31	6.4
East South Central	7.38	0.99	0.92	0.07	7.5
West South Central	16.10	2.74	2.58	0.16	6.0
West	*31.52*	*5.64*	*5.39*	*0.25*	*4.5*
Mountain	9.93	1.66	1.57	0.09	5.3
Pacific	21.59	3.98	3.82	0.16	4.1
By Metropolitan Status					
Metropolitan	118.99	22.66	21.53	1.14	5.0
Non-metropolitan	15.94	1.52	1.40	0.13	8.3
Not identified	0.99	0.10	0.09	0.01	8.9

Note: Pooled data for 2015–2017 adjusted to reflect 2017.
[a] Exempt workers who are white collar, salaried, not eligible for another (non-EAP) overtime exemption, and not in a named occupation.
[b] Workers who continue to be exempt after the increases in the salary levels (assuming affected workers' weekly earnings do not increase to the new salary level).
[c] Estimated number of workers exempt under the EAP exemptions who would be entitled to overtime protection under the updated salary levels (if their weekly earnings do not increase to the new salary levels).

iii. Costs

1. Summary

The Department quantified three direct costs to employers in this analysis: (1) Regulatory familiarization costs; (2) adjustment costs; and (3) managerial costs. The Department estimated costs for Year 1 assuming that the rule will go into effect in 2020 (Table 11). The Department estimated that in Year 1, regulatory familiarization costs would be $324.9 million, adjustment costs would be $66.6 million, and managerial costs would be $72.7 million. Total direct employer costs in Year 1 would be $464.2 million.

TABLE 11—SUMMARY OF YEAR 1 DIRECT EMPLOYER COSTS

[Millions]

Direct employer costs	Standard salary level	HCE compensation level	Total
Regulatory familiarization [a]	.....	.....	$324.9
Adjustment	$56.1	$10.5	$66.6
Managerial	55.4	17.3	72.7
Total direct costs	111.4	27.9	464.2

[a] Regulatory familiarization costs are assessed jointly for the change in the standard salary level and the HCE compensation level.

Adjustment costs and management costs are recurring, so we also projected them for years 2 through 10 in section VI.D.viii. The Department discusses costs that are not quantified in section VI.D.iii.5.

2. Regulatory Familiarization Costs

Changing the standard salary level and the HCE total compensation level will impose direct costs on firms by requiring them to review the regulation. To estimate these ''regulatory familiarization costs,'' three pieces of information must be estimated: (1) The number of affected establishments; (2) a wage level for the employees reviewing the rule; and (3) the amount of time employees spend reviewing the rule.

It is unclear whether regulatory familiarization costs are a function of the number of establishments or the number of firms. To avoid underestimating these costs, the Department assumed that regulatory familiarization occurs at a decentralized level and used the number of establishments in its cost estimate; this results in a higher estimate than would result from using the number of firms. The most recent data on private sector establishments at the time this NPRM was drafted are from the 2015 Statistics of U.S. Businesses (SUSB), which reports 7.66 million establishments with paid employees.[198] Additionally, there were an estimated 90,106 state and local governments in 2012, the most recent

[198] Statistics of U.S. Businesses 2015, *https://www.census.gov/programs-surveys/susb.html.*

data available.[199] We thus estimated 7.75 million establishments altogether.

The Department believes that all establishments will incur some regulatory familiarization costs, even if they do not employ exempt workers, because all establishments will need to confirm whether this proposed rule includes any provisions that may affect their employees. Firms with more affected EAP workers will likely spend more time reviewing the regulation than firms with fewer or no affected EAP workers (since a careful reading of the regulation will probably follow the initial decision that the firm is affected). However, the Department did not know the distribution of affected EAP workers across firms, so it used an average cost per establishment.

The Department believes one hour per establishment is appropriate because the EAP exemptions have existed in one form or another since 1938. The most significant change proposed by this rulemaking is setting a new standard salary level for exempt workers, and the proposed changed regulatory text is only a few pages. The Department thus believes that one hour is an appropriate average estimate for the time each establishment will spend reviewing the changes made by this rulemaking. Time spent to implement the necessary changes was included in adjustment costs. The Department invites comments and data on the time required for regulatory familiarization.

The Department's analysis assumed that mid-level human resource workers with a median wage of $25.64 per hour will review the proposed rule.[200] The Department also assumed that benefits are paid at a rate of 46 percent of the base wage [201] and overhead costs are paid at a rate of 17 percent of the base wage,[202] resulting in an hourly rate of $41.91. The Department thus estimates regulatory familiarization costs in Year 1 would be $324.9 million ($41.91 per hour × 1 hour × 7.75 million establishments).[203]

3. Adjustment Costs

Changes in the standard salary level and HCE compensation level would also impose direct costs on firms by requiring them to evaluate the exemption status of employees, update and adapt overtime policies, notify employees of policy changes, and adjust their payroll systems.[204] The Department believes the size of these ''adjustment costs'' will depend on the number of affected EAP workers and will occur in any year when exemption status is changed for any workers. To estimate adjustment costs, three pieces of information must be estimated: (1) A wage level for the employees making the adjustments; (2) the amount of time spent making the adjustments; and (3) the estimated number of newly affected EAP workers. The Department again estimated that the average wage with benefits and overhead costs for a mid-level human resource worker would be $41.91 per hour (as explained above).

The Department estimated that it will take establishments an average of 75 minutes per affected worker to make the necessary adjustments. Little applicable data were identified from which to estimate the amount of time required to make these adjustments.[205] Therefore, the Department used the estimate of 1.25 hours from the 2016 final rule after reviewing public comments on the 2015 NPRM. The estimated number of affected EAP workers in Year 1 is 1.3 million (as discussed in section VI.D.ii). Therefore, total Year 1 adjustment costs would be $66.6 million ($41.91 × 1.25 hours × 1.3 million workers).

A reduction in the cost to employers of determining employees' exempt status may partially offset adjustment costs. Currently, to determine whether an employee is exempt, employers must apply the duties test to salaried workers who earn at least $455 per week. If finalized as proposed, firms will no longer be required to apply the potentially time-consuming duties test to employees earning less than the proposed standard salary level. This will be a clear cost savings to employers for the approximately 3.6 million salaried employees (2.0 million in white collar occupations and 1.6 million in blue collar occupations) who do not pass the duties test and earn at least $455 per week but less than the updated salary level. The Department did not estimate the potential size of this cost savings.

4. Managerial Costs

If employers reclassify employees as overtime-eligible due to the changes in the salary levels, then firms may incur ongoing managerial costs because the employer may spend more time developing work schedules and closely monitoring an employee's hours to minimize or avoid overtime. For example, the manager of a reclassified worker may have to assess whether the marginal benefit of scheduling the worker for more than 40 hours exceeds the marginal cost of paying the overtime premium. Additionally, the manager may have to spend more time monitoring the employee's work and productivity since the marginal cost of employing the worker per hour has increased. Unlike regulatory familiarization and adjustment costs, which occur primarily in Year 1, managerial costs are incurred more uniformly every year.

There was little precedent or data to aid in evaluating these costs. With the exception of the 2016 rulemaking, prior part 541 rulemakings did not estimate managerial costs. The Department likewise found no estimates of managerial costs after reviewing the literature. We thus used the same methodology as the 2016 final rule, which the Department adopted after considering comments on the 2015 NPRM.

The Department applied managerial costs to workers who (1) are reclassified as nonexempt, overtime-protected and (2) either regularly work overtime or occasionally work overtime, but on a

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[199] 2012 Census of Governments: Government Organization Summary Report, *http://www2.census.gov/govs/cog/g12_org.pdf.*

[200] The median wage in the pooled 2017 CPS data for workers with the Census 2010 occupations ''human resources workers'' (0630); ''compensation, benefits, and job analysis specialists'' (0640); and ''training and development specialists'' (0650). The Department determined these occupations include most of the workers who would conduct these tasks. *See* Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook.

[201] The benefits-earnings ratio is derived from the BLS's Employer Costs for Employee Compensation data using variables CMU1020000000000D and CMU1030000000000D. This fringe benefit rate includes some fixed costs such as health insurance.

[202] The Department believes that the overhead costs associated with this rule are small because existing systems maintained by employers to track currently hourly employees can be used for newly overtime eligible workers. However, acknowledging that there might be additional overhead costs, we have included an overhead rate of 17 percent. Because the 2016 final rule did not include overhead costs in its cost and transfer estimates, estimated costs and transfers associated with the 2016 final rule have been recalculated for comparison purposes in section VI.D.ix.

[203] As previously noted, the Department used the number of establishments rather than the number of firms, which results in a higher estimate of the regulatory familiarization cost. Using the number of firms, 6.0 million, would result in a reduced regulatory familiarization cost estimate of $251.1 million in Year 1.

[204] While some companies may need to reconfigure information technology systems to include both exempt and overtime-protected workers, the Department notes that most organizations affected by the rule already employ overtime-eligible workers and have in place payroll systems and personnel practices (*e.g.,* requiring advance authorization for overtime hours) so that additional costs associated with the rule should be relatively small in the short run.

[205] Costs from the 2004 final rule were considered, but because that revision included changes to the duties test, the cost estimates are not directly applicable; in addition, the 2004 final rule did not separately account for managerial costs. The 2015 NPRM separately accounted for managerial costs. Some commenters responded with higher time estimates, but these estimates were not substantiated with data or were considered excessive.

predictable basis—an estimated 344,300 workers (see Table 14 and accompanying explanation). The Department estimated these costs assuming that management spends an additional five minutes per week scheduling and monitoring each affected worker expected to be reclassified as nonexempt, overtime-eligible as a result of this rule, and whose hours are adjusted. As discussed in detail below, most affected workers do not currently work overtime, and there is no reason to expect their hours worked to change when their status changes from exempt to nonexempt. For that group of workers, management will have little or no need to increase their monitoring of hours worked; therefore, these workers are not included in the managerial cost calculation. Under these assumptions, the additional managerial hours worked per week would be 28,700 hours ((5 minutes/60 minutes) × 344,300 workers).

The median hourly wage in 2017 for a manager was $29.81 and benefits were estimated to be paid at a rate of 46 percent of the base wage.[206] Together with the 17 percent overhead costs used for this analysis, this totals $48.72 per hour. Thus, the Year 1 managerial costs would total $72.7 million (28,700 hours/week × 52 weeks × $48.72/hour). Although the exact magnitude would vary with the number of affected EAP workers each year, employers would incur managerial costs annually.

The Department believes that most companies already manage a mix of exempt and nonexempt employees and have policies and recordkeeping systems in place for nonexempt employees. Thus, most companies would be unlikely to purchase systems or hire additional monitoring personnel as a result of this rulemaking. Moreover, this rulemaking would not impose any new recordkeeping requirements.

5. Other Potential Costs

In addition to the costs discussed above, the proposed rule may impose additional costs that have not been quantified. These costs are discussed qualitatively below, but we note that in some cases (*e.g.,* schedule flexibility, salaried status) these costs may directly affect workers' wages because they face a tradeoff in the labor market between cash wages and the nonpecuniary aspects of jobs.[207]

Reduced Scheduling Flexibility

Exempt workers may enjoy more scheduling flexibility because their hours are less likely to be monitored than nonexempt workers. If so, the proposed rule could impose costs on newly nonexempt, overtime-eligible workers by, for example, limiting their ability to adjust their schedules to meet personal and family obligations. But the proposed rule does not require employers to reduce scheduling flexibility. Employers can continue to offer flexible schedules and require workers to monitor their own hours and to follow the employers' timekeeping rules. Additionally, some exempt workers already monitor their hours for billing purposes. For these reasons, and because there is little data or literature on these costs, the Department did not quantify potential costs regarding scheduling flexibility.

Preference for Salaried Status

Some of the workers that become nonexempt as a result of the proposed rule and are changed by their employer from salaried to hourly status may have preferred to remain salaried. Research has shown that salaried workers are more likely than hourly workers to receive benefits such as paid vacation time and health insurance,[208] and are more satisfied with their benefits.[209] Additionally, when employer demand for labor decreases, hourly workers tend to see their hours cut before salaried workers, making earnings for hourly workers less predictable.[210] However, this literature generally does not control for differences between salaried and hourly workers such as education, job title, or earnings; therefore, this correlation is not necessarily attributable to hourly status.

If workers are reclassified as hourly, and hourly workers have fewer benefits than salaried workers, this could reduce workers' benefits. But the Department notes that this rule does not require such reclassification. These workers may continue to be paid a salary, as long as that salary is equivalent to a base wage at least equal to the minimum wage rate for every hour worked, and the employee receives a 50 percent premium on that base wage for any overtime hours each week.[211]

Quality of Services

To the extent that employers respond to this rule by restricting employee work hours, this rulemaking could negatively affect the quality of public services provided by local governments and nonprofits. However, the Department believes the effect of the rule on public services will be small. The Department acknowledges that some employees who work overtime providing public services may see a reduction in hours as an effect of the rulemaking. But if the services are in demand, the Department believes additional workers may be hired, as funding availability allows, to make up some of these hours, and productivity increases may offset some reduction in services. In addition, the Department expects many employers will adjust base wages downward to some degree so that even after paying the overtime premium, overall pay and hours of work for many employees will be relatively minimally impacted. Additionally, as noted above, many nonprofits are non-covered enterprises because when determining enterprise coverage only revenue derived from business operations, not charitable activities, are included.

Increased Prices

Business firms may pass along increased labor costs to consumers through higher prices. The Department anticipates that some firms may offset part of the additional labor costs through charging higher prices for the firms' goods and services. However, because costs and transfers are, on average, small relative to payroll and revenues, the Department does not expect the proposed rule to have a significant effect on prices. The Department estimated that, on average, costs and transfers make up less than 0.02 percent of payroll and less than 0.003 percent of revenues, although for specific industries and firms this percentage may be larger. Therefore, any potential change in prices would be modest. Further, any significant price increases would not represent a separate category of effects from those estimated

[206] Calculated as the projected median wage in the CPS for workers in management occupations (excluding chief executives) in 2015–2017, adjusted to reflect 2017. The adjustment ratio is derived from the BLS' Employer Costs for Employee Compensation data using variables CMU1020000000000D and CMU1030000000000D.

[207] *See, e.g.,* Ashenfelter, O. & Layard, R. (1986). Handbook of Labor Economics. Volume 1. 641–92. *https://www.sciencedirect.com/science/article/abs/pii/S1573446386010155.*

[208] Lambert, S. J. (2007). Making a Difference for Hourly Employees. In A. Booth, & A. C. Crouter, *Work-Life Policies that Make a Real Difference for Individuals, Families, and Communities.* Washington, DC: Urban Institute Press.

[209] Balkin, D. B., & Griffeth, R. W. (1993). The Determinants of Employee Benefits Satisfaction. *Journal of Business and Psychology,* 7(3), 323–339.

[210] Lambert, S. J., & Henly, J. R. (2009). *Scheduling in Hourly Jobs: Promising Practices for the Twenty-First Century Economy.* The Mobility Agenda. Lambert, S. J. (2007). Making a Difference for Hourly Employees. In A. Booth, & A. C. Crouter, *Work-Life Policies that Make a Real Difference for Individuals, Families, and Communities.* Washington, DC: Urban Institute Press.

[211] §§ 778.113–.114.

in this economic analysis; rather, such price increases (where they occur) would be the channel through which consumers, rather than employers or employees, bear rule-induced costs (including transfers).

Reduced Profits

The increase in workers' earnings resulting from the revised salary level is a transfer of income from firms to workers, not a cost. The Department acknowledges that the increased employer costs and transfer payments as a result of this proposed rule may reduce the profits of business firms, although (1) some firms may offset some of these costs and transfers by making payroll adjustments, and (2) some firms may mitigate their reduced profits due to these costs and transfers through increased prices.[212] To the extent that the proposed rule would reduce profits at business firms after all these adjustments are made, these firms would have marginally lower after-tax returns on new investments in equipment, structures, and intellectual property and would therefore make fewer such investments going forward. All else equal, less business investment slows economic growth and reduces employment. However, the Department expects that any anti-growth effects of the proposed rule would be minimal.

Hiring Costs

To the extent that firms respond to an update to the salary level test by reducing overtime, they may do so by spreading hours to other workers, including current workers employed for less than 40 hours per week by that employer, current workers who retain their exempt status, and newly hired workers. If new workers are hired to absorb these transferred hours, then the associated hiring costs are a cost of this proposed rule.

iv. Transfers

1. Overview

Transfer payments occur when income is redistributed from one party to another. The Department has quantified two transfers from employers to employees that would likely result from the proposed rule: (1) Transfers to ensure compliance with the FLSA minimum wage provision; and (2) transfers to ensure compliance with the FLSA overtime pay provision. Transfers in Year 1 due to the minimum wage provision were estimated to be $57.0 million. The increase in the HCE compensation level does not affect minimum wage transfers because workers eligible for the HCE exemption earn well above the minimum wage. Transfers due to the overtime pay provision would be $469.9 million: $195.5 million from the increased standard salary level and $274.3 million from the increased HCE compensation level. Total Year 1 transfers would be $526.9 million (Table 12).

TABLE 12—SUMMARY OF YEAR 1 REGULATORY TRANSFERS

[Millions]

Transfer from employers to workers	Standard salary level	HCE compensation level	Total
Due to minimum wage	$57.0	$0.0	$57.0
Due to overtime pay	195.5	274.3	469.9
Total transfers	252.5	274.3	526.9

Because the overtime premium depends on the base wage, the estimates of minimum wage transfers and overtime transfers are linked. This can be considered a two-step approach. The Department first identified affected EAP workers with an implicit regular hourly wage lower than the minimum wage, and then calculated the wage increase necessary to reach the minimum wage.

2. Transfers Due to the Minimum Wage Provision

For purposes of this analysis, the hourly rate of pay was calculated as usual weekly earnings divided by usual weekly hours worked. To earn less than the federal or state minimum wage, this set of workers must work many hours per week. For example, a worker paid $455 per week must work 62.8 hours to earn less than the federal minimum wage of $7.25 per hour ($455/$7.25 = 62.8).[213] The applicable minimum wage is the higher of the federal minimum wage and the state minimum wage as of January 1, 2017. Most affected EAP workers already receive at least the minimum wage; only an estimated 1.4 percent of them (15,100 in total) earn an implicit hourly rate of pay less than the minimum wage. The Department estimated transfers due to payment of the minimum wage by calculating the change in earnings if wages rose to the minimum wage for workers who become nonexempt.[214]

In response to an increase in the regular rate of pay to the minimum wage, employers may reduce the workers' hours. Since the quantity of labor hours demanded is inversely related to wages, a higher mandated wage will result in fewer hours of labor demanded. The Department estimated the potential disemployment effects (*i.e.,* the estimated reduction in hours) of the transfer attributed to the minimum wage by multiplying the percent change in the regular rate of pay by a labor demand elasticity of −0.2.[215]

At the new standard salary level, the Department estimated that 15,100 affected EAP workers would, on average, see an hourly wage increase of $1.45, work 3.2 fewer hours per week, and receive an increase in weekly earnings of $72.68 as a result of

[212] Because costs and transfers compose on average less than 0.003 percent of revenues, the Department expects any such price increases to be minor.

[213] Workers in states with minimum wages higher than the federal minimum wage could earn less than the state minimum wage working fewer hours.

[214] Because these workers' hourly wages will be set at the minimum wage after this Proposed Rule, their employers will not be able to adjust their wages downward to offset part of the cost of paying the overtime pay premium (which will be discussed in the following section). Therefore, these workers will generally receive larger transfers attributed to the overtime pay provision than other workers.

[215] This elasticity estimate represents a short run demand elasticity for general labor, and is based on the Department's analysis of Lichter, A., Peichl, A. & Siegloch, A. (2014). The Own-Wage Elasticity of Labor Demand: A Meta-Regression Analysis. IZA DP No. 7958. We selected a general labor demand elasticity because employers will adjust their demand based on the cumulative change in employees' earnings, not on a conceptual differentiation between increases attributable to the minimum wage and the overtime provisions of the FLSA.

coverage by the minimum wage provisions (Table 13). The total change in weekly earnings due to the payment of the minimum wage was estimated to be $1.1 million per week ($72.68 × 15,100) or $57.0 million in Year 1.

TABLE 13—MINIMUM WAGE ONLY: MEAN HOURLY WAGES, USUAL OVERTIME HOURS, AND WEEKLY EARNINGS FOR AFFECTED EAP WORKERS, YEAR 1

	Hourly wage [a]	Usual weekly hours	Usual weekly earnings	Total weekly transfer (1,000s)
Before Proposed Rule	$8.29	64.1	$515.88	.....
After Proposed Rule	9.75	61.0	588.56	.....
Change	1.45	−3.2	72.68	$1,097

Note: Pooled data for 2015–2017 adjusted to reflect 2017.
[a] The applicable minimum wage is the higher of the federal minimum wage and the state minimum wage.

3. Transfers Due to the Overtime Pay Provision

Introduction

The proposed rule will transfer income to affected workers who work in excess of 40 hours per week. Requiring an overtime premium increases the marginal cost of labor, which employers will likely try to offset by adjusting wages and/or hours of affected workers. The size of the transfer will depend largely on how employers respond to the updated salary levels. Employers may respond by: (1) Paying overtime premiums to affected workers; (2) reducing overtime hours of affected workers and potentially transferring some of these hours to other workers; (3) reducing the regular rate of pay for affected workers working overtime (provided that the reduced rates still exceed the minimum wage); (4) increasing affected workers' salaries to the updated salary or compensation level to preserve their exempt status; or (5) using some combination of these responses. How employers will respond depends on many factors, including the relative costs of each of these alternatives; in turn, the relative costs of each of these alternatives are a function of workers' earnings and hours worked.

Literature on Employer Adjustments

Two conceptual models are useful for thinking about how employers may respond to reclassifying certain employees as overtime-eligible: (1) The ''fixed-wage'' or ''labor demand'' model, and (2) the ''fixed-job'' or ''employment contract'' model.[216] These models make different assumptions about the demand for overtime hours and the structure of the employment agreement, which result in different implications for predicting employer responses.

