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Presidential Documents

Title 3—

The President

Presidential Determination No. 2013–11 of July 26, 2013

Waiver of Restriction on Providing Funds to the Palestinian Authority

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7040(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Division I, Public Law 112–74) (the ''Act'') as carried forward by the Further Continuing Appropriations Act, 2013 (Division F, Public Law 113–6) (the ''CR''), I hereby certify that it is important to the national security interests of the United States to waive the provisions of section 7040(a) of the Act as carried forward by the CR, in order to provide funds appropriated to carry out chapter 4 of part II of the Foreign Assistance Act, as amended, to the Palestinian Authority.

You are directed to transmit this determination to the Congress, with a report pursuant to section 7040(d) of the Act as carried forward by the CR, and to publish this determination in the **Federal Register**.

THE WHITE HOUSE,
Washington, July 26, 2013

[FR Doc. 2013–19217
Filed 8–6–13; 8:45 am]
Billing code 4710–10

Presidential Documents

Memorandum of July 29, 2013

Delegation of Authority Pursuant to Sections 110(d)(4) and 110(f) of the Trafficking Victims Protection Act of 2000, as Amended

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State the authority conferred upon the President by the Trafficking Victims Protection Act of 2000 (Division A of Public Law 106–386), as amended (the ''Act''), to determine, consistent with sections 110(d)(4) and 110(f) of the Act, with respect to Syria for Fiscal Year 2013, that assistance described in section 110(d)(1)(B) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States.

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, July 29, 2013

[FR Doc. 2013–19218
Filed 8–6–13; 8:45 am]
Billing code 4710–10

Presidential Documents

Executive Order 13650 of August 1, 2013

Improving Chemical Facility Safety and Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* Chemicals, and the facilities where they are manufactured, stored, distributed, and used, are essential to today's economy. Past and recent tragedies have reminded us, however, that the handling and storage of chemicals are not without risk. The Federal Government has developed and implemented numerous programs aimed at reducing the safety risks and security risks associated with hazardous chemicals. However, additional measures can be taken by executive departments and agencies (agencies) with regulatory authority to further improve chemical facility safety and security in coordination with owners and operators.

Sec. 2. *Establishment of the Chemical Facility Safety and Security Working Group.* (a) There is established a Chemical Facility Safety and Security Working Group (Working Group) co-chaired by the Secretary of Homeland Security, the Administrator of the Environmental Protection Agency (EPA), and the Secretary of Labor or their designated representatives at the Assistant Secretary level or higher. In addition, the Working Group shall consist of the head of each of the following agencies or their designated representatives at the Assistant Secretary level or higher:

(i) the Department of Justice;

(ii) the Department of Agriculture; and

(iii) the Department of Transportation.

(b) In carrying out its responsibilities under this order, the Working Group shall consult with representatives from:

(i) the Council on Environmental Quality;

(ii) the National Security Staff;

(iii) the Domestic Policy Council;

(iv) the Office of Science and Technology Policy;

(v) the Office of Management and Budget (OMB);

(vi) the White House Office of Cabinet Affairs; and

(vii) such other agencies and offices as the President may designate.

(c) The Working Group shall meet no less than quarterly to discuss the status of efforts to implement this order. The Working Group is encouraged to invite other affected agencies, such as the Nuclear Regulatory Commission, to attend these meetings as appropriate. Additionally, the Working Group shall provide, within 270 days of the date of this order, a status report to the President through the Chair of the Council on Environmental Quality and the Assistant to the President for Homeland Security and Counterterrorism.

Sec. 3. *Improving Operational Coordination with State, Local, and Tribal Partners.* (a) Within 135 days of the date of this order, the Working Group shall develop a plan to support and further enable efforts by State regulators, State, local, and tribal emergency responders, chemical facility owners and operators, and local and tribal communities to work together to improve chemical facility safety and security. In developing this plan, the Working Group shall:

(i) identify ways to improve coordination among the Federal Government, first responders, and State, local, and tribal entities;

(ii) take into account the capabilities, limitations, and needs of the first responder community;

(iii) identify ways to ensure that State homeland security advisors, State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), Tribal Emergency Planning Committees (TEPCs), State regulators, and first responders have ready access to key information in a useable format, including by thoroughly reviewing categories of chemicals for which information is provided to first responders and the manner in which it is made available, so as to prevent, prepare for, and respond to chemical incidents;