The fixed-wage model assumes that the standard hourly wage is independent of the statutory overtime premium. Under the fixed-wage model, a reclassification of workers from overtime exempt to overtime non-exempt would cause a reduction in overtime hours for affected workers, an increase in the prevalence of a 40-hour workweek among affected workers, and an increase in the earnings of affected workers who continue to work overtime.

In contrast, the fixed job model assumes that the standard hourly wage is affected by the statutory overtime premium. Thus, employers can neutralize any reclassification of workers from overtime exempt to overtime non-exempt by reducing the standard hourly wage of affected workers so that their weekly earnings and hours worked are unchanged, except when minimum wage laws prevent employers from lowering the standard hourly wage below the minimum wage. Under the fixed-job model, a reclassification of workers from overtime exempt to overtime non-exempt would have differential effects on minimum-wage workers and above-minimum-wage workers. Similar to the fixed-wage model, minimum-wage workers would experience a reduction in overtime hours, an increase in the prevalence of a 40-hour workweek at a given employer (though not necessarily overall), and an increase in earnings for the portion of minimum-wage workers that continue to work overtime for a given employer. Unlike the fixed-wage model, however, above-minimum-wage workers would experience no change.

The Department conducted a literature review to evaluate studies of how labor markets adjust to a change in the requirement to pay overtime. In general, these studies are supportive of the fixed-job model of labor market adjustment, in that wages adjust to offset the requirement to pay an overtime premium as predicted by the fixed-job model, but do not adjust enough to completely offset the overtime premium as predicted by the model.

The Department believes the two most important papers in this literature are the studies by Trejo (1991) and Barkume (2010). Analyzing the economic effects of the overtime pay provisions of the FLSA, Trejo (1991) found ''the data analyzed here suggest the wage adjustments occur to mitigate the purely demand-driven effects predicted by the fixed-wage model, but these adjustments are not large enough to neutralize the overtime pay regulations completely.'' Trejo noted, ''In accordance with the fixed job model, the overtime law appears to have a greater impact on minimum-wage workers.'' He also stated, ''[T]he finding that overtime pay coverage status systematically influences the hours-of-work distribution for non-minimum wage works is supportive of the fixed-wage model. No significant differences in weekly earnings were discovered between the covered and non-covered sectors, which is consistent with the fixed-job model.'' However, ''overtime pay compliance is higher for union than for nonunion workers, a result that is more easily reconciled with the fixed wage model.'' Trejo's findings are supportive of the fixed-wage model whose adjustment is incomplete largely due to the minimum-wage requirement.[217]

A second paper by Trejo (2003) took a different approach to testing the consistency of the fixed-wage adjustment models with overtime coverage and data on hours worked. In this paper, he examined time-series data on employee hours by industry. After controlling for underlying trends in hours worked over 20 years, he found changes in overtime coverage had no

[216] *See* Trejo, S. J. (1991). The Effects of Overtime Pay Regulation on Worker Compensation. *American Economic Review,* 81(4), 719–740, and Barkume, A. (2010). The Structure of Labor Costs with Overtime Work in U.S. Jobs. *Industrial and Labor Relations Review,* 64(1), 128–142.

[217] Trejo, S. J. (1991). The Effects of Overtime Pay Regulation on Worker Compensation. *American Economic Review,* 81(4), 719–740.

impact on the prevalence of overtime hours worked. This result supports the fixed-job model. Unlike the 1991 paper, however, he did not examine impacts of overtime coverage on employees' weekly or hourly earnings, so this finding in support of the fixed-job model only analyzes one implication of the model.[218]

Barkume (2010) built on the analytic method used in Trejo (1991).[219] However, Barkume observed that Trejo did not account for ''quasi-fixed'' employment costs (*e.g.,* benefits) that do not vary with hours worked, and therefore affect employers' decisions on overtime hours worked. After incorporating these quasi-fixed costs in the model, Barkume found results consistent with those of Trejo (1991): ''though wage rates in otherwise similar jobs declined with greater overtime hours, they were not enough to prevent the FLSA overtime provisions from increasing labor costs.'' Barkume also determined that the 1991 model did not account for evidence that in the absence of regulation some employers may voluntarily pay workers some overtime premium to entice them to work longer hours, to compensate workers for unexpected changes in their schedules, or as a result of collective bargaining.[220] Barkume found that how much wages and hours worked adjusted in response to the overtime pay requirement depended on what overtime pay would be in absence of regulation.

In addition, Bell and Hart (2003) examined the standard hourly wage, average hourly earnings (including overtime), the overtime premium, and overtime hours worked in the United Kingdom. Unlike the United States, the United Kingdom does not have national labor laws regulating overtime compensation. Bell and Hart found that after accounting for overtime, average hourly earnings are generally uniform in a given industry because firms paying below-market level straight-time wages tend to pay above-market overtime premiums and firms paying above-market level straight-time wages tend to pay below-market overtime premiums. Bell and Hart concluded ''this is consistent with a model in which workers and firms enter into an implicit contract that specifies total hours at a constant, market-determined, hourly wage rate.[221] Their research is also consistent with studies showing that employers may pay overtime premiums either in the absence of a regulatory mandate (*e.g.,* Britain), or when the mandate exists but the requirements are not met (*e.g.,* United States).[222]

On balance, the Department finds strong support for the fixed-job model as the best approximation for the likely effects of a reclassification of above-minimum-wage workers from overtime exempt to overtime non-exempt and the fixed-wage model as the best approximation of the likely effects of a reclassification of minimum-wage workers from overtime exempt to overtime non-exempt. In addition, the studies suggest that although observed wage adjustment patterns are consistent with the fixed-job model, this evidence also suggests that the actual wage adjustment is less than 100 percent as predicted by the fixed-job model. Thus, the hybrid model used in this analysis may be described as a substantial, but incomplete fixed-job model.

To determine the magnitude of the adjustment, the Departments accounted for the following findings. Earlier research had demonstrated that in the absence of regulation some employers may voluntarily pay workers some overtime premium to entice them to work longer hours, to compensate workers for unexpected changes in their schedules, or as a result of collective bargaining.[223] Barkume (2010) found that the measured adjustment of wages and hours to overtime premium requirements depended on what overtime premium might be paid in absence of any requirement to do so. Thus, when Barkume assumed that workers would receive an average voluntary overtime pay premium of 28 percent in the absence of an overtime pay regulation, which is the average overtime premium that Bell and Hart (2003) found British employers paid in the absence of any overtime regulations, the straight time hourly wage adjusted downward by 80 percent of the amount that would occur with the fixed-job model. When Barkume assumed workers would receive no voluntary overtime pay premium in the absence of an overtime pay regulation, the results were more consistent with Trejo's (1991) findings that the adjustment was a smaller percentage. The Department modeled an adjustment process between these two findings. Although it seemed reasonable that some premium was paid for overtime in the absence of regulation, Barkume's assumption of a 28 percent initial overtime premium is likely too high for the salaried workers potentially affected by a change in the salary and compensation level requirements for the EAP exemptions because this assumption is based on a study of workers in Britain. British workers were likely paid a larger voluntary overtime premium than American workers because Britain did not have a required overtime pay regulation and so collective bargaining played a larger role in implementing overtime pay.[224]

The Department requests comment on this analysis, and how employers would likely respond to an increase in the salary level.

Identifying Types of Affected Workers

The Department identified four types of workers whose work characteristics affect how it modeled employers' responses to the changes in both the standard and HCE salary levels:

- *Type 1:* Workers who do not work overtime.
- *Type 2:* Workers who do not regularly work overtime but occasionally work overtime.
- *Type 3:* Workers who regularly work overtime and become overtime eligible (nonexempt).
- *Type 4:* Workers who regularly work overtime and remain exempt, because it is less expensive for the employer to pay the updated salary level than to pay overtime and incur additional managerial costs.[225]

[218] Trejo, S. J. (2003). Does the Statutory Overtime Premium Discourage Long Workweeks? Industrial and Labor Relations Review, 56(3), 375–392.

[219] Barkume, A. (2010). The Structure of Labor Costs with Overtime Work in U.S. Jobs. *Industrial and Labor Relations Review,* 64(1), 128–142.

[220] Barzel, Y. (1973). The Determination of Daily Hours and Wages. *The Quarterly Journal of Economics,* 87(2), 220–238 demonstrated that modest fluctuations in labor demand could justify substantial overtime premiums in the employment contract model. Hart, R. A. and Yue, M. (2000). Why Do Firms Pay an Overtime Premium? IZA Discussion Paper No. 163, showed that establishing an overtime premium in an employment contract can reduce inefficiencies.

[221] Bell, D. N. F. and Hart, R. A. (2003). Wages, Hours, and Overtime Premia: Evidence from the British Labor Market, *Industrial and Labor Relations Review,* 56(3), 470–480.

[222] Hart, R. A. and Yue, M. (2000). Why Do Firms Pay an Overtime Premium? IZA Discussion Paper No. 163

[223] Barzel, Y. (1973). The Determination of Daily Hours and Wages. *The Quarterly Journal of Economics,* 87(2), 220–238 demonstrated that modest fluctuations in labor demand could justify substantial overtime premiums in the employment contract model. Hart, R. A. and Yue, M. (2000). Why Do Firms Pay an Overtime Premium? IZA Discussion Paper No. 163, showed that establishing an overtime premium in an employment contract can reduce inefficiencies.

[224] Bell, D. and Hart, R. (2003). Wages, Hours, and Overtime Premia: Evidence from the British Labor Market. Industrial and Labor Relations Review, 56(3), 470–480.

[225] There is some evidence that employers will respond in this manner. In response to the RFI, one employer association reported that when making adjustments in anticipation of the 2016 final rule, more than 40 percent of its members raised the salaries of at least one worker above the 2016 final rule salary level. Similarly, it is possible that employers will increase the salaries paid to some ''occasional'' overtime workers to maintain the exemption for the worker, but the Department has no way of identifying these workers.

The Department began by identifying the number of workers in each type. After modeling employer adjustments, it estimated transfer payments. Type 3 and 4 workers were identified as those who regularly work overtime (CPS variable PEHRUSL1 greater than 40). Distinguishing Type 3 workers from Type 4 workers involved a four-step process. First, the Department identified all workers who regularly work overtime. Then the Department estimated each worker's weekly earnings if they became nonexempt, to which it added weekly managerial costs for each affected worker of $4.06 ($48.72 per hour × (5 minutes/60 minutes)).[226] Last, the Department identified as Type 4 those workers whose expected nonexempt earnings plus weekly managerial costs exceeds the updated standard salary level, and, conversely, as Type 3 those whose expected nonexempt earnings plus weekly managerial costs are less than the new standard salary.[227] The Department assumed that firms will include incremental managerial costs in their determination of whether to treat an affected employee as a Type 3 or Type 4 worker because those costs are only incurred if the employee is a Type 3 worker.

Identifying Type 2 workers involved two steps. First, using CPS MORG data, the Department identified those who do not usually work overtime but did work overtime in the survey week (the week referred to in the CPS questionnaire, variable PEHRACT1 greater than 40). Next, the Department supplemented the CPS data with data from the Survey of Income and Program Participation (SIPP) to look at likelihood of working some overtime during the year. Based on 2012 data, the most recent available, the Department found that 39.4 percent of non-hourly workers worked overtime at some point in a year. Therefore, the Department classified a share of workers who reported they do not usually work overtime, and did not work overtime in the reference week (previously identified as Type 1 workers), as Type 2 workers such that a total of approximately 39.4 percent of affected workers were Type 2, 3, or 4.

Modeling Changes in Wages and Hours

The substantial, but incomplete fixed-job model (hereafter referred to as the incomplete fixed-job model) predicts that employers will adjust wages of regular overtime workers but not to the full extent indicated by fixed-job model, and thus some employees may receive a small increase in weekly earnings due to overtime pay coverage. Therefore, when modeling employer responses with respect to the adjustment to the regular rate of pay, the Department used the incomplete fixed-job model.

The Department determined that an appropriate estimate of the effect on the implicit hourly rate of pay for regular overtime workers should be determined using the average of two estimates of the incomplete fixed-job model adjustments: Trejo's (1991) estimate that the overtime-induced wage change is 40 percent of the adjustment toward the amount predicted by the fixed-job model, assuming an initial zero overtime pay premium, and Barkume's (2010) estimate that the wage change is 80 percent of the predicted adjustment assuming an initial 28 percent overtime pay premium.[228] This is approximately equivalent to assuming that salaried overtime workers implicitly receive the equivalent of a 14 percent overtime premium in the absence of regulation (the midpoint between 0 and 28 percent).

Modeling changes in wages, hours, and earnings for Type 1 and Type 4 workers was relatively straightforward. Type 1 affected EAP workers will become overtime-eligible, but because they do not work overtime, they will see no change in their weekly earnings. Type 4 workers will remain exempt because their earnings will be raised to at least the updated EAP level (either the standard salary level or HCE compensation level). These workers' earnings will increase by the difference between their current earnings and the amount necessary to satisfy the new salary or compensation level. It is possible employers will increase these workers' hours in response to paying them a higher salary, but the Department did not have enough information to model this potential change.[229]

Modeling changes in wages, hours, and earnings for Type 2 and Type 3 workers was more complex. The Department distinguished those who regularly work overtime (Type 3 workers) from those who occasionally work overtime (Type 2 workers) because employer adjustment to the proposed rule may differ accordingly. Employers are more likely to adjust hours worked and wages for regular overtime workers because their hours are predictable. However, in response to a transient, perhaps unpredicted, shift in market demand for the good or service such employers provide, employers are more likely to pay for occasional overtime rather than adjust hours worked and pay.

The Department treated Type 2 affected workers in two ways due to the uncertainty of the nature of these occasional overtime hours. The Department assumed that 50 percent of these occasional overtime workers worked *expected* overtime hours and the other 50 percent worked *unexpected* overtime. Workers were randomly assigned to these two groups. Workers with *expected* occasional overtime hours were treated like Type 3 affected workers (incomplete fixed-job model adjustments). Workers with *unexpected* occasional overtime hours were assumed to receive a 50 percent pay premium for the overtime hours worked and receive no change in base wage or hours (full overtime premium model).[230] When modeling Type 2 workers' hour and wage adjustments, the Department treated those identified as Type 2 using the CPS data as representative of all Type 2 workers. The Department estimated employer adjustments and transfers assuming that the patterns observed in the CPS reference week are representative of an average week in the year. Thus, the Department assumes total transfers for the year are equal to 52-times the transfers estimated for the single representative week for which the Department has CPS data. However, these transfers are spread over a larger group including those who occasionally

[226] *See supra* § VI.D.iii.4 (managerial costs).

[227] When analyzing impacts of increasing the standard salary level, Rohwedder and Wenger conducted a similar analysis; however, they use straight-time pay rather than overtime pay to calculate earnings in the absence of a pay raise to remain exempt. Rohwedder, S. and Wenger, *supra* note 163.

[228] Both studies considered a population that included hourly workers. Evidence is not available on how the adjustment towards the employment contract model differs between salaried and hourly workers. The employment contract model may be more likely to hold for salaried workers than for hourly workers since salaried workers directly observe their weekly total earnings, not their implicit equivalent hourly wage. Thus, applying the partial adjustment to the employment contract model as estimated by these studies may overestimate the transfers from employers to salaried workers. We do not attempt to quantify the magnitude of this potential overestimate.

[229] Cherry, Monica, ''Are Salaried Workers Compensated for Overtime Hours?'' *Journal of Labor Research* 25(3): 485–494, September 2004, found that exempt full-time salaried employees earn more when they work more hours, but her results do not lend themselves to the quantification of the effect *on* hours of an increase in earnings.

[230] We use the term ''full overtime premium'' to describe the adjustment process as modeled. The full overtime premium model is a special case of the general fixed-wage model in that the Department assumes the demand for labor under these circumstances is completely inelastic. That is, employers make no changes to employees' hours in response to these temporary, unanticipated changes in demand.

work overtime but did not do so in the CPS reference week.[231]

Since employers must now pay more for the same number of labor hours, for Type 2 and Type 3 EAP workers, the quantity of labor hours demanded by employers will decrease. It is the net effect of these two changes that will determine the final weekly earnings for affected EAP workers. The reduction in hours is calculated using the elasticity of labor demand with respect to wages. The Department used a short-term demand elasticity of −0.20 to estimate the percentage decrease in hours worked in Year 1 and a long-term elasticity of −0.4 to estimate the percentage decrease in hours worked in Years 2–10.[232] The Department acknowledges that the academic literature on elasticity can be interpreted in multiple ways, and invites comment on the appropriate elasticity to use.

For Type 3 affected workers, and the 50 percent of Type 2 affected workers who worked *expected* overtime, the Department estimated adjusted total hours worked after making wage adjustments using the incomplete fixed-job model. To estimate adjusted hours worked, the Department set the percent change in total hours worked equal to the percent change in average wages multiplied by the wage elasticity of labor demand.[233]

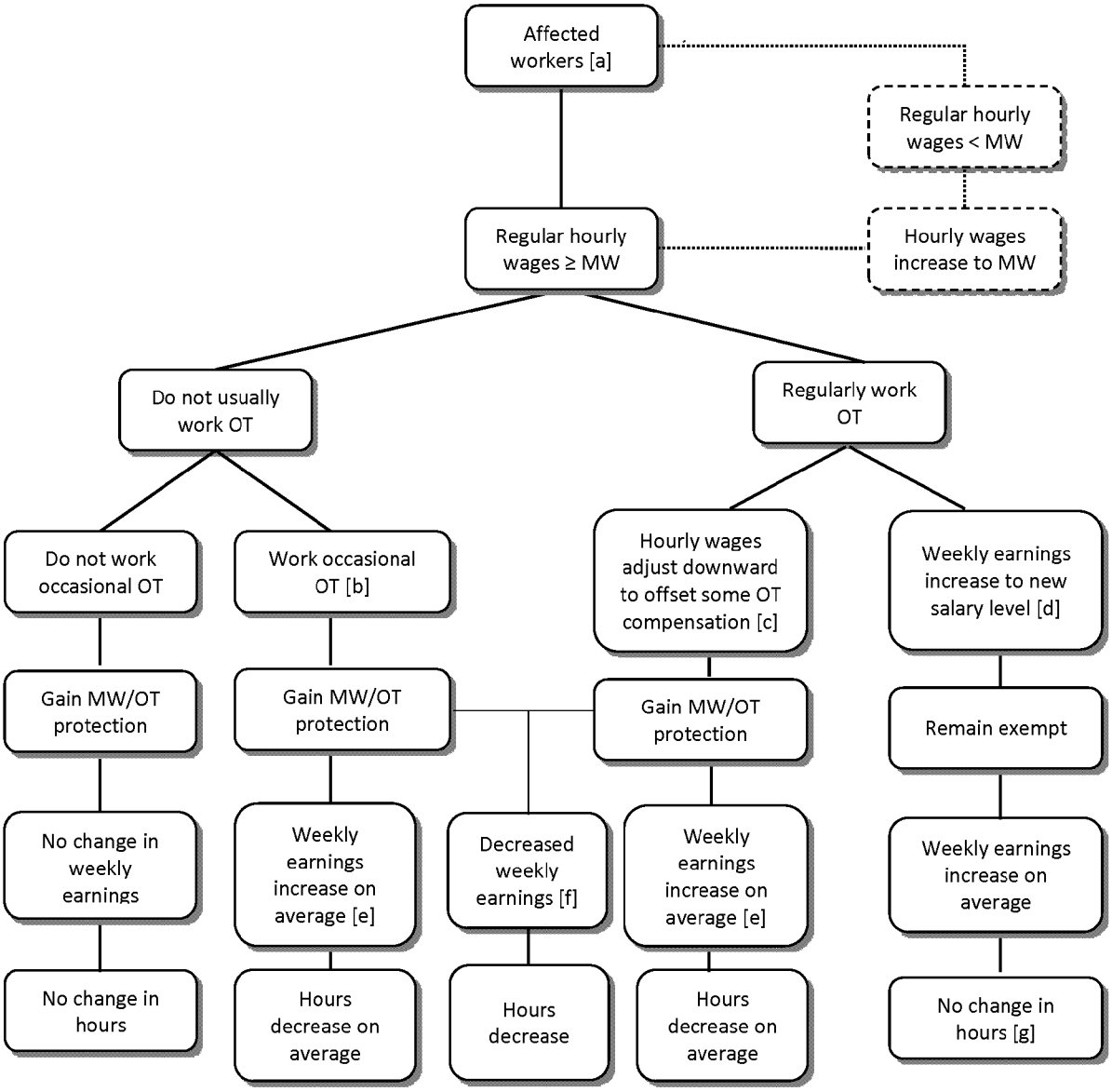
Figure 3 is a flow chart summarizing the four types of affected EAP workers. Also shown are the effects on exempt status, weekly earnings, and hours worked for each type of affected worker.

[231] If a different week was chosen as the survey week, then likely some of these workers would not have worked overtime. However, because the data are representative of both the population and all twelve months in a year, the Department believes the share of Type 2 workers identified in the CPS data in the given week is representative of an average week in the year.

[232] This elasticity estimate is based on the Department's analysis of Lichter, A., Peichl, A. & Siegloch, A. (2014). The Own-Wage Elasticity of Labor Demand: A Meta-Regression Analysis. IZA DP No. 7958. Some researchers have estimated larger impacts on the number of overtime hours worked (Hamermesh, D. and S. Trejo. (2000). The Demand for Hours of Labor: Direct Evidence from California. *The Review of Economics and Statistics,* 82(1), 38–47 concludes the price elasticity of demand for overtime hours is at least −0.5. The Department decided to use a general measure of elasticity applied to the average change in wages since the increase in the overtime wage is somewhat offset by a decrease in the non-overtime wage as indicated in the fixed-job model.

[233] In this equation, the only unknown is adjusted total hours worked. Since adjusted total hours worked is in the denominator of the left side of the equation and is also in the numerator of the right side of the equation, solving for adjusted total hours worked requires solving a quadratic equation.

Figure 3: Flow Chart of Proposed Rule's Effect on Earnings and Hours Worked



[a] Affected EAP workers are those who are exempt under the current EAP exemptions and would gain minimum wage and overtime protection or receive a raise to the increased salary or compensation level.

[b] There are two methods the Department uses to identify occasional overtime workers. The first includes workers who report they usually work 40 hours or less per week (identified with variable PEHRUSL1 in CPS MORG) but in the reference week worked more than 40 hours (variable PEHRACT1 in CPS MORG). The second includes reclassifying some additional workers who usually work 40 hours or less per week, and in the reference week worked 40 hours or less, to match the proportion of workers measured in other data sets who work overtime at any point in the year.

[c] The amount wages are adjusted downwards depends on whether the fixed-job model or the fixed-wage model holds. The Department's preferred method uses a combination of the two.

Employers reduce the regular hourly wage rate somewhat in response to overtime pay requirements, but the wage is not reduced enough to keep total compensation constant.
[d] Based on hourly wage and weekly hours it is more cost efficient for the employer to increase the worker's weekly salary to the updated salary level than to pay overtime pay.
[e] On average, the Department expects employees' overall weekly earnings will increase despite a small decrease in average hours worked.
[f] In some cases, employers might decrease employees' hours enough to cause those employees' weekly earnings to decrease. If so, such employees may seek a second job to offset their lost weekly earnings. In extreme cases, some workers may become unemployed.
[g] The Department assumed hours would not change due to lack of data and relevant literature; however, it is possible employers will increase these workers' hours in response to paying them a higher salary or to avoid paying overtime premiums to newly nonexempt coworkers.

In response to the Department's RFI and at the listening sessions, some commenters provided information concerning their proposed wage and hour adjustments in anticipation of an increase to the standard salary level and HCE total compensation level. Employers indicated they would respond by making a variety of adjustments to wages, hours worked, or both.

Estimated Number of and Effects on Affected EAP Workers

The Department estimated the proposed rule would affect 1.3 million workers (Table 14), of which 760,100 were Type 1 workers (59.8 percent of all affected EAP workers), 279,500 were estimated to be Type 2 workers (22.0 percent of all affected EAP workers), 204,600 were Type 3 workers (16.1 percent of all affected EAP workers), and 27,100 were estimated to be Type 4 workers (2.1 percent of all affected workers). All Type 3 workers and half of Type 2 employees (344,300) are assumed to work predictable overtime.

TABLE 14—AFFECTED EAP WORKERS BY TYPE (1,000S), YEAR 1

	Total	No overtime (T1)	Occasional overtime (T2)	Regular overtime	
				Newly nonexempt (T3)	Remain exempt (T4)
Standard salary level	1,070.2	648.9	269.6	127.4	24.3
HCE compensation level	201.1	111.2	9.9	77.2	2.8
Total	1,271.3	760.1	279.5	204.6	27.1

Note: Pooled data for 2015–2017 adjusted to reflect 2017.
* Type 1: Workers without regular OT and without occasional OT and become overtime eligible.
* Type 2: Workers without regular OT but with occasional OT. These workers become overtime eligible.
* Type 3: Workers with regular OT who become overtime eligible.
* Type 4: Workers with regular OT who remain exempt (*i.e.,* earnings increase to the updated salary level).

The proposed rule would affect some affected workers' hourly wages, hours, and weekly earnings. Predicted changes in implicit wage rates are outlined in Table 15, changes in hours in Table 16, and changes in weekly earnings in Table 17. How these would change depends on the type of worker, but on average weekly earnings would be unchanged or increase while hours worked would be unchanged or decrease.

Type 1 workers would have no change in wages, hours, or earnings.[234] Employers were assumed to be unable to adjust the hours or regular rate of pay for the occasional overtime workers whose overtime is irregularly scheduled and unpredictable. The Department used the incomplete fixed-job model to estimate changes in the regular rate of pay for Type 3 workers and the 50 percent of Type 2 workers who regularly work occasional overtime. As a group, Type 2 workers would see a decrease in their average regular hourly wage; however, because workers would now receive a 50 percent premium on their regular hourly wage for each hour worked in excess of 40 hours per week, average weekly earnings for Type 2 workers would increase.[235]

Similarly, Type 3 workers would also receive decreases in their regular hourly wage as predicted by the incomplete fixed-job model but an increase in weekly earnings because these workers would now be eligible for the overtime premium. Type 4 workers' implicit hourly rates of pay would increase to meet the updated standard salary level or HCE annual compensation level.

[234] It is possible that these workers may experience an increase in hours and weekly earnings because of transfers of hours from overtime workers. Due to the high level of uncertainty in employers' responses regarding the transfer of hours, the Department did not have credible evidence to support an estimation of the number of hours transferred to other workers.

[235] Type 2 workers do not see increases in regular earnings to the new salary level (as Type 4 workers do) even if their new earnings in this week exceed that new level. This is because the estimated new earnings only reflect their earnings in that week when overtime is worked; their earnings in typical weeks that they do not work overtime do not exceed the salary level.

TABLE 15—AVERAGE REGULAR RATE OF PAY BY TYPE OF AFFECTED EAP WORKER, YEAR 1

	Total	No overtime (T1)	Occasional overtime (T2)	Regular overtime	
				Newly nonexempt (T3)	Remain exempt (T4)
Standard Salary Level					
Before Proposed Rule	$15.70	$16.74	$15.78	$11.32	$10.35
After Proposed Rule	$15.65	$16.74	$15.72	$10.83	$11.01
Change ($)	−$0.06	$0.00	−$0.05	−$0.49	$0.66
Change (%)	−0.4%	0.0%	−0.3%	−4.3%	6.3%
HCE Compensation Level					
Before Proposed Rule	$49.71	$54.41	$53.51	$42.66	$44.21
After Proposed Rule	$48.58	$54.41	$50.70	$40.04	$45.08
Change ($)	−$1.13	$0.00	−$2.81	−$2.61	$0.87
Change (%)	−2.3%	0.0%	−5.2%	−6.1%	2.0%

Note: Pooled data for 2015–2017 adjusted to reflect 2017.
* Type 1: Workers without regular OT and without occasional OT and become overtime-eligible.
* Type 2: Workers without regular OT but with occasional OT. These workers become overtime-eligible.
* Type 3: Workers with regular OT who become overtime eligible.
* Type 4: Workers with regular OT who remain exempt (*i.e.,* earnings increase to the updated salary level).

Hours for Type 1 workers would not change. Similarly, hours would not change for the half of Type 2 workers who work irregular overtime. Half of Type 2 and all Type 3 workers would see a small decrease in their hours of overtime worked. This reduction in hours is relatively small and is due to the effect on labor demand from the increase in the average hourly wage as predicted by the incomplete fixed-job model (Table 16). Type 4 workers' hours may increase, but due to lack of data, the Department assumed hours would not change.

TABLE 16—AVERAGE WEEKLY HOURS FOR AFFECTED EAP WORKERS BY TYPE, YEAR 1

	Total	No overtime worked (T1)	Occasional OT (T2)	Regular OT	
				Newly nonexempt (T3)	Remain exempt (T4)
Standard Salary Level [a]					
Before Proposed Rule	39.7	37.2	39.2	49.6	60.5
After Proposed Rule	39.6	37.2	39.2	49.1	60.5
Change (hours)	−0.1	0.0	0.0	−0.5	0.0
Change (%)	−0.2%	0.0%	−0.1%	−0.9%	0.0%
HCE Compensation Level [a]					
Before Proposed Rule	45.1	39.5	49.3	52.1	61.3
After Proposed Rule	44.9	39.5	49.0	51.7	61.3
Change (hours)	−0.2	0.0	−0.3	−0.4	0.0
Change (%)	−0.4%	0.0%	−0.6%	−0.7%	0.0%

Note: Pooled data for 2015–2017 adjusted to reflect 2017.
[a] Usual hours for Types 1, 3, and 4 but actual hours for Type 2 workers identified in the CPS MORG.
* Type 1: Workers without regular OT and without occasional OT and become overtime eligible.
* Type 2: Workers without regular OT but with occasional OT. These workers become overtime eligible.
* Type 3: Workers with regular OT who become overtime eligible.
* Type 4: Workers with regular OT who remain exempt (*i.e.,* earnings increase to the updated salary level).

Because Type 1 workers would not experience a change in their regular rate of pay or hours, they would have no change in earnings due to the proposed rule (Table 17). Although both Type 2 and Type 3 workers would, on average, experience a decrease in both their regular rate of pay and hours worked, their weekly earnings would increase as a result of the overtime premium. Weekly earnings after the standard salary level increased were estimated using the new wage (*i.e.,* the incomplete fixed-job model wage) and the reduced number of overtime hours worked. Type 4 workers' salaries would increase to the new standard salary level or the HCE compensation level.

TABLE 17—AVERAGE WEEKLY EARNINGS FOR AFFECTED EAP WORKERS BY TYPE, YEAR 1

	Total	No overtime (T1)	Occasional overtime (T2)	Regular overtime	
				Newly nonexempt (T3)	Remain exempt (T4)
Standard Salary Level [a]					
Before Proposed Rule	$563.76	$558.32	$577.87	$555.45	$596.04
After Proposed Rule	$568.30	$558.32	$583.34	$573.43	$641.00
Change ($)	$4.54	$0.00	$5.47	$17.98	$44.96
Change (%)	0.8%	0.0%	0.9%	3.2%	7.5%
HCE Compensation Level [a]					
Before Proposed Rule	$2,179.37	$2,126.62	$2,623.44	$2,182.02	$2,627.16
After Proposed Rule	$2,205.61	$2,126.62	$2,683.14	$2,240.70	$2,682.00
Change ($)	$26.23	$0.00	$59.70	$58.68	$54.84
Change (%)	1.2%	0.0%	2.3%	2.7%	2.1%

Note: Pooled data for 2015–2017 adjusted to reflect 2017.

[a] The mean of the hourly wage multiplied by the mean of the hours does not necessarily equal the mean of the weekly earnings because the product of two averages is not necessarily equal to the average of the product.

* Type 1: Workers without regular OT and without occasional OT and become overtime eligible.
* Type 2: Workers without regular OT but with occasional OT. These workers become overtime eligible.
* Type 3: Workers with regular OT who become overtime eligible.
* Type 4: Workers with regular OT who remain exempt (*i.e.,* earnings increase to the updated salary level).

At the new standard salary level, the average weekly earnings of all affected workers would increase $4.54 (0.8 percent), from $563.76 to $568.30. Multiplying the average change of $4.54 by the 1.1 million affected standard EAP workers and 52 weeks equals an increase in earnings of $252.5 million in the first year (Table 18). For workers affected by the change in the HCE compensation level, average weekly earnings would increase by $26.23. When multiplied by 201,100 affected workers and 52 weeks, the national increase would be $274.3 million in the first year. Thus, total Year 1 transfer payments attributable to this proposed rule would total $526.9 million.

TABLE 18—TOTAL CHANGE IN WEEKLY AND ANNUAL EARNINGS FOR AFFECTED EAP WORKERS BY PROVISION, YEAR 1

Provision	Annual change in earnings (1,000s)
Total	$526,894
Standard salary level:	
Total	252,546
Minimum wage only	57,041
Overtime pay only [a]	195,505
HCE compensation level:	
Total	274,348
Minimum wage only	.....
Overtime pay only [a]	274,348

[a] Estimated by subtracting the minimum wage transfer from the total transfer.

Rohwedder and Wenger (2015) analyzed the effects of increasing the standard salary level.[236] They compared hourly and salaried workers in the CPS using quantile treatment effects. This methodology estimates the effect of a worker becoming nonexempt by comparing similar workers who are hourly and salaried. They found no statistically significant change in hours or wages on average. However, their point estimates, averaged across all affected workers, show small increases in earnings and decreases in hours, similar to our analysis. For example, using a salary level of $750, they estimated weekly earnings may increase between $2 and $22 and weekly hours may decrease by approximately 0.4 hours. The Department estimated weekly earnings for workers affected by the standard salary level would increase by $4.54 and hours would decrease by 0.1 hours.

4. Potential Transfers Not Quantified

There may be additional transfers attributable to this proposed rule; however, the magnitude of these other transfers could not be quantified and therefore are discussed only qualitatively.

Reduced Earnings for Some Workers

Holding regular rate of pay and work hours constant, payment of an overtime premium will increase weekly earnings for workers who work overtime. However, as discussed previously, employers may try to mitigate cost increases by reducing the number of overtime hours worked, either by transferring these hours to other workers or monitoring hours more closely. Depending on how hours are adjusted, a specific worker may earn less pay after this proposed rule.

[236] Rohwedder and Wenger, *supra* note 163.

Additional Work for Some Workers

Affected workers who remain exempt would see an increase in pay but may also see an increase in workload. The Department estimated the net changes in hours, but due to the data limitations as noted in section VI.D.iv.3, did not estimate changes in hours for affected workers whose salary is increased to the new threshold so they remain overtime exempt.

Reduction in Bonuses and Benefits for Some Workers

Employers may offset increased labor costs by reducing bonuses or benefits instead of reducing base wages or hours worked. Due to data limitations, the Department has not modeled this effect separately. The Department observes that any reductions in bonuses or benefits would be likely accompanied by smaller reductions in base wages or hours worked.

v. Benefits and Cost Savings

Potential Benefits and Effects Not Discussed Elsewhere

The Department has determined that the proposed rulemaking would provide some benefits; however, these benefits could not be quantified due to data limitations, requiring the Department to discuss such benefits only qualitatively.

1. Reduce Employee Misclassification

The revised salary level reduces the likelihood of workers being misclassified as exempt from overtime pay, providing an additional measure of the effectiveness of the salary level as a bright-line test delineating exempt and nonexempt workers. The Department's analysis of misclassification drew on CPS data and looked at workers who are white collar, salaried, subject to the FLSA and covered by part 541 regulations, earn at least $455 but less than $641 per week, and fail the duties test. Because only workers who work overtime may receive overtime pay, when determining the share of workers who are misclassified the sample was limited to those who usually work overtime. Workers were considered misclassified if they did not receive overtime pay.[237] The Department estimated that 9.3 percent of workers in this analysis who usually worked overtime did not receive overtime compensation and are therefore misclassified as exempt. Applying this estimate to the sample of white collar salaried workers who fail the duties test and earn at least $455 but less than $641 (the 2017 proposed salary level used for the RIA), the Department estimated that there are approximately 188,100 white collar salaried workers who are overtime-eligible but whose employers do not recognize them as such.[238] These employees' entitlement to overtime pay will now be abundantly evident.

RAND has conducted a survey to identify the number of workers who may be misclassified as EAP exempt. The survey, a special module to the American Life Panel, asks respondents: (1) Their hours worked, (2) whether they are paid on an hourly or salary basis, (3) their typical earnings, (4) whether they perform certain job responsibilities that are treated as proxies for whether they would justify exempt status, and (5) whether they receive any overtime pay. Using these data, Susann Rohwedder and Jeffrey B. Wenger[239] found ''11.5 percent of salaried workers were classified as exempt by their employer although they did not meet the criteria for being so.'' Using RAND's estimate of the rate of misclassification (11.5 percent), the Department estimated that approximately 232,400 salaried workers earning between $455 and $641 per week who fail the standard duties test are currently misclassified as exempt.[240] By raising the salary level the proposed rule will increase the likelihood that these workers will be correctly classified as nonexempt.

2. Reduced Litigation

One result of enforcing the 2004 standard salary level for 14 years is that the established ''dividing line'' between EAP workers who are exempt and not exempt has gradually eroded and no longer holds the same relative position in the distribution of nominal wages and salaries. Therefore, as nominal wages and salaries for workers have increased over time, while the standard salary level has remained constant, more workers earn above the ''dividing line'' and have moved from nonexempt to potentially exempt. The Department's enforcement of the 2004 salary levels has burdened employers with performing duties tests to determine overtime exemption status of white collar workers for a larger proportion of workers than in 2004 and has created uncertainty regarding the correct classification of workers as nonexempt or exempt. This may have contributed to an increase in FLSA lawsuits since 2004,[241] much of which has involved cases regarding whether workers who satisfy the salary level test also meet the duties test for exemption.

Updating the standard salary level should restore the relative position of the standard salary level in the overall distribution of nominal wages and salaries as set forth in the 2004 rule. Additionally, proposed regular updates to the standard salary level would maintain its desired position within the distribution of nominal wages and salaries and therefore would keep the standard salary test's effectiveness as a ''dividing line'' for separating nonexempt and potentially exempt EAP workers. Increasing the standard salary level from $455 per week to the proposed level of $679 per week would increase the number of white collar workers for whom the standard salary-level test is determinative of their nonexempt status, and employers would no longer have to perform a duties analysis for these employees. This would reduce the burden on employers and may reduce legal challenges and the overall cost of litigation faced by employers in FLSA overtime lawsuits, specifically litigation that turns on whether workers earning above the current standard salary level ($455 per week) pass the duties test. The size of the potential social benefit from fewer legal challenges and the corresponding decline in overall litigation costs is difficult to quantify, but a reduction in litigation costs would be beneficial to both employers and workers.

To provide a general estimate of the size of the potential benefits from reducing litigation, the Department used data from the federal courts' Public Access to Court Electronic Records (PACER) system and the CPS to estimate the number and percentage of FLSA cases that concern EAP exemptions and are likely to be affected by the proposed rule. For this step of the analysis, to avoid using data that could reflect changed behavior in anticipation of the 2016 final rule, the Department used the

[237] Overtime pay status was based on worker responses to the CPS MORG question concerning whether they receive overtime pay, tips, or commissions at their job (''PEERNUOT'' variable).

[238] The Department applies the misclassification estimate derived here to both the group of workers who usually work more than 40 hours and to those who do not.

[239] Rohwedder and Wenger, *supra* note 163.

[240] The number of misclassified workers estimated based on the RAND research cannot be directly compared to the Department's estimates because of differences in data, methodology, and assumptions. Although it is impossible to reconcile the two different approaches without further information, by calculating misclassified workers as a percent of all salaried workers in its sample, RAND uses a larger denominator than the Department. If calculated on a more directly comparable basis, the Department expects the RAND estimate of the misclassification rate would still be higher than the Department's estimate.

[241] *See https://www.washingtonpost.com/news/wonk/wp/2015/11/25/people-are-suing-more-than-ever-over-wages-and-hours/?utm_term=.c8dcc2783351; https://www.bna.com/uptick-flsa-litigation-n57982064020/.*

data gathered during the 2016 rulemaking. As explained in that rule, to determine the potential number of cases that would likely be affected by the proposed rule, the Department obtained a list of all FLSA cases closed in 2014 from PACER (8,256 cases).[242] From this list, the Department selected a random sample of 500 cases. The Department identified the cases within this sample that were associated with the EAP exemption. The Department found that 12.0 percent of these FLSA cases (60 of 500) were related to the EAP exemptions. Next the Department determined what share of these cases could potentially be avoided by an increase in the standard salary and HCE compensation levels.

The Department estimated the share of EAP cases that may be avoided due to the proposed rule by using data on the salaried earnings distribution from the 2017 CPS MORG to determine the share of EAP cases in which workers earn at least $455 but less than $641 per week or at least $100,000 but less than $139,464 annually. From CPS, the Department selected white collar, nonhourly workers as the appropriate reference group for defining the earnings distribution rather than exempt workers because if a worker is litigating his or her exempt status, then we do not know if that worker is exempt or not. Based on this analysis, the Department determined that 21.3 percent of white collar nonhourly workers had earnings within these ranges. Applying these findings to the 12 percent of cases associated with the EAP exemption yields an estimated 2.6 percent of FLSA cases, or about 211 cases, that may be avoidable. The assumption underlying this method is that workers who claim they are misclassified as EAP exempt have a similar earnings distribution as all white collar nonhourly workers.

After determining the potential number of EAP cases that the proposed rule may avoid, the Department examined a selection of 56 FLSA cases concluded between 2012 and 2015 that contained litigation cost information to estimate the average costs of litigation to assign to the potentially avoided EAP cases.[243] To calculate average litigation costs associated with these cases, the Department looked at records of court filings in the Westlaw Case Evaluator tool and on PACER to ascertain how much plaintiffs in these cases were paid for attorney fees, administrative fees, and/or other costs, apart from any monetary damages attributable to the alleged FLSA violations. (The FLSA provides for successful plaintiffs to be awarded reasonable attorney's fees and costs, so this data is available in some FLSA cases.) After determining the plaintiff's total litigation costs for each case, the Department then doubled the figures to account for litigation costs that the defendant employers incurred.[244] According to this analysis, the average litigation cost for FLSA cases concluded between 2012 and 2015 was $654,182.[245] Applying this figure to approximately 211 EAP cases that could be prevented as a consequence of this rulemaking, the Department estimated that avoided litigation costs resulting from the rule may total approximately $138.2 million per year. The Department believes these totals may underestimate total litigation costs because some FLSA overtime cases are heard in state court and thus were not captured by PACER; some FLSA overtime matters are resolved before litigation or by alternative dispute resolution; and some attorneys representing FLSA overtime plaintiffs may take a contingency fee atop their statutorily awarded fees and costs.

3. Benefits of Transparency and Certainty

The proposed rule also affirms the Department's intention to update the part 541 earnings thresholds every four years going forward. This would help maintain the relative position of the standard salary and HCE compensation levels in the overall distribution of nominal wages and salaries over time. Proposing to adjust the standard salary level and HCE compensation test every four years may provide social benefits from increased transparency and certainty for employers.

The Department believes an update to the salary level tests is long overdue. Long periods between adjustments result in large changes in the salary levels to restore the appropriate relative position of the ''dividing line'' between nonexempt and potentially exempt workers. The size and unpredictability of these changes in the past are challenging and costly to employers, because there are significant familiarization, adjustment, and managerial costs associated with infrequent updates.