(iv) identify areas, in collaboration with State, local, and tribal governments and private sector partners, where joint collaborative programs can be developed or enhanced, including by better integrating existing authorities, jurisdictional responsibilities, and regulatory programs in order to achieve a more comprehensive engagement on chemical risk management;

(v) identify opportunities and mechanisms to improve response procedures and to enhance information sharing and collaborative planning between chemical facility owners and operators, TEPCs, LEPCs, and first responders;

(vi) working with the National Response Team (NRT) and Regional Response Teams (RRTs), identify means for Federal technical assistance to support developing, implementing, exercising, and revising State, local, and tribal emergency contingency plans, including improved training; and

(vii) examine opportunities to improve public access to information about chemical facility risks consistent with national security needs and appropriate protection of confidential business information.

(b) Within 90 days of the date of this order, the Attorney General, through the head of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), shall assess the feasibility of sharing data related to the storage of explosive materials with SERCs, TEPCs, and LEPCs.

(c) Within 90 days of the date of this order, the Secretary of Homeland Security shall assess the feasibility of sharing Chemical Facility Anti-Terrorism Standards (CFATS) data with SERCs, TEPCs, and LEPCs on a categorical basis.

Sec. 4. *Enhanced Federal Coordination.* In order to enhance Federal coordination regarding chemical facility safety and security:

(a) Within 45 days of the date of this order, the Working Group shall deploy a pilot program, involving the EPA, Department of Labor, Department of Homeland Security, and any other appropriate agency, to validate best practices and to test innovative methods for Federal interagency collaboration regarding chemical facility safety and security. The pilot program shall operate in at least one region and shall integrate regional Federal, State, local, and tribal assets, where appropriate. The pilot program shall include innovative and effective methods of collecting, storing, and using facility information, stakeholder outreach, inspection planning, and, as appropriate, joint inspection efforts. The Working Group shall take into account the results of the pilot program in developing integrated standard operating procedures pursuant to subsection (b) of this section.

(b) Within 270 days of the date of this order, the Working Group shall create comprehensive and integrated standard operating procedures for a unified Federal approach for identifying and responding to risks in chemical facilities (including during pre-inspection, inspection execution, post-inspection, and post-accident investigation activities), incident reporting and response procedures, enforcement, and collection, storage, and use of facility information. This effort shall reflect best practices and shall include agency-

to-agency referrals and joint inspection procedures where possible and appropriate, as well as consultation with the Federal Emergency Management Agency on post-accident response activities.

(c) Within 90 days of the date of this order, the Working Group shall consult with the Chemical Safety Board (CSB) and determine what, if any, changes are required to existing memorandums of understanding (MOUs) and processes between EPA and CSB, ATF and CSB, and the Occupational Safety and Health Administration and CSB for timely and full disclosure of information. To the extent appropriate, the Working Group may develop a single model MOU with CSB in lieu of existing agreements.

Sec. 5. *Enhanced Information Collection and Sharing.* In order to enhance information collection by and sharing across agencies to support more informed decisionmaking, streamline reporting requirements, and reduce duplicative efforts:

(a) Within 90 days of the date of this order, the Working Group shall develop an analysis, including recommendations, on the potential to improve information collection by and sharing between agencies to help identify chemical facilities which may not have provided all required information or may be non-compliant with Federal requirements to ensure chemical facility safety. This analysis should consider ongoing data-sharing efforts, other federally collected information, and chemical facility reporting among agencies (including information shared with State, local, and tribal governments).

(b) Within 180 days of the date of this order, the Working Group shall produce a proposal for a coordinated, flexible data-sharing process which can be utilized to track data submitted to agencies for federally regulated chemical facilities, including locations, chemicals, regulated entities, previous infractions, and other relevant information. The proposal shall allow for the sharing of information with and by State, local, and tribal entities where possible, consistent with section 3 of this order, and shall address computer-based and non-computer-based means for improving the process in the short-term, if they exist.

(c) Within 180 days of the date of this order, the Working Group shall identify and recommend possible changes to streamline and otherwise improve data collection to meet the needs of the public and Federal, State, local, and tribal agencies (including those charged with protecting workers and the public), consistent with the Paperwork Reduction Act and other relevant authorities, including opportunities to lessen the reporting burden on regulated industries. To the extent feasible, efforts shall minimize the duplicative collection of information while ensuring that pertinent information is shared with all key entities.