The Department hopes to increase transparency and certainty by proposing to update the salary levels routinely. Adjustments that are more frequent would be smaller and make compliance easier and less costly to employers, compared to large adjustments, which are more disruptive. Employers would be aware of the timing of proposed updates and would be able to anticipate the increase beforehand. The increased transparency and certainty in regards to future proposed adjustments would help employers make more effective short- and long-term employment decisions, as well as improve their estimates of future costs.

vi. Sensitivity Analysis

This section includes estimated costs and transfers using either different assumptions or segments of the population. First, the Department presents bounds on transfer payments estimated using alternative assumptions. Second, the Department considers costs and transfers by region and by industry.

1. Bounds on Transfer Payments

Because the Department cannot predict employers' precise reaction to the proposed rule, the Department calculated bounds on the size of the estimated transfers from employers to workers. These bounds on transfers do not generate bounded estimates for costs.

For a reasonable upper bound on transfer payments, the Department assumed that all occasional overtime workers and half of regular overtime workers would receive the full overtime premium (*i.e.,* such workers would work the same number of hours but be paid 1.5 times their implicit initial hourly wage for all overtime hours) (Table 19). The full overtime premium model is a special case of the fixed-wage model where there is no change in hours. For the other half of regular overtime workers, the Department assumed in the upper-bound method that they would have their implicit hourly wage adjusted as predicted by the incomplete fixed-job model (wage rates fall and hours are reduced but total earnings continue to increase, as in the preferred method). In the preferred model, the Department assumed that

[242] *See* 81 FR 32501.

[243] The 56 cases used for this analysis were retrieved from Westlaw's Case Evaluator database using a keyword search for case summaries between 2012 and 2015 mentioning the terms ''FLSA'' and ''fees.'' Although the initial search yielded 64 responsive cases, the Department excluded one duplicate case, one case resolving litigation costs through a confidential settlement agreement, and six cases where the defendant employer(s) ultimately prevailed. Because the FLSA only entitles prevailing plaintiffs to litigation cost awards, information about litigation costs was only available for the remaining 56 FLSA cases that ended in settlement agreements or court verdicts favoring the plaintiff employees.

[244] This is likely a conservative approach to estimate the total litigation costs for each FLSA lawsuit, as defendant employers tend to incur greater litigation costs than plaintiff employees because of, among other things, typically higher discovery costs.

[245] The median cost was $111,835 per lawsuit.

only 50 percent of occasional overtime workers and no regular overtime workers would receive the full overtime premium.

The plausible lower-transfer bound also depends on whether employees work regular overtime or occasional overtime. For those who regularly work overtime hours and half of those who work occasional overtime, the Department assumes the employees' wages will fully adjust as predicted by the fixed-job model.[246] For the other half of employees with occasional overtime hours, the lower bound assumes they will be paid one and one-half times their implicit hourly wage for overtime hours worked (full overtime premium).

TABLE 19—SUMMARY OF THE ASSUMPTIONS USED TO CALCULATE THE LOWER ESTIMATE, PREFERRED ESTIMATE, AND UPPER ESTIMATE OF TRANSFERS

Lower transfer estimate	Preferred estimate	Upper transfer estimate
Occasional Overtime Workers (Type 2)		
50% fixed-job model 50% full overtime premium	50% incomplete fixed-job model 50% full overtime premium	100% full overtime premium.
Regular Overtime Workers (Type 3)		
100% fixed-job model	100% incomplete fixed-job model	50% incomplete fixed-job model. 50% full overtime premium.

* Full overtime premium model: Regular rate of pay equals the implicit hourly wage prior to the regulation (with no adjustments); workers are paid 1.5 times this base wage for the same number of overtime hours worked prior to the regulation.
* Fixed-job model: Base wages are set at the higher of: (1) A rate such that total earnings and hours remain the same before and after the regulation; thus the base wage falls, and workers are paid 1.5 times the new base wage for overtime hours (the fixed-job model) or (2) the minimum wage.
* Incomplete fixed-job model: Regular rates of pay are partially adjusted to the wage implied by the fixed-job model.

The cost and transfer payment estimates associated with the bounds are presented in Table 20. Regulatory familiarization costs and adjustment costs do not vary across the scenarios. Managerial costs are lower under these alternative employer response assumptions because fewer workers' hours are adjusted by employers and thus managerial costs, which depend in part on the number of workers whose hours change, will be smaller.[247] Depending on how employers adjust the implicit regular hourly wage, estimated transfers may range from $234.7 million to $1,053.9 million, with the preferred estimate equal to $526.9 million.

TABLE 20—BOUNDS ON YEAR 1 COST AND TRANSFER PAYMENT ESTIMATES, YEAR 1 (MILLIONS)

Cost/transfer	Lower transfer estimate	Preferred estimate	Upper transfer estimate
Direct employer costs	$394.7	$464.2	$409.7
Reg. familiarization	324.9	324.9	324.9
Adjustment costs	66.6	66.6	66.6
Managerial costs	3.2	72.7	18.1
Transfers	234.7	526.9	1,053.9

Note 1: Pooled data for 2015–2017 adjusted to reflect 2017.

2. Effects by Regions and Industries

This section presents estimates of the effects of this proposed rule by region and by industry. The Department analyzed effects on low-wage regions by comparing the number of affected workers, costs, and transfers across the four Census Regions. The region with the largest number of affected workers would be the South (544,000). However, as a share of potentially affected workers in the region, the South would not be significantly more affected relative to other regions (6.4 percent are affected compared with 4.4 to 5.0 percent in other regions). As a share of all workers in the region, the South would also not be particularly affected relative to other regions (1.1 percent are affected compared with 0.8 to 0.9 percent in other regions).

[246] The straight-time wage adjusts to a level that keeps weekly earnings constant when overtime hours are paid at 1.5 times the straight-time wage. In cases where adjusting the straight-time wage results in a wage less than the minimum wage, the straight-time wage is set to the minimum wage.

[247] In the lower transfer estimate, managerial costs are for employees whose hours change because their hourly rate increased to the minimum wage.

TABLE 21—POTENTIALLY AFFECTED AND AFFECTED WORKERS, BY REGION, YEAR 1

Region	Workers subject to FLSA (millions)	Potentially affected workers (millions) [a]	Affected workers			
			Number (millions) [b]	Percent of total affected (%)	Percent of potentially affected workers in region	Percent of all workers in region
All	135.9	24.3	1.271	100	5.2	0.9
Northeast	25.0	5.1	0.226	17.7	4.4	0.9
Midwest	30.1	5.0	0.251	19.7	5.0	0.8
South	49.4	8.5	0.544	42.8	6.4	1.1
West	31.5	5.6	0.251	19.7	4.5	0.8

Note: Pooled data for 2015–2017 adjusted to reflect 2017.

[a] Potentially affected workers are EAP exempt workers who are white collar, salaried, not eligible for another (non-EAP) overtime exemption, and not in a named occupation.

[b] Estimated number of workers exempt under the EAP exemptions who would be entitled to overtime protection under the updated salary levels (if their weekly earnings do not increase to the new salary levels).

Total transfers in the first year were estimated to be $526.9 million (Table 22). As expected, the transfers in the South would be the largest portion because the largest number of affected workers would be in the South; however, transfers per affected worker would be the lowest in the South. Annual transfers per worker would be $336 in the South, but $437 to $511 in other regions.

TABLE 22—TRANSFERS BY REGION, YEAR 1

Region	Total change in earnings (millions)	Percent of total (%)	Per affected worker
All	$526.9	100	$414.44
Northeast	115.3	21.9	511.25
Midwest	109.6	20.8	437.34
South	182.7	34.7	335.63
West	119.3	22.6	475.47

Note: Pooled data for 2015–2017 adjusted to reflect 2017.

Direct employer costs are composed of regulatory familiarization costs, adjustment costs, and managerial costs. Total first year direct employer costs would be $464.2 million (Table 23). Total direct employer costs would be the highest in the South ($172.2 million) and lowest in the Northeast ($87.0 million). While the three components of direct employer costs vary as a percent of these total costs by region, the percentage of total direct costs in each region would be fairly consistent with the share of all workers in a region. Direct employer costs in each region as a percentage of the total direct costs would range from 18.7 percent in the Northeast, to 37.1 percent in the South. Once again, these proportions are almost the same as the proportions of the total workforce in each region: 18.4 percent in the Northeast and 36.3 percent in the South.

TABLE 23—DIRECT EMPLOYER COSTS BY REGION, YEAR 1

Region	Regulatory familiarization	Adjustment	Managerial	Total direct costs
Costs (Millions)				
All	$324.9	$66.6	$72.7	$464.2
Northeast	62.7	11.8	12.5	87.0
Midwest	71.4	13.1	16.4	100.9
South	114.2	28.5	29.5	172.2
West	76.7	13.1	14.3	104.2
Percent of Total Costs by Region				
All	100.0	100.0	100.0	100.0
Northeast	19.3	17.7	17.2	18.7
Midwest	22.0	19.7	22.5	21.7
South	35.1	42.8	40.6	37.1
West	23.6	19.7	19.7	22.4

Note: Pooled data for 2015–2017 adjusted to reflect 2017.

Another way to compare the relative effects of this proposed rule by region is to consider the transfers and costs as a proportion of current payroll and current revenues (Table 24). Nationally, employer costs and transfers would be approximately 0.013 percent of payroll. By region, direct employer costs and transfers as a percent of payroll would be also approximately the same (between 0.012 and 0.014 percent of payroll). Employer costs and transfers as a percent of revenue would be 0.002 percent nationally and in each region.

TABLE 24—ANNUAL TRANSFERS AND COSTS AS PERCENT OF PAYROLL AND OF REVENUE BY REGION, YEAR 1

Region	Payroll (billions)	Revenue (billions)	Costs and transfers	
			As percent of payroll	As percent of revenue
All	$7,461	$42,832	0.0133	0.0023
Northeast	1,646	8,614	0.0122	0.0023
Midwest	1,589	9,766	0.0132	0.0022
South	2,483	15,308	0.0143	0.0023
West	1,743	9,145	0.0128	0.0024

Notes: Pooled data for 2015–2017 adjusted to reflect 2017. Payroll, revenue, costs, and transfers all exclude the federal government.
Sources: Private sector payroll and revenue data from 2012 SUSB. State and local payroll data from State and Local Government Finances Summary: FY2015.

In order to gauge the effect of the proposed rule on industries, the Department compared estimates of combined direct costs and transfers as a percent of payroll, profit, and revenue for the 13 major industry groups (Table 25).[248] This provides a common method of assessing the relative effects of the rule on different industries, and the magnitude of adjustments the rule may require on the part of enterprises in each industry. The relative costs and transfers expressed as a percentage of payroll are particularly useful measures of the relative size of adjustment faced by organizations in an industry because they benchmark against the cost category directly associated with the labor force. Measured in these terms, costs and transfers as a percent of payroll would be highest in agriculture, forestry, fishing, and hunting; leisure and hospitality; and other services. However, the overall magnitude of the relative shares would be small, representing less than 0.1 percent of overall payroll costs across industries.

The Department also estimated transfers and costs as a percent of profits.[249] Benchmarking against profits is potentially helpful in the sense that it provides a measure of the proposed rule's effect against returns on investment. However, this metric must be interpreted carefully as it does not account for differences across industries in risk-adjusted rates of return, which are not readily available for this analysis. The ratio of costs and transfers to profits also does not reflect differences in the firm-level adjustment to changes in profits reflecting cross-industry variation in market structure.[250] Nonetheless, the overall magnitude of costs and transfers as a percentage of profits would be small, representing in less than 0.3 percent of overall profits in every industry. The range of values of total costs and transfers would vary among industries as a percent of profits ranging from a low of 0.02 percent (financial activities) to a high of 0.28 percent (agriculture, forestry, fishing, and hunting). However, because the share is less than 0.3 percent, even for the industry with the largest impact, we believe this proposed rule would not disproportionately affect any industries.

Finally, the Department's estimates of transfers and costs as a percent of revenue by industry also indicated very small effects (Table 25) of less than 0.02 percent of revenues in any industry. The industries with the largest costs and transfers as a percent of revenue would be agriculture, forestry, fishing, and hunting; and leisure and hospitality. However, the difference between the agriculture, forestry, fishing, and hunting industry, the industry with the highest costs and transfers as a percent of revenue, and the industry with the lowest costs and transfers as a percent of revenue (public administration), would be only 0.011 percentage points. Table 25 illustrates that the actual differences in costs relative to revenues would be quite small across industry groupings.

TABLE 25—ANNUAL TRANSFERS, TOTAL COSTS, AND TRANSFERS AND COSTS AS PERCENT OF PAYROLL, REVENUE, AND PROFIT BY INDUSTRY, YEAR 1

Industry	Transfers (millions)	Direct costs (millions)	Costs and transfers		
			As percent of payroll	As percent of revenue	As percent of profit [a]
All	$525.7	$454.2	0.013	0.002	0.04
Agriculture, forestry, fishing, & hunting	3.0	1.1	0.066	0.012	0.28

[248] Note that the totals in this table for transfers and direct costs do not match the totals in other sections due to the exclusion of transfers to federal workers and costs to federal entities. Federal costs and transfers are excluded to be consistent with payroll and revenue which exclude the federal government.

[249] Internal Revenue Service. (2013). Corporation Income Tax Returns. Available at: *https://www.irs.gov/statistics/soi-tax-stats-corporation-complete-report.* Table 5 of the IRS report provides information on total receipts, net income, and deficits. The Department calculated the ratio of net income (column (7)) less any deficit (column (8)) to total receipts (column (3)) for all firms by major industry categories. Costs and transfers as a percent of revenues were divided by the profit to receipts ratios to calculate the costs and transfers as a percent of profit.

[250] In particular, a basic model of competitive product markets would predict that highly competitive industries with lower rates of return would adjust to increases in the marginal cost of labor arising from the rule through an overall, industry-level increase in prices and a reduction in quantity demanded based on the relative elasticities of supply and demand. Alternatively, more concentrated markets with higher rates of return would be more likely to adjust through some combination of price increases and profit reductions based on elasticities as well as interfirm pricing responses.

TABLE 25—ANNUAL TRANSFERS, TOTAL COSTS, AND TRANSFERS AND COSTS AS PERCENT OF PAYROLL, REVENUE, AND PROFIT BY INDUSTRY, YEAR 1—Continued

Industry	Transfers (millions)	Direct costs (millions)	Costs and transfers		
			As percent of payroll	As percent of revenue	As percent of profit [a]
Mining	8.5	2.1	0.016	0.002	0.05
Construction	13.7	31.7	0.015	0.003	0.09
Manufacturing	75.8	25.3	0.016	0.002	0.03
Wholesale & retail trade	103.6	84.5	0.024	0.001	0.05
Transportation & utilities	21.0	14.6	0.014	0.003	0.10
Information	23.3	11.3	0.013	0.003	0.03
Financial activities	53.3	51.2	0.016	0.002	0.02
Professional & business services	71.0	75.0	0.011	0.006	0.06
Education & health services	67.6	68.4	0.014	0.005	0.10
Leisure & hospitality	51.6	43.7	0.033	0.010	0.19
Other services	14.8	36.1	0.032	0.008	0.20
Public administration	18.58	9.1	0.003	0.001	[b]

Sources: Private sector payroll and revenue data from 2012 Economic Census. State and local payroll and revenue data from State and Local Government Finances Summary: FY2015 are used for the Public Administration industry. Profit to revenue ratios calculated from 2012 Internal Revenue Service Corporation Income Tax Returns.
[a] Profit data based on corporations only.
[b] Profit is not applicable for public administration.

Although labor market conditions vary by Census Region and industry, the effects from updating the standard salary level and the HCE compensation level would not unduly affect any of the regions or industries. The proportion of total costs and transfers in each region would be fairly consistent with the proportion of total workers in each region. Additionally, although the shares will be larger for some firms and smaller for others, the average estimated costs and transfers from this proposed rule are very small relative to current payroll or current revenue—generally less than a tenth of a percent of payroll and less than two-hundredths of a percent of revenue in each region and in each industry.

vii. Regulatory Alternatives

As mentioned earlier, the Department considered a range of alternatives before selecting the 2004 methodology for updating the standard salary level and the 2016 methodology for updating the HCE compensation level (*see* section VI.C.i). As seen in Table 26, the Department has calculated 2017 salary levels, the number of affected workers, and the associated costs and transfers for the alternative methods that the Department considered. Regulatory familiarization costs were not included because they do not vary over the alternatives. As with the regulatory analysis for the proposed levels, we use 2017 salary levels and 2017 earnings data to estimate the effect of January 2020 salary levels and 2020 earnings.

TABLE 26—UPDATED STANDARD SALARY AND HCE COMPENSATION LEVELS AND ALTERNATIVES, AFFECTED EAP WORKERS, COSTS, AND TRANSFERS, YEAR 1

Alternative	2017 salary level [a]	Affected EAP workers (1,000s)	Year 1 effects (millions)	
			Adj. & managerial costs [b]	Transfers
Standard Salary Level (Weekly)				
Alt. #0: Maintain average minimum wage protection since 2004 [c]	$503	242	$21.5	$35.7
Alt. #1: Inflate 2004 level using PCEPI	597	786	77.9	155.2
Alt. #2: Inflate 2004 level using Chained CPI	599	787	78.0	158.3
Alt. #3: Inflate 2004 level using CPI–U	620	924	94.1	207.5
Alt. #4: Inflate 2004 level using ECI civilan	639	1,069	110.6	250.1
Proposed rule: 2004 method	641	1,070	111.4	252.5
Alt. #5: Inflate 2004 level using ECI private	643	1,072	111.8	255.0
HCE Compensation Level (Annually)				
HCE alt. #1: No change	100,000	0	.....	.....
HCE alt. #2: Inflate 2004 level using PCEPI	131,189	186	24.4	226.4
HCE alt. #3: Inflate 2004 level using Chained CPI	131,750	186	24.5	229.0
HCE alt. #4: Inflate 2004 level using CPI–U	136,253	198	26.2	257.1
Proposed rule: 90th percentile of full-time salaried workers	139,464	201	27.9	274.3
HCE alt. #5: Inflate 2004 level using ECI civilian	140,480	204	28.1	277.8
HCE alt. #6: Inflate 2004 level using ECI private	141,337	204	28.3	280.3

Note: Pooled data for 2015–2017 adjusted to reflect 2017.
[a] These salary levels reflect estimated values for 2017 to approximate Year 1 effects.
[b] Regulatory familiarization costs are excluded because they do not vary based on the selected values of the salary levels.

[c] When the $455 weekly threshold was established in 2004, the federal minimum wage was $5.15, so the salary threshold was equivalent to the earnings of an employee working 72.2 hours at the minimum wage (including time-and-a-half for hours beyond the fortieth in a week). That amount fell with increases in the minimum wage and is now 55.2 hours. The weighted average across the 15 years since the overtime threshold was last changed is 59.6 hours, and a threshold that would provide 59.6 hours of $7.25 minimum wage protection and overtime pay for hours over 40 would be $503.

viii. Projections

1. Methodology

The Department projected affected workers, costs, and transfers forward for ten years. This involved several steps.

First, the Department calculated workers' projected earnings in future years. The wage growth rate is calculated as the compound annual growth rate in median wages using the historical CPS MORG data for occupation-industry categories from 2007 to 2016.[251] This is the annual growth rate that when compounded (applied to the first year's wage, then to the resulting second year's wage, etc.) yields the last historical year's wage. In occupation-industry categories where the CPS MORG data had an insufficient number of observations to reliably calculate median wages, the Department used the growth rate in median wages calculated from BLS' Occupational Employment Statistics (OES).[252] Any remaining occupation-industry combinations without estimated median growth rates were assigned the median of the growth rates in median wages from the CPS MORG data for all industries and occupations. For projecting costs, we similarly projected wage rates for the human resource and managerial workers whose time is spent on these tasks.

Second, the Department compared workers' counter-factual earnings (*i.e.,* absent any rulemakings) to the earnings levels. If the counter-factual earnings are below the relevant level (*i.e.,* standard or HCE) then the worker is considered affected. In other words, in each year affected EAP workers were identified as those who would be exempt in Year 1 absent any change to the current regulations but have projected earnings in the future year that are less than the relevant salary level.

Third, sampling weights were adjusted to reflect employment growth. The employment growth rate is the compound annual growth rate based on the ten-year employment projection from BLS' National Employment Matrix (NEM) for 2016 to 2026 within an occupation-industry category.

Adjusted hours for workers affected in Year 1 were re-estimated in Year 2 using a long-run elasticity of labor demand of –0.4.[253] For workers newly affected in Year 2 through Year 10, employers' wage and hour adjustments are estimated in that year, as described in section VI.D.iv, except the long-run elasticity of labor demand of –0.4 is used. Employer adjustments are made in the first year the worker is affected and then applied to all future years in which the worker continues to be affected (unless the worker switches to a Type 4 worker). Workers' earnings in predicted years are earnings post employer adjustments, with overtime pay, and with ongoing wage growth based on historical growth rates (as described above).

2. Estimated Projections

The Department estimated that the proposed rule would affect 1.3 million EAP workers in Year 1 and 1.1 million workers in Year 10 (Table 27). The projected number of affected workers includes workers who were not EAP exempt in the base year but would have become exempt in the absence of this proposed rule in Years 2 through 10. For example, a worker who passes the standard duties test may earn less than $455 in Year 1 but between $455 and the new salary level in subsequent years; such a worker would be counted as an affected worker.

The Department quantified three types of direct employer costs in the ten-year projections: (1) Regulatory familiarization costs; (2) adjustment costs; and (3) managerial costs. Regulatory familiarization costs only occur in Year 1. Although start-up firms must still become familiar with the FLSA following Year 1, the difference between the time necessary for familiarization with the current part 541 regulations and the regulations as modified by the proposed rule is essentially zero. Therefore, projected regulatory familiarization costs for new entrants over the next nine years would be zero.

Adjustment costs would occur in any year in which workers are newly affected. After Year 1, these costs would be relatively small since the majority of workers would be affected in Year 1. Management costs would recur each year for all affected EAP workers whose hours are adjusted. However, managerial costs generally decrease over time as the number of affected EAP workers decreases. The Department estimated that Year 1 managerial costs would be $72.7 million; by Year 10 these costs decline to $64.2 million.

The Department projected two types of transfers from employers to employees associated with workers affected by the regulation. Transfers due to the minimum wage provision would be $57.0 million in Year 1 and would fall to $17.6 million in Year 10 as increased earnings over time move workers' implicit rate of pay above the minimum wage.[254] Transfers due to overtime pay decline over time because the number of affected workers decreases. Thus, transfers due to the overtime pay provision would decrease from $469.9 million in Year 1 to $429.5 million in Year 10.[255]

Projected costs and transfers were deflated to 2017 dollars using the Congressional Budget Office's projections for the CPI–U.[256]

[251] To increase the number of observations, three years of data were pooled for each of the endpoint years. Specifically, data from 2006, 2007, and 2008 (converted to 2007 dollars) were used to calculate the 2007 median wage and data from 2015, 2016, and 2017 (converted to 2016 dollars) were used to calculate the 2016 median wage.

[252] To lessen small sample bias, this rate was only calculated using CPS MORG data when these data contained at least 30 observations in each period.

[253] This elasticity estimate is based on the Department's analysis of the following paper: Lichter, A., Peichl, A. & Siegloch, A. (2014). The Own-Wage Elasticity of Labor Demand: A Meta-Regression Analysis. IZA DP No. 7958.

[254] Increases in minimum wages were not projected. If state or federal minimum wages increase during the projected timeframe, as anticipated, then projected minimum wage transfers may be underestimated.

[255] If earnings levels were in fact updated quadrennially as the Department intends, which remains a matter within the Secretary's sole discretion, then the potential projected costs and transfers would be higher in the Department's estimation than those shown here, based on the Department's estimates on future outcomes many years into the future. Because those potential costs and transfers would be the result of any future rulemakings and therefore included in the economic analyses of those rulemakings, they have not been incorporated into this analysis. The Department has estimated these potential costs and transfers, however. With updates in Years 6 and 10, the ten-year annualized costs, based on the Department's estimates and subject to change given that it relies on future projections and the Secretary's discretionary actions, would increase from $120.5 million to $135.9 million. Annualized transfers would increase from $429.4 million to $510.0 million.

[256] Congressional Budget Office. 2018. The Budget and Economic Outlook: 2018 To 2028. *See https://www.cbo.gov/publication/53651.*

TABLE 27—PROJECTED COSTS AND TRANSFERS, STANDARD AND HCE SALARY LEVELS

Year (year #)	Affected EAP workers (millions)	Costs				Transfers		
		Reg. Fam.	Adjustment [a]	Managerial	Total	Due to MW	Due to OT	Total
		(Millions 2017$)						
Year:								
Year 1	1.3	$324.9	$66.6	$72.7	$464.2	$57.0	$469.9	$526.9
Year 2	1.2	0.0	1.5	72.7	74.2	30.4	390.9	421.3
Year 3	1.2	0.0	1.7	68.5	70.2	28.0	374.9	402.8
Year 4	1.1	0.0	2.2	66.5	68.7	25.4	378.0	403.4
Year 5	1.1	0.0	2.9	63.0	65.9	25.8	380.5	406.3
Year 6	1.0	0.0	3.4	62.5	65.9	25.2	375.5	400.7
Year 7	1.0	0.0	3.2	60.3	63.6	21.9	387.2	409.1
Year 8	1.0	0.0	3.3	60.8	64.1	19.2	401.9	421.1
Year 9	1.0	0.0	3.4	61.8	65.1	18.5	413.4	431.9
Year 10	1.1	0.0	3.6	64.2	67.8	17.6	429.5	447.1
Annualized value:								
3% real discount rate		37.0	10.0	65.6	112.6	27.7	400.3	428.0
7% real discount rate		43.2	11.2	66.0	120.5	28.6	400.7	429.4

[a] Adjustment costs occur in all years when there are newly affected workers. Adjustment costs may occur in years without updated salary levels because some workers' projected earnings are estimated using negative earnings growth.

Table 27 also summarizes annualized costs and transfers over the ten-year projection period, using 3 percent and 7 percent real discount rates. The Department estimated that total direct employer costs have an annualized value of $120.5 million per year over ten years when using a 7 percent real discount rate. The annualized value of total transfers was estimated to equal $429.4 million.

ix. Alternative Regulatory Baseline, Including Calculation of Cost Savings Under Executive Order 13771

Other portions of this regulatory impact analysis contain estimates of the impacts of this proposed rule relative to the 2004 final rule, which is the policy that the Department is currently enforcing. However, Circular A–4 states that multiple regulatory baselines may be analytically relevant. In this case, a second informative baseline is the 2016 final rule, which is currently in the Code of Federal Regulations (CFR).[257] Moreover, for purposes of determining whether this proposed rule is deregulatory under E.O. 13771, the economic impacts should be compared to what is currently published in the CFR. As such, most of this section presents an estimate of the cost savings of this proposed rule relative to the 2016 rule, and in addition to estimating annualized cost savings for the proposed rule using a 10-year time horizon, we also estimated annualized costs savings in perpetuity in accordance with E.O. 13771 accounting standards. Later in this section, the Department presents transfer and benefits estimates from the analysis accompanying the 2016 final rule—values that are also relevant to this second regulatory baseline.

To ensure the estimated costs of the 2016 final rule can be directly and appropriately compared with the costs estimated for this proposed rule, the Department started with the analytic model for this proposed rule and replaced the proposed salary and compensation thresholds with the thresholds set in the 2016 final rule. The Department assumed that initial regulatory familiarization costs would be identical under adoption of either the proposed rule or the 2016 final rule, because the same number of employers would be potentially affected in Year 1. In addition, the Department added the updated thresholds from the planned triennial updates in years 4, 7 and 10 from the 2016 final rule. Therefore, the *only* differences in estimated costs presented here between the 2016 final rule and this proposed rule are attributable to the initial difference in earnings thresholds and the effects of the 2016 final rule's automatic updating mechanism, which updates the thresholds every three years.

TABLE 28—WEEKLY EARNINGS THRESHOLDS USED IN COMPARISON OF 2016 FINAL RULE AND 2018 PROPOSED RULE

Year	2016 Final Rule		2018 Proposed Rule	
	Standard salary threshold	HCE compensation threshold	Standard salary threshold	HCE compensation threshold
Year 1	$913	$2,577	$641	$2,682
Year 4	984	2,837	641	2,682
Year 7	1,049	3,080	641	2,682
Year 10	1,118	3,345	641	2,682

Note: Year 1 impacts are calculated using 2017 pooled CPS MORG data (the most recently available data); therefore, the earnings thresholds in Year 1 must correspond to the levels that would have been in effect under each rule had the rule been promulgated in 2017. These figures are the Department's best approximation for impacts starting in 2020, the earliest year the Department expects the proposed earnings levels to be implemented.

However, this approach means that the estimated costs presented here for the 2016 final rule are not directly comparable to those published in the **Federal Register** (81 FR 32391). The differences between the previously

[257] 29 CFR part 541

published 2016 cost estimates and those presented here are primarily due to: An increase in the number of establishments that would incur regulatory familiarization costs to account for economic growth between 2012 (estimates for the 2016 final rule were based on 2012 SUSB data) and 2015 (this proposed rule is based on 2015 SUSB data); the use of more recent CPS MORG data (the 2016 final rule used pooled CPS data for 2013 through 2015 inflated to represent FY 2017); an increase in the wage rates used to value staff time spent on regulatory familiarization, adjustment, and monitoring; incorporating a 17 percent overhead rate in those wage rates; and minor improvements to the model.[258]

Table 29 presents the estimated number of affected EAP workers, and direct regulatory, adjustment, and managerial costs for the 2016 final rule calculated using the 2018 analytic model.

TABLE 29—ADJUSTED 2016 FINAL RULE PROJECTED COSTS AND TRANSFERS, STANDARD SALARY AND HCE COMPENSATION LEVELS

Year	Affected EAP workers (millions)	Costs			
		Reg. Fam.	Adjustment [a]	Managerial	Total
		(Millions FY2017$)			
Year:					
Year 1	4.1	$324.9	$215.2	$241.2	$781.3
Year 2	4.0	0.0	1.5	231.6	233.1
Year 3	3.8	0.0	1.7	221.8	223.5
Year 4	4.5	27.6	14.3	262.3	304.2
Year 5	4.4	0.0	2.9	253.7	256.6
Year 6	4.3	0.0	3.5	247.5	251.0
Year 7	4.9	28.2	9.4	279.1	316.6
Year 8	4.8	0.0	3.3	270.5	273.7
Year 9	4.7	0.0	3.4	267.9	271.2
Year 10	5.4	28.8	13.7	303.2	345.6
Annualized value:					
3% real rate		45.1	29.7	256.2	331.0
7% real rate		50.8	33.5	254.2	338.6

[a] Adjustment costs occur in all years when there are newly affected workers, including years when the salary level is not updated. Adjustment costs may occur in years without updated salary levels because some workers' projected earnings are estimated using negative earnings growth.

The Department then subtracted direct regulatory costs expected to have been incurred under the 2016 final rule from the direct costs estimated under this proposed rule (*see* Table 27). As shown in Table 30, direct employer costs of the proposed rule are estimated to be, on average, $224.0 million lower per year in perpetuity than the 2016 final rule (using a 7 percent discount rate).

TABLE 30—DIFFERENCE IN COSTS BETWEEN 2016 FINAL RULE AND THIS PROPOSED RULE

Year	Reduction in affected EAP workers (millions)	Reduction in costs			
		Reg. Fam.	Adjustment [a]	Managerial	Total
		(Millions FY2017$)			
Year:					
Year 1	2.8	$0.0	$148.6	$168.5	$317.1
Year 2	2.7	0.0	0.0	158.9	158.9
Year 3	2.6	0.0	0.0	153.3	153.3
Year 4	3.4	27.6	12.1	195.8	235.5
Year 5	3.3	0.0	0.0	190.7	190.7
Year 6	3.2	0.0	0.1	185.1	185.1
Year 7	3.9	28.2	6.1	218.7	253.1
Year 8	3.8	0.0	0.0	209.6	209.6
Year 9	3.6	0.0	0.0	206.1	206.1
Year 10	4.3	28.8	10.1	238.9	277.8
Annualized Value: 10-Year Time Horizon					
3% real discount rate		$8.1	$19.6	$190.6	$218.4
7% real discount rate		7.6	22.4	188.2	218.2
Annualized Value: Perpetual Time Horizon					
3% real discount rate		$9.0	$7.5	$210.9	$227.4

[258] As previously discussed, one such improvement is the Department's application of conditional probabilities to estimate the number of HCE workers. *See supra* note 193.

TABLE 30—DIFFERENCE IN COSTS BETWEEN 2016 FINAL RULE AND THIS PROPOSED RULE—Continued

Year	Reduction in affected EAP workers (millions)	Reduction in costs			
		Reg. Fam.	Adjustment [a]	Managerial	Total
7% real discount rate		8.3	12.6	203.1	224.0

[a] Adjustment costs occur in all years when there are newly affected workers, including years when the salary level is not updated. Adjustment costs may occur in years without updated salary levels because some workers' projected earnings are estimated using negative earnings growth.

The cost savings from the proposed rule are primarily attributable to two factors. First, a lower standard salary level will result in fewer affected workers in any given year. If fewer workers are affected, then management must consider and make earnings adjustments for fewer employees, and must monitor hours worked for fewer employees. Second, this analysis does not incorporate automatic updating whereas the 2016 final rule incorporated a triennial automatic updating mechanism. Therefore, regulatory familiarization costs are now only incurred in Year 1 and adjustment costs are primarily incurred in Year 1. Additionally, managerial costs now gradually decrease over time rather than increasing every three years.

In the 2016 final rule, the Department estimated average annualized transfers of $1,189.1 million over a ten-year period using a discount rate of 7 percent. The Department also estimated that avoided litigation costs resulting from the rule could total approximately $31.2 million per year.[259] The Department includes these values here for reference.

VII. Initial Regulatory Flexibility Analysis (IRFA)

The Regulatory Flexibility Act of 1980 (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), hereafter jointly referred to as the RFA, requires that an agency prepare an initial regulatory flexibility analysis (IRFA) when proposing, and a final regulatory flexibility analysis (FRFA) when issuing, regulations that will have a significant economic impact on a substantial number of small entities. The agency is also required to respond to public comment on the NPRM.[260] The Chief Counsel for Advocacy of the Small Business Administration was notified of this proposed rule upon submission of the rule to OMB under Executive Order 12866. The Department invites commenters to provide input on data analysis and/or methodology used throughout this IRFA.

A. Reasons Why Action by the Agency Is Being Considered

The standard salary level and HCE total compensation levels have not been updated since 2004 [261] and, as described in detail in section VI.A.ii., the standard salary level has declined considerably in real terms relative to the 2004 value. As a result, the standard salary level's usefulness in identifying nonexempt workers has eroded over time. Similarly, the HCE annual compensation requirement is out of date; more than twice as many workers earn at least $100,000 annually compared to when it was adopted in 2004. Additionally, the Department's 2016 final rule updating the standard salary level and the HCE annual compensation requirement was declared invalid because the rule would make nonexempt too many employees whose exemption status should have been determined by their duties. Therefore, the Department believes that rulemaking is necessary in order to correct the deficiencies in the 2016 final rule and restore the effectiveness of the salary levels.

B. Statement of Objectives and Legal Basis for the Proposed Rule

Section 13(a)(1) creates a minimum wage and overtime pay exemption for bona fide executive, administrative, professional, and outside sales employees, and teachers and academic administrative personnel, as those terms are defined and delimited by the Secretary of Labor. The regulations in part 541 contain specific criteria that define each category of exemption. The regulations also define those computer employees who are exempt under section 13(a)(1) and section 13(a)(17). To qualify for exemption, employees must meet certain tests regarding their job duties and generally must be paid on a salary basis at not less than $455 per week.

The Department's primary objective in this rulemaking is to ensure that the revised salary levels will continue to provide a useful and effective test for exemption. The premise behind the standard salary level is to be an appropriate dividing-line between employees who are nonexempt from employees who may be performing exempt duties. The threshold essentially screens out obviously nonexempt employees whom Congress intended to be protected by the FLSA's minimum wage and overtime provisions. If left unchanged, the effectiveness of the salary level test as a means of determining exempt status diminishes as nonexempt employee wages increase over time.

Given that the 2016 final rule was invalidated, the Department last updated the salary levels in the 2004 final rule, which set the standard test threshold at $455 per week for EAP employees. The 2004 final rule also created a new ''highly compensated'' test for exemption. Under the HCE exemption, employees who are paid total annual compensation of at least $100,000 (which must include at least $455 per week paid on a salary or fee basis) are exempt from the FLSA's overtime requirements if they customarily and regularly perform at least one of the duties or responsibilities of an exempt EAP employee identified in the standard tests for exemption.[262]

Employees who meet the requirements of part 541 are excluded from the Act's minimum wage and overtime pay protections. As a result, employees may work any number of hours in the workweek and not be subject to the FLSA's overtime pay requirements. Some state laws have stricter exemption standards than those described above. The FLSA does not preempt any such stricter state

[259] In this proposed rule, the Department has revised how it calculates avoided litigation costs so the number referenced here for the 2016 final rule is not directly comparable to the calculation of reduced litigation costs for this proposal.

[260] *See* 5 U.S.C. 604.

[261] The Department revised the EAP salary levels in 2004. In 2016, the Department also issued a final rule revising the EAP salary levels, however, on August 31, 2017, the U.S. District Court for Eastern District of Texas held that the 2016 final rule's standard salary level exceeded the Department's authority and was therefore invalid. *See Nevada* v. *U.S. Dep't of Labor,* 275 F. Supp. 3d 795 (E.D. Tex. 2017). Until the Department issues a new final rule, it is enforcing the part 541 regulations in effect on November 30, 2016, including the $455 per week standard salary level set in the 2004 final rule.

[262] § 541.601.

standards. If a state law establishes a higher standard than the provisions of the FLSA, the higher standard applies as a matter of state law in that specific state.[263]

To restore the function of the standard salary level and the HCE total compensation requirements as appropriate bright-line tests between overtime-protected employees and those who may be bona fide EAP employees, the Department proposes to increase the minimum salary level necessary for exemption from the FLSA minimum wage and overtime requirements as an EAP employee from $455 to $679 a week for the standard salary test, and from $100,000 to $147,414 per year for the HCE test. To ensure that these levels continue to function appropriately in the future, the Department intends to update these levels every four years.

C. Description of the Number of Small Entities to Which the Proposed Rule Will Apply

i. Definition of Small Entity

The RFA defines a ''small entity'' as a (1) small not-for-profit organization, (2) small governmental jurisdiction, or (3) small business. The Department used the entity size standards defined by SBA, in effect as of October 1, 2017, to classify entities as small.[264] SBA establishes separate standards for individual 6-digit NAICS industry codes, and standard cutoffs are typically based on either the average number of employees, or the average annual receipts. For example, small businesses are generally defined as having fewer than 500, 1,000, or 1,250 employees in manufacturing industries and less than $7.5 million in average annual receipts for nonmanufacturing industries. However, some exceptions do exist, the most notable being that depository institutions (including credit unions, commercial banks, and non-commercial banks) are classified by total assets (small defined as less than $550 million in assets). Small governmental jurisdictions are another noteworthy exception. They are defined as the governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000 people.[265]

Parameters that are used in the small business cost analysis, and a summary of the effects, are provided in Table 31.

TABLE 31—OVERVIEW OF PARAMETERS USED FOR COSTS TO SMALL BUSINESSES

Small business costs	Cost
Direct and Payroll Costs	
Average total cost per affected entity [a]	$4,053.
Range of total costs per affected entity [a]	$1,146–$100,536.
Average percent of revenue per affected entity [a]	0.18%.
Average percent of payroll per affected entity [a]	0.97%.
Average percent of small business profit	0.06%.
Direct Costs	
Regulatory familiarization:	
Time (first year)	1 hour per establishment.
Hourly wage	$41.91.
Adjustment:	
Time (first year affected)	75 minutes per newly affected worker.
Hourly wage	$41.91.
Managerial:	
Time (weekly)	5 minutes per affected worker.
Hourly wage	$48.72.
Payroll Increases	
Average payroll increase per affected entity [a]	$3,187.
Range of payroll increases per affected entity [a]	$0–$92,869.

[a] Using the methodology where all employees at an affected small firm are affected. This assumption generates upper-end estimates. Lower-end cost estimates are significantly smaller.

ii. Data Sources and Methods

The Department obtained data from several sources to determine the number of small entities and employment in these entities for each industry. However, the Statistics of U.S. Businesses (SUSB, 2012) was used for most industries. Industries for which the Department used alternative sources include credit unions,[266] commercial banks and savings institutions,[267] agriculture,[268] and public administration.[269] The Department used the latest available data in each case, so data years differ between sources.

For each industry, the SUSB data tabulates total employment, establishment, and firm counts by both enterprise employment size (*e.g.,* 0–4 employees, 5–9 employees) and receipt size (*e.g.,* less than $100,000, $100,000-

[263] *See* 29 U.S.C. 218

[264] *See https://www.sba.gov/sites/default/files/files/Size_Standards_Table_2017.pdf.*

[265] *See http://www.sba.gov/advocacy/regulatory-flexibility-act* for details.

[266] National Credit Union Association. (2012). 2012 Year End Statistics for Federally Insured Credit Unions. *https://www.ncua.gov/analysis/Pages/call-report-data/reports/chart-pack/chart-pack-2018-q1.pdf.*

[267] Federal Depository Insurance Corporation. (2018). Statistics on Depository Institutions—Compare Banks. Available at: *https://www5.fdic.gov/SDI/index.asp. Data are from 3/31/18* for employment and data are from 6/30/2017 for share of firms and establishments that are ''small''.

[268] United States Department of Agriculture. (2014). 2012 Census of Agriculture: United States Summary and State Data: Volume 1, Geographic Area Series, Part 51. Available at: *http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf.*

[269] Hogue, C. (2012). Government Organization Summary Report: 2012. Available at: *http://www2.census.gov/govs/cog/g12_org.pdf.*

$499,999).[270] The Department combined these categories with the SBA size standards to estimate the proportion of establishments and employees in each industry that are considered small or employed by a small entity, respectively. The general methodological approach was to classify all establishments or employees in categories below the SBA cutoff as in ''small entity'' employment.[271] If a cutoff fell in the middle of a defined category, a uniform distribution of employees across that bracket was assumed to determine what proportion should be classified as small. The Department assumed that the small entity share of credit card issuing and other depository credit intermediation institutions (which were not separately represented in FDIC asset data), is similar to that of commercial banking and savings institutions. The estimated share of employment in small entities was applied to the CPS data to estimate the number of affected workers in small entities.

The Department also estimated the number of small establishments by employer type (nonprofit, for-profit, government). The calculation of the number of establishments by employer type is similar to the calculation of the number of establishments by industry. However, instead of using SUSB data by industry, the Department used SUSB data by Legal Form of Organization for nonprofit and for-profit establishments, and data from the 2012 Census of Governments for small governments. The 2012 Census of Governments report includes a breakdown of state and local governments by the population of their underlying jurisdiction, allowing us to estimate the number of governments that are small. The Department welcomes comments on the data sets used in the analysis and alternative sources of data.

iii. Number of Small Entities Affected by the Proposed Rule

Table 32 presents the estimated number of establishments and small establishments in the U.S. (hereafter, the terms ''establishment'' and ''entity'' are used interchangeably and are considered equivalent for the purposes of this IRFA).[272] Based on the methodology described above, the Department found that of the 7.8 million establishments relevant to this analysis, more than 80 percent (6.3 million) are small by SBA standards. These small establishments employ about 51.5 million workers, about 37 percent of workers employed by all establishments (excluding self-employed, unpaid workers, and members of the armed forces), and account for roughly 36 percent of total payroll ($2.6 trillion of $7.4 trillion).[273]

TABLE 32—NUMBER OF ESTABLISHMENTS AND EMPLOYEES BY SBA SIZE STANDARDS, BY INDUSTRY AND EMPLOYER TYPE

Industry/employer type	Establishments (1,000s)		Workers (1,000s) [a]		Annual payroll (billions)	
	Total	Small	Total	Small business employed	Total ($)	Small ($)
Total	7,754.0	6,270.4	139,636.5	51,542.2	7,359.5	2,621.7
Industry [b]						
Agriculture	9.2	8.5	(c)	(c)	(c)	(c)
Forest., log., fish., hunt., and trap	13.1	12.8	(c)	(c)	(c)	(c)
Mining	29.2	23.6	(c)	(c)	(c)	(c)
Construction	682.4	663.0	7,955.8	5,153.8	421.2	271.5
Nonmetallic mineral prod. manuf	14.7	11.3	(c)	(c)	(c)	(c)
Prim. metals and fab. metal prod	59.3	55.7	1,636.3	992.3	87.3	50.8
Machinery manufacturing	23.8	21.7	1,267.0	678.3	78.1	41.7
Computer and elect. prod. manuf	12.7	11.3	1,211.3	562.2	107.2	50.3
Electrical equip., appliance manuf	5.7	4.9	(c)	(c)	(c)	(c)
Transportation equip. manuf	11.9	10.2	2,522.2	711.3	165.9	43.9
Wood products	14.1	12.9	(c)	(c)	(c)	(c)
Furniture and fixtures manuf	15.1	14.7	(c)	(c)	(c)	(c)
Misc. and not spec. manuf	26.6	25.6	1,464.6	861.7	86.3	49.8
Food manufacturing	26.8	23.6	1,761.2	834.6	75.1	34.2
Beverage and tobacco products	8.0	7.1	(c)	(c)	(c)	(c)
Textile, app., and leather manuf	16.7	16.2	590.2	391.1	25.5	17.0
Paper and printing	29.9	27.8	883.7	475.9	47.8	24.2
Petroleum and coal prod. manuf	2.1	1.2	(c)	(c)	(c)	(c)
Chemical manufacturing	13.2	10.5	1,377.9	545.5	109.4	41.6
Plastics and rubber products	12.3	10.3	(c)	(c)	(c)	(c)
Wholesale trade	413.4	329.1	3,453.2	1,617.5	208.4	96.5
Retail trade	1,070.2	689.6	15,784.9	5,357.8	582.8	221.6
Transport. and warehousing	228.4	181.7	6,019.2	1,580.3	301.8	74.2

[270] The SUSB defines employment as of March 12th.

[271] The Department's estimates of the numbers of affected small entities and affected workers who are employees of small entities are likely overestimates as the Department had no credible way to estimate which enterprises with annual revenues below $500,000 also did not engage in interstate commerce.

[272] SUSB reports data by ''enterprise'' size designations (a business organization consisting of one or more domestic establishments that were specified under common ownership or control). However, the number of enterprises is not reported for the size designations. Instead, SUSB reports the number of ''establishments'' (individual plants, regardless of ownership) and ''firms'' (a collection of establishments with a single owner within a given state and industry) associated with enterprises size categories. Therefore, numbers in this analysis are for the number of establishments associated with small enterprises, which may exceed the number of small enterprises. We based the analysis on the number of establishments rather than firms for a more conservative estimate (potential overestimate) of the number of small businesses.

[273] Since information is not available on employer size in the CPS MORG, respondents were randomly assigned as working in a small business based on the SUSB probability of employment in a small business by detailed Census industry. Annual payroll was estimated based on the CPS weekly earnings of workers by industry size.

TABLE 32—NUMBER OF ESTABLISHMENTS AND EMPLOYEES BY SBA SIZE STANDARDS, BY INDUSTRY AND EMPLOYER TYPE—Continued

Industry/employer type	Establishments (1,000s)		Workers (1,000s) [a]		Annual payroll (billions)	
	Total	Small	Total	Small business employed	Total ($)	Small ($)
Utilities	18.0	7.7	[c]	[c]	[c]	[c]
Publishing ind. (ex. internet)	26.9	20.7	484.9	208.8	35.4	14.3
Motion picture and sound recording	25.5	22.3	[c]	[c]	[c]	[c]
Broadcasting (except internet)	8.4	4.7	577.5	136.8	39.9	8.5
Internet publishing and broadcasting	7.8	6.6	[c]	[c]	[c]	[c]
Telecommunications	53.0	11.9	885.4	177.7	66.9	13.1
Internet serv. providers and data	13.6	9.0	[c]	[c]	[c]	[c]
Other information services	4.3	3.7	[c]	[c]	[c]	[c]
Finance	291.4	128.0	4,446.7	818.7	347.4	65.0
Insurance	178.7	139.5	2,702.7	711.2	184.0	49.0
Real estate	324.4	275.8	2,015.4	1,208.9	112.5	66.5
Rental and leasing services	53.2	26.5	[c]	[c]	[c]	[c]
Professional and technical services	896.0	812.3	9,445.1	4,433.7	790.6	360.7
Management of companies and enterprises	53.9	33.2	[c]	[c]	[c]	[c]
Admin. and support services	380.4	325.0	5,029.6	2,285.4	196.3	82.6
Waste manag. and remed. services	23.9	17.9	[c]	[c]	[c]	[c]
Educational services	102.0	89.3	13,911.5	2,916.7	737.2	145.7
Hospitals	7.0	1.6	7,158.8	327.9	436.3	19.4
Health care services, except hospitals	690.2	567.3	9,760.5	4,673.4	457.1	218.4
Social assistance	178.9	145.8	2,937.6	1,643.5	104.0	54.4
Arts, entertainment, and recreation	133.6	123.0	2,680.8	1,360.4	99.7	49.7
Accommodation	66.0	55.2	1,558.4	600.6	56.6	21.1
Food services and drinking places	621.6	488.8	8,766.3	2,399.7	217.4	59.5
Repair and maintenance	213.5	198.6	1,584.2	1,181.1	67.1	49.2
Personal and laundry services	225.6	197.5	1,651.7	1,209.7	50.1	36.1
Membership associations & organizations	307.0	296.2	2,083.4	1,534.2	104.6	75.3
Private households	[d]	[d]	[c]	[c]	[c]	[c]
Public administration [e]	90.1	72.8	7,269.7	687.0	467.3	38.3
Employer Type						
Nonprofit, private	579.1	500.4	10,019.23	4,123.0	541.2	200.5
For profit, private	7,084.8	5,682.7	107,980.07	45,149.1	5,579.2	2,303.6
Government (state and local)	90.1	72.8	17,811.69	2,270.1	960.8	117.7

Note: Establishment data are from the Survey of U.S. Businesses 2015; worker and payroll data from CPS MORG using pooled data for 2015–2017 adjusted to reflect 2017.

[a] Excludes the self-employed and unpaid workers.

[b] Summation across industries may not add to the totals reported due to suppressed values and some establishments not reporting an industry.

[c] Data not displayed because sample size of affected workers in small establishments is less than 10 due to reliability concerns.

[d] SUSB does not provide information on private households.

[e] Establishment number represents the total number of governments, including state and local.

Data from Government Organization Summary Report: 2012.

As discussed in VI.B.iii, estimates of workers subject to the FLSA do not exclude workers employed by enterprises that do not meet the enterprise coverage requirements because there is no reliable way of identifying this population. Although not excluding such workers would only affect a small percentage of workers generally, it may have a larger effect (and result in a larger overestimate) for non-profits, because revenue from charitable activities is not included when determining enterprise coverage.

iv. Number of Affected Small Entities and Employees

To estimate the probability that an exempt EAP worker in the CPS data is employed by a small establishment, the Department assumed this probability is equal to the proportion of all workers employed by small establishments in the corresponding industry. That is, if 50 percent of workers in an industry are employed in small entities, then on average small entities are expected to employ 1 out of every 2 exempt EAP workers in this industry.[274] The Department applied these probabilities to the population of exempt EAP workers to find the number of workers (total exempt EAP workers and total affected by the rule) that small entities employ. No data are available to determine whether small businesses (or small businesses in specific industries) are more or less likely than non-small businesses to employ exempt EAP

[274] The Department used CPS microdata to estimate the number of affected workers. This was done individually for each observation in the relevant sample by randomly assigning them a small business status based on the best available estimate of the probability of a worker to be employed in a small business in their respective industry (3-digit Census codes). While aggregation to the 262 3-digit Census codes is certainly possible, many of these industry codes contain too few observations to be reliable.

workers or affected EAP workers. Therefore, the best assumption available is to assign the same rates to all small and non-small businesses.[275] [276]

The Department estimated that small entities employ 483,400 of the 1.3 million affected workers (38.0 percent) (Table 33). This composes less than 1.0 percent of the 51.5 million workers that small entities employ. The sectors with the highest total number of affected workers employed by small establishments are: Professional and technical services (67,500); health care services, except hospitals (53,000); and retail trade (46,300). The sectors with the largest percent of small business workers who are affected include: Telecommunications (2.9 percent); insurance (2.3 percent); and broadcasting (except internet) (2.0 percent).

TABLE 33—NUMBER OF AFFECTED WORKERS EMPLOYED BY SMALL ESTABLISHMENTS, BY INDUSTRY AND EMPLOYER TYPE

Industry	Workers (1,000s)		Affected workers (1,000s) [a]	
	Total	Small business employed	Total	Small business employed
Total	139,636.5	51,542.2	1,271.3	483.4
Industry				
Agriculture	(c)	(c)	(c)	(c)
Forest., log., fish., hunt., and trap	(c)	(c)	(c)	(c)
Mining	(c)	(c)	(c)	(c)
Construction	7,955.8	5,153.8	38.1	27.4
Nonmetallic mineral prod. manuf	(c)	(c)	(c)	(c)
Prim. metals and fab. metal prod	1,636.3	992.3	7.9	3.8
Machinery manufacturing	1,267.0	678.3	10.2	4.2
Computer and elect. prod. manuf	1,211.3	562.2	11.8	3.6
Electrical equip., appliance manuf	(c)	(c)	(c)	(c)
Transportation equip. manuf	2,522.2	711.3	13.3	4.2
Wood products	(c)	(c)	(c)	(c)
Furniture and fixtures manuf	(c)	(c)	(c)	(c)
Misc. and not spec. manuf	1,464.6	861.7	10.4	4.7
Food manufacturing	1,761.2	834.6	8.2	3.6
Beverage and tobacco products	(c)	(c)	(c)	(c)
Textile, app., and leather manuf	590.2	391.1	4.5	3.9
Paper and printing	883.7	475.9	8.4	5.1
Petroleum and coal prod. manuf	(c)	(c)	(c)	(c)
Chemical manufacturing	1,377.9	545.5	10.8	4.9
Plastics and rubber products	(c)	(c)	(c)	(c)
Wholesale trade	3,453.2	1,617.5	44.0	21.6
Retail trade	15,784.9	5,357.8	132.9	46.3
Transport. and warehousing	6,019.2	1,580.3	34.7	7.8
Utilities	(c)	(c)	(c)	(c)
Publishing ind. (ex. internet)	484.9	208.8	9.9	4.1
Motion picture and sound recording	(c)	(c)	(c)	(c)
Broadcasting (except internet)	577.5	136.8	10.2	2.7
Internet publishing and broadcasting	(c)	(c)	(c)	(c)
Telecommunications	885.4	177.7	14.9	5.2
Internet serv. providers and data	(c)	(c)	(c)	(c)
Other information services	(c)	(c)	(c)	(c)
Finance	4,446.7	818.7	80.7	15.9
Insurance	2,702.7	711.2	61.6	16.2
Real estate	2,015.4	1,208.9	24.3	14.1
Rental and leasing services	(c)	(c)	(c)	(c)
Professional and technical services	9,445.1	4,433.7	149.4	67.5
Management of companies & enterprises	(c)	(c)	(c)	(c)
Admin. and support services	5,029.6	2,285.4	38.1	15.3
Waste manag. and remed. services	(c)	(c)	(c)	(c)
Educational services	13,911.5	2,916.7	71.9	13.9
Hospitals	7,158.8	327.9	67.6	2.9
Health care services, except hospitals	9,760.5	4,673.4	106.2	53.0
Social assistance	2,937.6	1,643.5	47.8	26.1
Arts, entertainment, and recreation	2,680.8	1,360.4	48.3	24.1
Accommodation	1,558.4	600.6	8.0	3.9
Food services and drinking places	8,766.3	2,399.7	25.6	7.2
Repair and maintenance	1,584.2	1,181.1	8.9	4.9
Personal and laundry services	1,651.7	1,209.7	7.6	5.3

[275] There is a strand of literature that indicates that small establishments tend to pay lower wages than larger establishments. This may imply that workers in small businesses are more likely to be affected than workers in large businesses; however, the literature does not make clear what the appropriate alternative rate for small businesses should be.

[276] Workers are designated as employed in a small business based on their industry of employment. The share of workers considered small in nonprofit, for profit, and government entities is therefore the weighted average of the shares for the industries that compose these categories.

TABLE 33—NUMBER OF AFFECTED WORKERS EMPLOYED BY SMALL ESTABLISHMENTS, BY INDUSTRY AND EMPLOYER TYPE—Continued

Industry	Workers (1,000s)		Affected workers (1,000s) [a]	
	Total	Small business employed	Total	Small business employed
Membership associations & organizations	2,083.4	1,534.2	35.4	25.5
Private households	(c)	(c)	(c)	(c)
Public administration [b]	7,269.7	687.0	54.6	6.5
Employer Type				
Nonprofit, private	10,019.2	4,123.0	126.5	60.3
For profit, private	107,980.1	45,149.1	1,012.3	408.1
Government (state and local)	17,811.7	2,270.1	132.5	15.1

Note: Worker data are from CPS MORG using pooled data for 2015–2017 adjusted to reflect 2017.

[a] Estimation of affected workers employed by small establishments was done at the Census 4-digit occupational code and industry level. Therefore, at the more aggregated 51 industry level shown in this table, the ratio of small business employed to total employed does not equal to the ratio of affected small business employed to total affected for each industry, nor does it equal the ratio for the national total because relative industry size, employment, and small business employment differs from industry to industry.

[b] Establishment number represents the total number of state and local governments. Data from Government Organization Summary Report: 2012.

[c] Data not displayed due to reliability concerns; sample size of affected workers in small establishments is less than 10.

Because no information is available on how affected workers are distributed among small establishments that employ affected workers, the Department estimated a range for effects. At one end of this range, the Department assumed that each small establishment employs no more than one affected worker, meaning that at most 483,400 of the 6.3 million small establishments will employ an affected worker. Thus, these assumptions provide an upper bound estimate of the number of affected small establishments (although it provides a lower bound estimate of the effect per small establishment because costs are spread over a larger number of establishments). The impacts experienced by an establishment would increase as the share of its workers that are affected increases. Establishments that employ only affected workers are most likely to experience the most severe effects. Therefore, to estimate a lower-end estimate for the number of affected establishments (which generates an upper-end estimate for impacts per establishment) the Department assumed that all workers employed by an affected establishment are affected.

For the purposes of estimating this lower-range number of affected small establishments, the Department used the average size of a small establishment as the typical size of an affected small establishment.[277] The average number of employees in a small establishment is the number of workers that small establishments employ divided by the total number of small establishments in that industry (SUSB 2012). Thus, the number of affected small establishments in an industry, if all employees of an affected establishment are affected, equals the number of affected small establishment employees divided by the average number of employees per small establishment.

Table 34 summarizes the estimated number of affected workers that small establishments employ and the expected range for the number of affected small establishments by industry. The Department estimated that the rule will affect 483,400 workers who are employed by somewhere between 64,100 and 483,400 small establishments; this composes from 1.0 percent to 7.7 percent of all small establishments. It also means that from 5.8 million to 6.2 million small establishments incur no more than minimal regulatory familiarization costs (*i.e.,* 6.3 million minus 483,400 equals 5.8 million; 6.3 million minus 64,100 equals 6.2 million, using rounded values). The table also presents the average number of affected employees per establishment using the method in which all employees at the establishment are affected. For the other method, by definition, there is always one affected employee per establishment. Also displayed is the average payroll per small establishment by industry (based on both affected and non-affected small establishments), calculated by dividing total payroll of small businesses by the number of small businesses (Table 32) (applicable to both methods).

[277] This is not the true lower bound estimate of the number of affected establishments. Strictly speaking, a true lower bound estimate of the number of affected small establishments would be calculated by assuming all employees in the largest small establishments are affected. For example, if the SBA standard is that establishments with 500 employees are ''small,'' and 1,350 affected workers are employed by small establishments in that industry, then the smallest number of establishments that could be affected in that industry (the true lower bound) would be three. However, because such an outcome appears implausible, the Department determined a more reasonable lower estimate would be based on average establishment size.

TABLE 34—NUMBER OF SMALL AFFECTED ESTABLISHMENTS AND EMPLOYEES BY INDUSTRY AND EMPLOYER TYPE

Industry	Affected workers in small entities (1,000s)	Number of small affected establishments (1,000s) [a]		Per establishment	
		One affected employee per estab. [b]	All employees at estab. affected [c]	Affected employees [a]	Average annual payroll ($1,000s)
Total	483.4	483.4	64.1	7.5	418.1
Industry					
Agriculture	[d]	[d]	[d]	[d]	[d]
Forest., log., fish., hunt., and trap	[d]	[d]	[d]	[d]	[d]
Mining	[d]	[d]	[d]	[d]	[d]
Construction	27.4	27.4	3.5	7.8	409.5
Nonmetallic mineral prod. manuf	[d]	[d]	[d]	[d]	[d]
Prim. metals and fab. metal prod	3.8	3.8	0.2	17.8	913.1
Machinery manufacturing	4.2	4.2	0.1	31.2	1,919.0
Computer and elect. prod. manuf	3.6	3.6	0.1	49.8	4,454.5
Electrical equip., appliance manuf	[d]	[d]	[d]	[d]	[d]
Transportation equip. manuf	4.2	4.2	0.1	69.6	4,297.1
Wood products	[d]	[d]	[d]	[d]	[d]
Furniture and fixtures manuf	[d]	[d]	[d]	[d]	[d]
Misc. and not spec. manuf	4.7	4.7	0.1	33.7	1,943.5
Food manufacturing	3.6	3.6	0.1	35.4	1,448.9
Beverage and tobacco products	[d]	[d]	[d]	[d]	[d]
Textile, app., and leather manuf	3.9	3.9	0.2	24.1	1,046.6
Paper and printing	5.1	5.1	0.3	17.1	870.6
Petroleum and coal prod. manuf	[d]	[d]	[d]	[d]	[d]
Chemical manufacturing	4.9	4.9	0.1	52.1	3,973.8
Plastics and rubber products	[d]	[d]	[d]	[d]	[d]
Wholesale trade	21.6	21.6	4.4	4.9	293.3
Retail trade	46.3	46.3	6.0	7.8	321.3
Transport. and warehousing	7.8	7.8	0.9	8.7	408.2
Utilities	[d]	[d]	[d]	[d]	[d]
Publishing ind. (ex. internet)	4.1	4.1	0.4	10.1	690.8
Motion picture and sound recording	[d]	[d]	[d]	[d]	[d]
Broadcasting (except internet)	2.7	2.7	0.1	29.2	1,803.8
Internet publishing and broadcasting	[d]	[d]	[d]	[d]	[d]
Telecommunications	5.2	5.2	0.4	14.9	1,096.7
Internet serv. providers and data	[d]	[d]	[d]	[d]	[d]
Other information services	[d]	[d]	[d]	[d]	[d]
Finance	15.9	15.9	2.5	6.4	507.9
Insurance	16.2	16.2	3.2	5.1	351.6
Real estate	14.1	14.1	3.2	4.4	240.9
Rental and leasing services	[d]	[d]	[d]	[d]	[d]
Professional and technical services	67.5	67.5	12.4	5.5	444.1
Management of companies and enterprises	[d]	[d]	[d]	[d]	[d]
Admin. and support services	15.3	15.3	2.2	7.0	254.3
Waste manag. and remed. services	[d]	[d]	[d]	[d]	[d]
Educational services	13.9	13.9	0.4	32.6	1,630.5
Hospitals	2.9	[e] 1.2	0.0	200.9	11,892.0
Health care services, except hospitals	53.0	53.0	6.4	8.2	384.9
Social assistance	26.1	26.1	2.3	11.3	373.0
Arts, entertainment, and recreation	24.1	24.1	2.2	11.1	404.4
Accommodation	3.9	3.9	0.4	10.9	381.9
Food services and drinking places	7.2	7.2	1.5	4.9	121.8
Repair and maintenance	4.9	4.9	0.8	5.9	248.0
Personal and laundry services	5.3	5.3	0.9	6.1	183.0
Membership associations & organizations	25.5	25.5	4.9	5.2	254.4
Private households	[d]	[d]	[d]	[d]	[d]
Public administration [f]	6.5	6.5	0.7	9.4	526.1
Employer Type					
Nonprofit, private	60.3	60.3	7.3	8.2	400.6
For profit, private	408.1	408.1	51.4	7.9	405.4
Government (state and local)	15.1	15.1	0.5	31.2	1,615.2

Note: Establishment data are from the Survey of U.S. Businesses 2012; worker and payroll data from CPS MORG using pooled data for 2015–2017 adjusted to reflect 2017.

[a] Estimation of both affected small establishment employees and affected small establishments was done at the most detailed industry level available. Therefore, the ratio of affected small establishment employees to total small establishment employees for each industry may not match the ratio of small affected establishments to total small establishments at more aggregated industry level presented in the table, nor will it equal the ratio at the national level because relative industry size, employment, and small business employment differs from industry to industry.

[b] This method may overestimate the number of affected establishments and therefore the ratio of affected workers to affected establishments may be greater than 1-to-1. However, we addressed this issue by also calculating effects based on the assumption that 100 percent of workers at an establishment are affected.
[c] For example, on average, a small establishment in the construction industry employs 7.8 workers (5.2 million employees divided by 663,000 small establishments). This method assumes if an establishment is affected then all 7.8 workers are affected. Therefore, in the construction industry this method estimates there are 3,500 small affected establishments (27,400 affected small workers divided by 7.8).
[d] Data not displayed due to reliability concerns; sample size of affected workers in small establishments is less than 10.
[e] Number of establishments is smaller than number of affected employees; thus, total number of establishments reported.
[f] Establishment number represents the total number of state and local governments.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

The FLSA sets minimum wage, overtime pay, and recordkeeping requirements for employment subject to its provisions. Unless exempt, covered employees must be paid at least the minimum wage and not less than one and one-half times their regular rates of pay for overtime hours worked.

Every covered employer must keep certain records for each nonexempt worker. The regulations at part 516 require employers to maintain records for employees subject to the minimum wage and overtime pay provisions of the FLSA. The recordkeeping requirements are not new requirements; however, employers would need to keep some additional records for additional affected employees if the NPRM became final without change. As indicated in this analysis, the NPRM would expand minimum wage and overtime pay coverage to 1.3 million affected EAP workers (including HCE workers and excluding Type 4 workers who remain exempt). This would result in an increase in employer burden and was estimated in the PRA portion (section V) of this NPRM. Note that the burdens reported for the PRA section of this NPRM include the entire information collection and not merely the additional burden estimated as a result of this NPRM.

i. Costs to Small Entities

For small entities, the Department projected various types of effects, including regulatory familiarization costs, adjustment costs, managerial costs, and payroll increases to employees. The Department estimated a range for the number of small affected establishments and the impacts they incur. However, few establishments are likely to incur the effects at the upper end of this range because it seems unlikely that the proposed rule would affect all employees at a small firm. While the upper and lower bounds are likely over- and under-estimates, respectively, of effects per small establishment, the Department believes that this range of costs and payroll increases provides the most accurate characterization of the effects of the rule on small employers.[278] Furthermore, the smaller estimate of the number of affected establishments (*i.e.,* where all employees are assumed to be affected) will result in the largest costs and payroll increases per entity as a percent of establishment payroll and revenue, and the Department expects that many, if not most, entities will incur smaller costs, payroll increases, and effects relative to establishment size. The Department seeks comments on the estimates for regulatory familiarization, adjustment costs, managerial costs, and transfers, as discussed below.

The Department expects total direct employer costs will range from $55.5 million to $72.0 million for affected small establishments (Table 35) in the first year after the proposed rule is finalized. Small establishments that do not employ affected workers will incur an additional $242.5 million to $260.1 million in regulatory familiarization costs. The three industries with the highest costs (professional and technical services; healthcare services, except hospitals; and retail trade) account for about 35 percent of the costs. The hospitals industry is expected to incur the largest cost per establishment ($22,000 using the method where all employees are affected), although the costs are not expected to exceed 0.19 percent of payroll. The food services and drinking places industry is expected to experience the largest effect as a share of payroll (estimated direct costs compose 0.48 percent of average entity payroll).

TABLE 35—YEAR 1 SMALL ESTABLISHMENT DIRECT COSTS, TOTAL AND PER ESTABLISHMENT, BY INDUSTRY AND EMPLOYER TYPE

Industry	Cost to small entities in year 1 [a]					
	One affected employee			All employees affected		
	Total (millions) [b]	Cost per affected entity	Percent of annual payroll (%)	Total (millions) [b]	Cost per affected entity	Percent of annual payroll (%)
Total	$72.0	$149	0.04	$55.5	$867	0.21
Industry						
Agriculture	(c)	(c)	(c)	(c)	(c)	(c)
Forest., log., fish., hunt., and trap	(c)	(c)	(c)	(c)	(c)	(c)
Mining	(c)	(c)	(c)	(c)	(c)	(c)
Construction	4.2	151	0.04	3.2	894	0.22
Nonmetallic mineral prod. manuf	(c)	(c)	(c)	(c)	(c)	(c)
Prim. metals and fab. metal prod	0.6	151	0.02	0.4	1,994	0.22
Machinery manufacturing	0.6	151	0.01	0.5	3,461	0.18
Computer and elect. prod. manuf	0.5	151	0.00	0.4	5,499	0.12
Electrical equip., appliance manuf	(c)	(c)	(c)	(c)	(c)	(c)

[278] As noted previously, these are not the true lower and upper bounds. The values presented are the highest and lowest estimates the Department believes are plausible.

TABLE 35—YEAR 1 SMALL ESTABLISHMENT DIRECT COSTS, TOTAL AND PER ESTABLISHMENT, BY INDUSTRY AND EMPLOYER TYPE—Continued

Industry	Cost to small entities in year 1 [a]					
	One affected employee			All employees affected		
	Total (millions) [b]	Cost per affected entity	Percent of annual payroll (%)	Total (millions) [b]	Cost per affected entity	Percent of annual payroll (%)
Transportation equip. manuf	0.6	151	0.00	0.5	7,667	0.18
Wood products	[c]	[c]	[c]	[c]	[c]	[c]
Furniture and fixtures manuf	[c]	[c]	[c]	[c]	[c]	[c]
Misc. and not spec. manuf	0.7	151	0.01	0.5	3,730	0.19
Food manufacturing	0.5	151	0.01	0.4	3,917	0.27
Beverage and tobacco products	[c]	[c]	[c]	[c]	[c]	[c]
Textile, app., and leather manuf	0.6	151	0.01	0.4	2,685	0.26
Paper and printing	0.8	151	0.02	0.6	1,915	0.22
Petroleum and coal prod. manuf	[c]	[c]	[c]	[c]	[c]	[c]
Chemical manufacturing	0.7	151	0.00	0.5	5,754	0.14
Plastics and rubber products	[c]	[c]	[c]	[c]	[c]	[c]
Wholesale trade	3.3	151	0.05	2.5	580	0.20
Retail trade	7.0	1.51	0.05	5.3	893	0.28
Transport. and warehousing	1.2	151	0.04	0.9	995	0.24
Utilities	[c]	[c]	[c]	[c]	[c]	[c]
Publishing ind. (ex. internet)	0.6	151	0.02	0.5	1,146	0.17
Motion picture and sound recording	[c]	[c]	[c]	[c]	[c]	[c]
Broadcasting (except internet)	0.4	151	0.01	0.3	3,237	0.18
Internet publishing and broadcasting	[c]	[c]	[c]	[c]	[c]	[c]
Telecommunications	0.8	151	0.01	0.6	1,672	0.15
Internet serv. providers and data	[c]	[c]	[c]	[c]	[c]	[c]
Other information services	[c]	[c]	[c]	[c]	[c]	[c]
Finance	2.4	151	0.03	1.8	743	0.15
Insurance	2.5	151	0.04	1.9	600	0.17
Real estate	2.1	151	0.06	1.7	522	0.22
Rental and leasing services	[c]	[c]	[c]	[c]	[c]	[c]
Professional and technical services	10.2	151	0.03	7.9	640	0.14
Management of companies and enterprises	[c]	[c]	[c]	[c]	[c]	[c]
Admin. and support services	2.3	151	0.06	1.8	812	0.32
Waste manag. and remed. services	[c]	[c]	[c]	[c]	[c]	[c]
Educational services	2.1	151	0.01	1.5	3,619	0.22
Hospitals	0.4	151	0.00	0.3	22,051	0.19
Health care services, except hospitals	8.0	151	0.04	6.1	944	0.25
Social assistance	4.0	151	0.04	3.0	1,277	0.34
Arts, entertainment, and recreation	3.7	151	0.04	2.7	1,254	0.31
Accommodation	0.6	151	0.04	0.4	1,235	0.32
Food services and drinking places	1.1	151	0.12	0.9	580	0.48
Repair and maintenance	0.7	151	0.06	0.6	694	0.28
Personal and laundry services	0.8	151	0.08	0.6	713	0.39
Membership associations & organizations	3.9	151	0.06	3.0	609	0.24
Private households	[c]	[c]	[c]	[c]	[c]	[c]
Public administration	1.0	151	0.03	0.7	1,076	0.20
Employer Type						
Nonprofit, private	8.8	146	0.04	6.6	898	0.22
For profit, private	63.0	154	0.04	48.0	935	0.23
Government (state and local)	2.2	148	0.01	1.6	3,339	0.21

Note: Pooled data for 2015–2017 adjusted to reflect 2017.

[a] Direct costs include regulatory familiarization, adjustment, and managerial costs.

[b] The range of costs per establishment depends on the number of affected establishments. The minimum assumes that each affected establishment has one affected worker (therefore, the number of affected establishments is equal to the number of affected workers). The maximum assumes the share of workers in small entities who are affected is also the share of small entity establishments that are affected.

[c] Data not displayed due to reliability concerns; sample size of affected workers in small establishments is less than 10.

It is possible that the costs of the proposed rule may be disproportionately large for small entities, especially because small entities often have limited or no human resources personnel on staff. However, the Department expects that small entities will rely upon compliance assistance materials provided by the Department or industry associations to become familiar with the proposed rule. Additionally, the Department notes that the proposed rule is quite limited in scope as it primarily makes changes to the salary component of the part 541

regulations. Finally, the Department believes that most entities have at least some nonexempt employees and, therefore, already have policies and systems in place for monitoring and recording their hours. The Department believes that applying those same policies and systems to the workers whose exemption status changes will not be an unreasonable burden on small businesses.

Average weekly earnings for affected EAP workers in small establishments are expected to increase by about $8.12 per week per affected worker, using the incomplete fixed-job model [279] described in section VI.D.iv.[280] This would lead to $204.1 million in additional annual wage payments to employees in small entities (less than 0.8 percent of aggregate affected establishment payroll; Table 36). The largest payroll increases per establishment are expected in the sectors of transportation equipment manufacturing (up to $92,900 per entity); computer and electronic product manufacturing (up to $44,400 per entity); and chemical manufacturing (up to $39,800 per entity). However, average payroll increases per establishment exceed 2 percent of average annual payroll in only three sectors: Food services and drinking places (4.7 percent), primary metals and fabricated metal products (2.3 percent), and transportation equipment manufacturing (2.2 percent).

TABLE 36—YEAR 1 SMALL ESTABLISHMENT PAYROLL INCREASES, TOTAL AND PER ESTABLISHMENT, BY INDUSTRY AND EMPLOYER TYPE

Industry	Increased payroll for small entities in year 1 [a]				
	Total (millions)	One affected employee		All employees affected	
		Per estab.	Percent of annual payroll (%)	Per estab.	Percent of annual payroll (%)
Total	$204.1	$422	0.10	$3,187	0.76
Industry					
Agriculture	[b]	[b]	[b]	[b]	[b]
Forest., log., fish., hunt., and trap	[b]	[b]	[b]	[b]	[b]
Mining	[b]	[b]	[b]	[b]	[b]
Construction	9.8	356	0.09	2,768	0.68
Nonmetallic mineral prod. manuf	[b]	[b]	[b]	[b]	[b]
Prim. metals and fab. metal prod	4.4	1,172	0.13	20,889	2.29
Machinery manufacturing	4.5	1,054	0.05	32,885	1.71
Computer and elect. prod. manuf	3.2	892	0.02	44,405	1.00
Electrical equip., appliance manuf	[b]	[b]	[b]	[b]	[b]
Transportation equip. manuf	5.6	1,334	0.03	92,869	2.16
Wood products	[b]	[b]	[b]	[b]	[b]
Furniture and fixtures manuf	[b]	[b]	[b]	[b]	[b]
Misc. and not spec. manuf	5.0	1,066	0.05	35,874	1.85
Food manufacturing	1.6	448	0.03	15,837	1.09
Beverage and tobacco products	[b]	[b]	[b]	[b]	[b]
Textile, app., and leather manuf	1.7	429	0.04	10,355	0.99
Paper and printing	0.5	91	0.01	1,556	0.18
Petroleum and coal prod. manuf	[b]	[b]	[b]	[b]	[b]
Chemical manufacturing	3.8	764	0.02	39,839	1.00
Plastics and rubber products	[b]	[b]	[b]	[b]	[b]
Wholesale trade	20.6	957	0.33	4,705	1.60
Retail trade	29.4	635	0.20	4,935	1.54
Transport. and warehousing	1.9	242	0.06	2,104	0.52
Utilities	[b]	[b]	[b]	[b]	[b]
Publishing ind. (ex. internet)	.....	0	.....	0	.....
Motion picture and sound recording	[b]	[b]	[b]	[b]	[b]
Broadcasting (except internet)	0.0	6	0.00	167	0.01
Internet publishing and broadcasting	[b]	[b]	[b]	[b]	[b]
Telecommunications	3.1	604	0.06	8,986	0.82
Internet serv. providers and data	[b]	[b]	[b]	[b]	[b]
Other information services	[b]	[b]	[b]	[b]	[b]
Finance	7.0	442	0.09	2,829	0.56
Insurance	3.2	196	0.06	1,000	0.28
Real estate	5.4	386	0.16	1,692	0.70
Rental and leasing services	[b]	[b]	[b]	[b]	[b]
Professional and technical services	22.6	335	0.08	1,826	0.41
Management of companies and enterprises	[b]	[b]	[b]	[b]	[b]
Admin. and support services	3.7	245	0.10	1,720	0.68
Waste manag. and remed. services	[b]	[b]	[b]	[b]	[b]
Educational services	8.2	591	0.04	19,278	1.18

[279] As explained in section VI.D.iv., the incomplete fixed-job model reflects the Department's determination that an appropriate estimate of the impact on the implicit hourly rate of pay for regular overtime workers, if the NPRM is finalized as proposed, should be determined using the average of Barkume's and Trejo's two estimates of the incomplete fixed-job model adjustments: A wage change that is 40 percent of the adjustment toward the amount predicted by the fixed-job model, assuming an initial zero overtime pay premium, and a wage change that is 80 percent of the adjustment assuming an initial 28 percent overtime pay premium.

[280] This is an average increase for all affected workers (both EAP and HCE), and reconciles to the weighted average of individual salary changes discussed in the Transfers section.

TABLE 36—YEAR 1 SMALL ESTABLISHMENT PAYROLL INCREASES, TOTAL AND PER ESTABLISHMENT, BY INDUSTRY AND EMPLOYER TYPE—Continued

Industry	Increased payroll for small entities in year 1 [a]				
	Total (millions)	One affected employee		All employees affected	
		Per estab.	Percent of annual payroll (%)	Per estab.	Percent of annual payroll (%)
Hospitals	.....	$0	.....	$0	.....
Health care services, except hospitals	8.7	165	.04	1,358	0.35
Social assistance	2.8	109	0.03	1,228	0.33
Arts, entertainment, and recreation	11.5	475	0.12	5,259	1.30
Accommodation	1.3	331	0.09	3,602	0.94
Food services and drinking places	8.4	1,168	0.96	5,736	4.71
Repair and maintenance	1.4	293	0.12	1,742	0.70
Personal and laundry services	0.8	150	0.08	921	0.50
Membership associations & organizations	6.4	252	0.10	1,307	0.51
Private households	[b]	[b]	[b]	[b]	[b]
Public administration	2.4	363	0.07	3,426	0.65
Employer Type					
Nonprofit, private	21.3	353	0.09	2,911	0.73
For profit, private	177.2	434	0.11	3,449	0.85
Government (state and local)	5.7	376	0.02	11,710	0.72

Note: Pooled data for 2015–2017 adjusted to reflect 2017.

[a] Aggregate change in total annual payroll experienced by small entities under the updated salary levels after labor market adjustments. This amount represents the total amount of (wage) transfers from employers to employees.

[b] Data not displayed due to reliability concerns; sample size of affected workers in small establishments is less than 10.

Table 37 presents estimated first year direct costs and payroll increases combined per establishment and the costs and payroll increases as a percent of average establishment payroll. The Department presents only the results for the upper bound scenario where all workers employed by the establishment are affected. Combined costs and payroll increases per establishment range from $1,150 in publishing industries (except internet) to $100,500 in the transportation equipment manufacturing sector.[281] Combined costs and payroll increases compose more than 2 percent of average annual establishment payroll in four sectors: Food services and drinking places (5.2 percent), primary metals and fabricated metal products (2.5 percent), transportation equipment manufacturing (2.3 percent), and miscellaneous and not specified manufacturing (2.0 percent). In all other sectors, they range from 0.2 percent to 1.9 percent of payroll.

However, comparing costs and payroll increases to payrolls overstates the effects on establishments because payroll represents only a fraction of the financial resources available to an establishment. The Department approximated revenue per small affected establishment by calculating the ratio of small business revenues to payroll by industry from the 2012 SUSB data then multiplying that ratio by average small entity payroll.[282] Using this approximation of annual revenues as a benchmark, only one sector has costs and payroll increases amounting to more than one percent of revenues, food services and drinking places (1.5 percent).

TABLE 37—YEAR 1 SMALL ESTABLISHMENT DIRECT COSTS AND PAYROLL INCREASES, TOTAL AND PER ESTABLISHMENT, BY INDUSTRY AND EMPLOYER TYPE, USING ALL EMPLOYEES IN ESTABLISHMENT AFFECTED METHOD

Industry	Costs and payroll increases for small affected establishments, all employees affected			
	Total (millions)	Per estab. [a]	Percent of annual payroll (%)	Percent of estimated revenues [b] (%)
Total	$259.6	$4,053	0.97	0.18
Industry				
Agriculture	(c)	(c)	(c)	(c)
Forest., log., fish., hunt., and trap	(c)	(c)	(c)	(c)
Mining	(c)	(c)	(c)	(c)
Construction	12.9	3,662	0.89	0.20

[281] When a single affected worker is employed, combined costs and transfers by industry were estimated to range from $151 (in both the publishing (except internet) and hospitals industries) to $1,500 (in transportation equipment manufacturing) per establishment.

[282] The ratio of revenues to payroll for small businesses ranged from 2.15 (social assistance) to 43.40 (petroleum and coal products manufacturing), with an average over all sectors of 5.35. The Department used this estimate of revenue, instead of small business revenue reported directly from the 2012 SUSB so revenue aligned with payrolls in 2017.

TABLE 37—YEAR 1 SMALL ESTABLISHMENT DIRECT COSTS AND PAYROLL INCREASES, TOTAL AND PER ESTABLISHMENT, BY INDUSTRY AND EMPLOYER TYPE, USING ALL EMPLOYEES IN ESTABLISHMENT AFFECTED METHOD—Continued

Industry	Costs and payroll increases for small affected establishments, all employees affected			
	Total (millions)	Per estab. [a]	Percent of annual payroll (%)	Percent of estimated revenues [b] (%)
Nonmetallic mineral prod. manuf	(c)	(c)	(c)	(c)
Prim. metals and fab. metal prod	4.8	22,883	2.51	0.49
Machinery manufacturing	4.9	36,346	1.89	0.39
Computer and elect. prod. manuf	3.6	49,904	1.12	0.25
Electrical equip., appliance manuf	(c)	(c)	(c)	(c)
Transportation equip. manuf	6.1	100,536	2.34	0.34
Wood products	(c)	(c)	(c)	(c)
Furniture and fixtures manuf	(c)	(c)	(c)	(c)
Misc. and not spec. manuf	5.5	39,603	2.04	0.48
Food manufacturing	2.0	19,753	1.36	0.12
Beverage and tobacco products	(c)	(c)	(c)	(c)
Textile, app., and leather manuf	2.1	13,040	1.25	0.23
Paper and printing	1.0	3,471	0.40	0.08
Petroleum and coal prod. manuf	(c)	(c)	(c)	(c)
Chemical manufacturing	4.3	45,592	1.15	0.11
Plastics and rubber products	(c)	(c)	(c)	(c)
Wholesale trade	23.2	5,285	1.80	0.11
Retail trade	34.8	5,828	1.81	0.18
Transport. and warehousing	2.8	3,098	0.76	0.17
Utilities	(c)	(c)	(c)	(c)
Publishing ind. (ex. internet)	0.5	1,146	0.17	0.06
Motion picture and sound recording	(c)	(c)	(c)	(c)
Broadcasting (except internet)	0.3	3,404	0.19	0.07
Internet publishing and broadcasting	(c)	(c)	(c)	(c)
Telecommunications	3.7	10,658	0.97	0.14
Internet serv. providers and data	(c)	(c)	(c)	(c)
Other information services	(c)	(c)	(c)	(c)
Finance	8.9	3,572	0.70	0.25
Insurance	5.1	1,600	0.46	0.10
Real estate	7.1	2,214	0.92	0.20
Rental and leasing services	(c)	(c)	(c)	(c)
Professional and technical services	30.5	2,466	0.56	0.22
Management of companies and enterprises	(c)	(c)	(c)	(c)
Admin. and support services	5.5	2,532	1.00	0.45
Waste manag. and remed. services	(c)	(c)	(c)	(c)
Educational services	9.7	22,897	1.40	0.54
Hospitals	0.3	22,051	0.19	0.08
Health care services, except hospitals	14.8	2,302	0.60	0.25
Social assistance	5.8	2,505	0.67	0.31
Arts, entertainment, and recreation	14.2	6,513	1.61	0.53
Accommodation	1.7	4,836	1.27	0.32
Food services and drinking places	9.3	6,315	5.19	1.54
Repair and maintenance	2.0	2,436	0.98	0.28
Personal and laundry services	1.4	1,634	0.89	0.31
Membership associations & organizations	9.4	1,917	0.75	0.19
Private households	(c)	(c)	(c)	(c)
Public administration	3.1	4,501	0.86	0.23
Employer Type				
Nonprofit, private	94.40	3,570	1.00	0.30
For profit, private	585.30	3,532	1.00	0.20
Government (state and local)	12.20	9,264	0.60	0.20

Note: Pooled data for 2015–2017 adjusted to reflect 2017.

[a] Total direct costs and transfers for small establishments in which all employees are affected. Impacts to small establishments in which one employee is affected will be a fraction of the impacts presented in this table.

[b] Revenues estimated by calculating the ratio of estimated small business revenues to payroll from the 2012 SUSB, and multiplying by payroll per small entity. For the public administration sector, the ratio was calculated using revenues and payroll from the 2012 Census of Governments.

[c] Data not displayed due to reliability concerns; sample size of affected workers in small establishments is less than 10.

vi. Projected Effects to Affected Small Entities in Year 2 Through Year 10

To determine how small businesses will be affected in future years, the Department projected costs to small business for nine years after Year 1 of the rule. Projected employment and earnings were calculated using the same methodology described in Section VI.B.ii. Affected employees in small firms follow a similar pattern to affected workers in all establishments: The number decreases gradually in projected years. There are 483,400 affected workers in small establishments in Year 1 and 405,200 in Year 10. Table 38 reports affected workers in selected years only.

TABLE 38—PROJECTED NUMBER OF AFFECTED WORKERS IN SMALL ESTABLISHMENTS, BY INDUSTRY

Industry	Affected workers in small establishments (1,000s)	
	Year 1	Year 10
Total	483.4	405.2
Agriculture	[a]	[a]
Forest., log., fish., hunt., and trap	[a]	[a]
Mining	[a]	1.7
Construction	27.4	22.3
Nonmetallic mineral prod. manuf	[a]	[a]
Prim. metals and fab. metal prod	3.8	3.1
Machinery manufacturing	4.2	4.0
Computer and elect. prod. manuf	3.6	4.9
Electrical equip., appliance manuf	[a]	[a]
Transportation equip. manuf	4.2	3.0
Wood products	[a]	[a]
Furniture and fixtures manuf	[a]	[a]
Misc. and not spec. manuf	4.7	5.5
Food manufacturing	3.6	[a]
Beverage and tobacco products	[a]	[a]
Textile, app., and leather manuf	3.9	[a]
Paper and printing	5.1	[a]
Petroleum and coal prod. manuf	[a]	[a]
Chemical manufacturing	4.9	3.4
Plastics and rubber products	[a]	[a]
Wholesale trade	21.6	21.3
Retail trade	46.3	34.4
Transport. and warehousing	7.8	7.3
Utilities	[a]	[a]
Publishing ind. (ex. internet)	4.1	3.8
Motion picture and sound recording	[a]	[a]
Broadcasting (except internet)	2.7	[a]
Internet publishing and broadcasting	[a]	[a]
Telecommunications	5.2	[a]
Internet serv. providers and data	[a]	[a]
Other information services	[a]	[a]
Finance	15.9	14.8
Insurance	16.2	11.9
Real estate	14.1	12.4
Rental and leasing services	[a]	[a]
Professional and technical services	67.5	65.6
Management of companies and enterprises	[a]	[a]
Admin. and support services	15.3	10.7
Waste manag. and remed. services	[a]	[a]
Educational services	13.9	14.3
Hospitals	2.9	[a]
Health care services, except hospitals	53.0	44.4
Social assistance	26.1	21.5
Arts, entertainment, and recreation	24.1	18.1
Accommodation	3.9	3.1
Food services and drinking places	7.2	6.7
Repair and maintenance	4.9	4.5
Personal and laundry services	5.3	4.2
Membership associations & organizations	25.5	20.2
Private households	[a]	[a]
Public administration	6.5	5.0

Note: Worker data are from CPS MORG using pooled data for 2015–2017 adjusted to reflect 2017.
[a] Data not displayed because sample size of affected workers in small establishments is less than 10.

Costs to small establishments vary by year but generally decrease from Year 1 mostly because regulatory familiarization costs are zero in all projected years, and adjustment costs are relatively small. By Year 10, additional costs and payroll to small businesses have decreased from $259.6 million in Year 1 to $210.2 million (Table 39). The Department notes that, due to relatively small sample sizes, the estimates by detailed industry are not

precise. This can cause some numbers in the data to vary across years by a greater amount than they will in the future.

TABLE 39—PROJECTED DIRECT COSTS AND PAYROLL INCREASES FOR AFFECTED SMALL ESTABLISHMENTS, BY INDUSTRY, USING ALL EMPLOYEES IN ESTABLISHMENT AFFECTED METHOD

Industry	Costs and payroll increases for small affected establishments, all employees affected (millions 2017$)	
	Year 1	Year 10
Total	$259.6	$210.2
Agriculture	[a]	[a]
Forest., log., fish., hunt., and trap	[a]	[a]
Mining	[a]	2.4
Construction	12.9	12.2
Nonmetallic mineral prod. manuf	[a]	[a]
Prim. metals and fab. metal prod	4.8	1.8
Machinery manufacturing	4.9	2.5
Computer and elect. prod. manuf	3.6	3.0
Electrical equip., appliance manuf	[a]	[a]
Transportation equip. manuf	6.1	2.8
Wood products	[a]	[a]
Furniture and fixtures manuf	[a]	[a]
Misc. and not spec. manuf	5.5	0.8
Food manufacturing	2.0	[a]
Beverage and tobacco products	[a]	[a]
Textile, app., and leather manuf	2.1	[a]
Paper and printing	1.0	[a]
Petroleum and coal prod. manuf	[a]	[a]
Chemical manufacturing	4.3	1.4
Plastics and rubber products	[a]	[a]
Wholesale trade	23.2	14.1
Retail trade	34.8	25.3
Transport. and warehousing	2.8	2.4
Utilities	[a]	[a]
Publishing ind. (ex. internet)	0.5	3.6
Motion picture and sound recording	[a]	[a]
Broadcasting (except internet)	0.3	[a]
Internet publishing and broadcasting	[a]	[a]
Telecommunications	3.7	[a]
Internet serv. providers and data	[a]	[a]
Other information services	[a]	[a]
Finance	8.9	15.5
Insurance	5.1	4.0
Real estate	7.1	5.5
Rental and leasing services	[a]	[a]
Professional and technical services	30.5	30.2
Management of companies and enterprises	[a]	[a]
Admin. and support services	5.5	2.6
Waste manag. and remed. services	[a]	[a]
Educational services	9.7	7.6
Hospitals	0.3	[a]
Health care services, except hospitals	14.8	9.7
Social assistance	5.8	5.5
Arts, entertainment, and recreation	14.2	8.1
Accommodation	1.7	0.2
Food services and drinking places	9.3	4.7
Repair and maintenance	2.0	1.3
Personal and laundry services	1.4	1.0
Membership associations & organizations	9.4	6.6
Private households	[a]	[a]
Public administration	3.1	3.0

Note: pooled data for 2015–2017 adjusted to reflect 2017.
[a] Data not displayed because sample size of affected workers in small establishments is less than 10.

ii. Differing Compliance and Reporting Requirements for Small Entities

This NPRM provides no differing compliance requirements and reporting requirements for small entities. The Department has strived to minimize respondent recordkeeping burden by requiring no specific form or order of records under the FLSA and its corresponding regulations. Moreover, employers would normally maintain the records under usual or customary business practices.

iii. Least Burdensome Option or Explanation Required

The Department believes it has chosen the most effective option that updates and clarifies the rule and which results in the least burden. Among the options considered by the Department, the least restrictive option was taking no regulatory action. Taking no regulatory action does not address the Department's concerns discussed above under Need for Regulation. Pursuant to section 603(c) of the RFA, the following alternatives are to be addressed:

Differing compliance or reporting requirements that take into account the resources available to small entities. The FLSA creates a level playing field for businesses by setting a floor below which employers may not pay their employees. To establish differing compliance or reporting requirements for small businesses would undermine this important purpose of the FLSA and appears unnecessary given the small annualized cost of the rule. The Year 1 cost of the proposed rule for the average employer that qualifies as small was estimated to range from a minimum of $1,150 (publishing industries, except internet) to a maximum of $100,500 (transportation equipment, manufacturing), using the upper-bound estimates. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance. Therefore, the Department has not proposed differing compliance or reporting requirements for small businesses.

The clarification, consolidation, or simplification of compliance and reporting requirements for small entities. The proposed rule imposes no new reporting requirements. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance.

The use of performance rather than design standards. Under the proposed rule, employers may achieve compliance through a variety of means. Employers may elect to continue to claim the EAP exemption for affected employees by adjusting salary levels, hire additional workers or spread overtime hours to other employees, or compensate employees for overtime hours worked. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance.

An exemption from coverage of the rule, or any part thereof, for such small entities. Creating an exemption from coverage of this rule for businesses with as many as 500 employees, those defined as small businesses under SBA's size standards, is inconsistent with the FLSA, which applies to all employers that satisfy the enterprise coverage threshold or employ individually covered employees.[283] Creating a regulatory exemption for small businesses is beyond the scope of the Department's statutory authority to define and delimit the meaning of the term ''employed in a bona fide executive, administrative, or professional capacity.'' [284]

E. Identification, to the Extent Practicable, of all Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

The Department is not aware of any federal rules that duplicate, overlap, or conflict with this NPRM.

VIII. Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMRA),[285] requires agencies to prepare a written statement for rules for which a general notice of proposed rulemaking was published and that include any federal mandate that may result in increased expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $161 million ($100 million in 1995 dollars adjusted for inflation) or more in at least one year. This statement must: (1) Identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate state, local, and tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative.

A. Authorizing Legislation

This proposed rule is issued pursuant to section 13(a)(1) of the Fair Labor Standards Act (FLSA or Act), 29 U.S.C. 213(a)(1). The section exempts from the FLSA's minimum wage and overtime pay requirements ''any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of [the Administrative Procedure Act]. . .).'' [286] The requirements of the exemption are contained in part 541 of the Department's regulations. Section 3(e) of the FLSA [287] defines ''employee'' to include most individuals employed by a state, political subdivision of a state, or interstate governmental agency. Section 3(x) of the FLSA [288] also defines public agencies to include the government of a state or political subdivision thereof, or any interstate governmental agency.

B. Assessment of Costs and Benefits

For purposes of the UMRA, this rule includes a federal mandate that is expected to result in increased expenditures by the private sector of more than $161 million in at least one year, but the rule will not result in increased expenditures by state, local and tribal governments, in the aggregate, of $161 million or more in any one year.

Costs to state and local governments: Based on the economic impact analysis of this proposed rule, the Department determined that the proposed rule will result in Year 1 costs for state and local governments totaling $59.2 million, of which $17.2 million are direct employer costs and $42.0 million are payroll increases (Table 40). In subsequent years, the Department estimated that state and local governments may experience payroll increases of as much as $38.3 million per year.

Costs to the private sector: The Department determined that the proposed rule will result in Year 1 costs to the private sector of approximately $0.9 billion, of which $446.7 million are direct employer costs and $483.7 million are payroll increases. In subsequent years, the Department estimated that the private sector may experience a payroll increase of as much as $407.1 million per year.

[283] *See* 29 U.S.C. 203(s).

[284] 29 U.S.C. 213(a)(1).

[285] 2 U.S.C. 1501.

[286] 29 U.S.C. 213(a)(1).

[287] 29 U.S.C. 203(e).

[288] 29 U.S.C. 203(x).

TABLE 40—SUMMARY OF YEAR 1 AFFECTED EAP WORKERS, REGULATORY COSTS, AND TRANSFERS BY TYPE OF EMPLOYER

	Total	Private	Government [a]
Affected EAP Workers (1,000s)			
Number	1,271	1,139	128
Direct Employer Costs (Millions)			
Regulatory familiarization	$324.9	$321.2	$3.8
Adjustment	66.6	59.7	6.7
Managerial	72.7	65.9	6.7
Total direct costs	464.2	446.7	17.2
Payroll Increases (Millions)			
From employers to workers	$526.9	$483.7	$42.0
Direct Employer Costs & Transfers (Millions)			
From employers	$991.1	$930.4	$59.2

[a] Includes only state, local, and tribal governments.

UMRA requires agencies to estimate the effect of a regulation on the national economy if, at its discretion, such estimates are reasonably feasible and the effect is relevant and material.[289] However, OMB guidance on this requirement notes that such macro-economic effects tend to be measurable in nationwide econometric models only if the economic effect of the regulation reaches 0.25 percent to 0.5 percent of GDP, or in the range of $48.5 billion to $97.0 billion (using 2017 GDP). A regulation with smaller aggregate effect is not likely to have a measurable effect in macro-economic terms unless it is highly focused on a particular geographic region or economic sector, which is not the case with this proposed rule.

The Department's RIA estimates that the total first-year costs (direct employer costs and payroll increases from employers to workers) of the proposed rule will be approximately $930.4 million for private employers and $59.2 million for state and local governments. Given OMB's guidance, the Department has determined that a full macro-economic analysis is not likely to show any measurable effect on the economy. Therefore, these costs are compared to payroll costs and revenue to demonstrate the feasibility of adapting to these new rules.

Total first-year private sector costs compose 0.015 percent of private sector payrolls nationwide.[290] Total private sector first-year costs compose 0.002 percent of national private sector revenues (revenues in 2017 are projected to be $38.8 trillion).[291] The Department concludes that effects of this magnitude are affordable and will not result in significant disruptions to typical firms in any of the major industry categories.

Total first-year state and local government costs compose less than 0.01 percent of state and local government payrolls.[292] First-year state and local government costs compose 0.002 percent of state and local government revenues (projected 2017 revenues were estimated to be $3.7 trillion).[293] Effects of this magnitude will not result in significant disruptions to typical state and local governments. The $59.2 million in state and local government costs constitutes an average of approximately $657 for each of the approximately 90,106 state and local entities. The Department considers effects of this magnitude to be quite small both in absolute terms and in relation to payrolls and revenue.

C. Least Burdensome Option or Explanation Required

This NPRM has described the Department's consideration of various options throughout the preamble and economic impact analysis (section VI.C.i). The Department believes that it has chosen the least burdensome but still cost-effective methodology to update the salary level consistent with the Department's statutory obligation. Although some alternative options considered would have set the standard salary level at a rate lower than the updated salary level, that outcome would not necessarily be the most cost-effective or least-burdensome alternative for employers. A lower or outdated salary level would result in a less effective bright-line test for separating workers who may be exempt from those nonexempt workers intended to be within the Act's protection. A low salary level would also increase the burden on the employer to apply the duties test to more employees in determining whether an employee is exempt, which would inherently increase the likelihood of misclassification and, in turn, increase the risk that employees who should receive overtime and minimum wage protections under the FLSA are denied those protections.

Selecting a standard salary level inevitably affects both the risk and cost of misclassification of overtime-eligible employees earning above the salary level, as well as the risk and cost of providing overtime protection to employees performing bona fide EAP duties who are paid below the salary level. An unduly low level risks increasing employer liability from

[289] 2 U.S.C. 1532(a)(4).

[290] Private sector payroll costs nationwide are projected to be $6.4 trillion in 2017. This projection is based on private sector payroll costs in 2012, which were $5.3 trillion using the 2012 Economic Census of the United States. This was inflated to 2017 dollars using the CPI–U.

[291] Private sector revenues in 2012 were $32.3 trillion using the 2012 Economic Census of the United States. This was inflated to 2017 dollars using the CPI–U.

[292] State and local payrolls in 2015 were reported as $900 billion. This was inflated to 2017 payroll costs of $962.9 billion using the CPI–U. State and Local Government Finances Summary: FY2015. Available at *https://www.census.gov/govs/local/*.

[293] State and local revenues in 2015 were reported as $3.4 trillion. This was inflated to 2017 dollars using the CPI–U. State and Local Government Finances Summary: FY2015. Available at *https://www.census.gov/govs/local/*.

unintentionally misclassifying workers as exempt; but an unduly high standard salary level increases labor costs to employers precluded from claiming the exemption for employees performing bona fide EAP duties. Thus, the ultimate cost of the regulation is increased if the standard salary level is set either too low or too high. The Department determined that setting the standard salary level using the level equivalent to the earnings of the 20th percentile of full-time salaried workers in the South and/or in the retail sector, projected forward to January 2020, balances the risks and costs of misclassification of exempt status.

IX. Executive Order 13132, Federalism

The Department has (1) reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

X. Executive Order 13175, Indian Tribal Governments

This proposed rule would not 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.

List of Subjects in 29 CFR Part 541

Labor, Minimum wages, Overtime pay, Salaries, Teachers, Wages.

Signed at Washington, DC this 7th day of March, 2019.

Keith E. Sonderling,

Acting Administrator, Wage and Hour Division.

For the reasons set out in the preamble, the Department of Labor proposes to amend title 29 of the Code of Federal Regulations part 541 as follows:

PART 541—DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, COMPUTER AND OUTSIDE SALES EMPLOYEES

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

Authority: 29 U.S.C. 213; Pub. L. 101–583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR, 1945–53 Comp., p. 1004); Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014).

■ 2. Revise paragraph (a)(1) of § 541.100 to read as follows:

§ 541.100 General rule for executive employees.

(a) * * *

(1) Compensated on a salary basis pursuant to § 541.600 at a rate of not less than $679 per week (or $455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or $380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities;

* * * * *

■ 3. Revise paragraph (a)(1) of § 541.200 to read as follows:

§ 541.200 General rule for administrative employees.

(a) * * *

(1) Compensated on a salary or fee basis pursuant to § 541.600 at a rate of not less than $679 per week (or $455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or $380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities;

* * * * *

■ 4. Revise paragraph (a)(1) of § 541.204 to read as follows:

§ 541.204 Educational establishments.

(a) * * *

(1) Compensated on a salary or fee basis at a rate of not less than $679 per week (or $455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or $380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging, or other facilities; or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed; and

* * * * *

■ 5. Revise paragraph (a)(1) of § 541.300 to read as follows:

§ 541.300 General rule for professional employees.

(a) * * *

(1) Compensated on a salary or fee basis pursuant to § 541.600 at a rate of not less than $679 per week (or $455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or $380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities; and

* * * * *

■ 6. Amend § 541.400 by removing the first two sentences of paragraph (b) and adding one sentence in their place to read as follows:

§ 541.400 General rule for computer employees.

* * * * *

(b) The section 13(a)(1) exemption applies to any computer employee who is compensated on a salary or fee basis at a rate of not less than $679 per week (or $455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or $380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging, or other facilities. * * *

* * * * *

■ 7. Amend § 541.600 by:

■ a. Removing the first three sentences of paragraph (a) and adding one sentence in their place; and

■ b. Revising paragraph (b).

The revisions and additions read as follows:

§ 541.600 Amount of salary required.

(a) To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis at a rate of not less than $679 per week (or $455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal Government, or $380 per week if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities. * * *

(b) The required amount of compensation per week may be translated into equivalent amounts for periods longer than one week. For example, the $679-per-week requirement will be met if the employee is compensated biweekly on a salary basis of not less than $1,358, semimonthly on a salary basis of not less than $1,471, or monthly on a salary basis of not less than $2,942. However, the shortest period of payment that will

meet this compensation requirement is one week.

* * * * *

■ 8. Amend § 541.601 by revising paragraphs (a) and (b) to read as follows:

§ 541.601 Highly compensated employees.

(a) An employee with total annual compensation of at least $147,414 is deemed exempt under section 13(a)(1) of the Act if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee as identified in subparts B, C or D of this part.

(b) (1) ''Total annual compensation'' must include at least $679 per week paid on a salary or fee basis as set forth in §§ 541.602 and 541.605, except that § 541.602(a)(3) shall not apply to highly compensated employees. Total annual compensation may also include commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period. Total annual compensation does not include board, lodging and other facilities as defined in § 541.606, and does not include payments for medical insurance, payments for life insurance, contributions to retirement plans and the cost of other fringe benefits.

(2) If an employee's total annual compensation does not total at least $147,414 by the last pay period of the 52-week period, the employer may, during the last pay period or within one month after the end of the 52-week period, make one final payment sufficient to achieve the required level. For example, an employee may earn $125,000 in base salary, and the employer may anticipate based upon past sales that the employee also will earn $22,414 in commissions. However, due to poor sales in the final quarter of the year, the employee actually only earns $10,000 in commissions. In this situation, the employer may within one month after the end of the year make a payment of at least $12,414 to the employee. Any such final payment made after the end of the 52-week period may count only toward the prior year's total annual compensation and not toward the total annual compensation in the year it was paid. If the employer fails to make such a payment, the employee does not qualify as a highly compensated employee, but may still qualify as exempt under subparts B, C, or D of this part.

* * * * *

§ 541.602 Salary basis.

■ 9. Revise paragraph (a) (3) of § 541.602 to read as follows:

(a) * * *

(3) Up to ten percent of the salary amount required by § 541.600(a) may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions, that are paid annually or more frequently. The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply. If by the last pay period of the 52-week period the sum of the employee's weekly salary plus nondiscretionary bonus, incentive, and commission payments received does not equal 52 times the weekly salary amount required by § 541.600(a), the employer may make one final payment sufficient to achieve the required level no later than the next pay period after the end of the year. Any such final payment made after the end of the 52-week period may count only toward the prior year's salary amount and not toward the salary amount in the year it was paid. This provision does not apply to highly compensated employees under § 541.601.

* * * * *

■ 10. Revise § 541.604 to read as follows:

§ 541.604 Minimum guarantee plus extras.

(a) An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least $679 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least $679 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least $679 each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (*e.g.,* flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis), and may include paid time off.

(b) An exempt employee's earnings may be computed on an hourly, a daily or a shift basis, without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. Thus, for example, an exempt employee guaranteed compensation of at least $700 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid $210 per shift without violating the $679-per-week salary basis requirement. The reasonable relationship requirement applies only if the employee's pay is computed on an hourly, daily or shift basis. It does not apply, for example, to an exempt store manager paid a guaranteed salary per week that exceeds the current salary level who also receives a commission of one-half percent of all sales in the store or five percent of the store's profits, which in some weeks may total as much as, or even more than, the guaranteed salary.

■ 11. Revise paragraph (b) of § 541.605 to read as follows:

§ 541.605 Fee basis.

* * * * *

(b) To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least the minimum salary per week, as required by §§ 541.600(a) and 541.602(a), if the employee worked 40 hours. Thus, an artist paid $350 for a picture that took 20 hours to complete meets the $679 minimum salary requirement for exemption since earnings at this rate would yield the artist $700 if 40 hours were worked.

■ 12. Amend § 541.709 by revising the first sentence to read as follows:

§ 541.709 Motion picture producing industry.

The requirement that the employee be paid ''on a salary basis'' does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $1,036 per week (exclusive of board, lodging, or other facilities). * * *

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