Sec. 6. *Policy, Regulation, and Standards Modernization.* (a) In order to enhance safety and security in chemical facilities by modernizing key policies, regulations, and standards, the Working Group shall:

(i) within 90 days of the date of this order, develop options for improved chemical facility safety and security that identifies improvements to existing risk management practices through agency programs, private sector initiatives, Government guidance, outreach, standards, and regulations;

(ii) within 90 days of developing the options described in subsection (a)(i) of this section, engage key stakeholders to discuss the options and other means to improve chemical risk management that may be available; and

(iii) within 90 days of completing the outreach and consultation effort described in subsection (a)(ii) of this section, develop a plan for implementing practical and effective improvements to chemical risk management identified pursuant to subsections (a)(i) and (ii) of this section.

(b) Within 90 days of the date of this order, the Secretary of Homeland Security, the Secretary of Labor, and the Secretary of Agriculture shall develop a list of potential regulatory and legislative proposals to improve

the safe and secure storage, handling, and sale of ammonium nitrate and identify ways in which ammonium nitrate safety and security can be enhanced under existing authorities.

(c) Within 90 days of the date of this order, the Administrator of EPA and the Secretary of Labor shall review the chemical hazards covered by the Risk Management Program (RMP) and the Process Safety Management Standard (PSM) and determine if the RMP or PSM can and should be expanded to address additional regulated substances and types of hazards. In addition, the EPA and the Department of Labor shall develop a plan, including a timeline and resource requirements, to expand, implement, and enforce the RMP and PSM in a manner that addresses the additional regulated substances and types of hazards.

(d) Within 90 days of the date of this order, the Secretary of Homeland Security shall identify a list of chemicals, including poisons and reactive substances, that should be considered for addition to the CFATS Chemicals of Interest list.

(e) Within 90 days of the date of this order, the Secretary of Labor shall:

(i) identify any changes that need to be made in the retail and commercial grade exemptions in the PSM Standard; and

(ii) issue a Request for Information designed to identify issues related to modernization of the PSM Standard and related standards necessary to meet the goal of preventing major chemical accidents.

Sec. 7. *Identification of Best Practices.* The Working Group shall convene stakeholders, including chemical producers, chemical storage companies, agricultural supply companies, State and local regulators, chemical critical infrastructure owners and operators, first responders, labor organizations representing affected workers, environmental and community groups, and consensus standards organizations, in order to identify and share successes to date and best practices to reduce safety risks and security risks in the production and storage of potentially harmful chemicals, including through the use of safer alternatives, adoption of best practices, and potential public-private partnerships.

Sec. 8. *General Provisions.* (a) This order shall be implemented consistent with applicable law, including international trade obligations, and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department, agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
August 1, 2013.

[FR Doc. 2013–19220
Filed 8–6–13; 8:45 am]
Billing code 3295–F3

Rules and Regulations

Federal Register

Vol. 78, No. 152

Wednesday, August 7, 2013

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560–AH80

Conservation Reserve Program, Re-Enrollment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; Technical Amendment.

SUMMARY: This rule makes a technical correction to the Commodity Credit Corporation (CCC) Conservation Reserve Program (CRP) regulations to clarify that land with use restrictions that prohibit the production of agricultural commodities, typically through an easement or other deed restrictions, is not eligible for re-enrollment in CRP. This is not a new policy and would not have affected any program determinations for recent CRP sign ups, had this change been specified in the regulations at the time. This amendment will improve the regulations by maintaining consistency with longstanding policy. This rule corrects a provision in the current regulations that allows re-enrollment in CRP of land with easements or other deed restrictions that restrict the production of agricultural commodities. A 2003 interim rule inadvertently added that provision through an incorrect cross-reference, but clearly stated in the preamble that the intent was to exclude land with such easements or deed restrictions from re-enrollment. The purpose of CRP is to cost-effectively assist producers in conserving and improving soil, water, wildlife, and other natural resources by converting environmentally-sensitive acreage from the production of agricultural commodities to a long-term vegetative cover.

DATES: *Effective Date:* August 7, 2013.

FOR FURTHER INFORMATION CONTACT: Beverly J. Preston; telephone 202–720–9563. Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

CRP was first authorized in the Food Security Act of 1985 (16 U.S.C. 3830–3835a, commonly known as the 1985 Farm Bill). This rule amends the CRP regulations in 7 CFR part 1410 to clarify that land with use restrictions that prohibit the production of agricultural commodities, typically through an easement or other deed restriction, is not eligible for re-enrollment in CRP.

The purpose of CRP is to cost-effectively assist producers in conserving and improving soil, water, wildlife, and other natural resources by converting environmentally-sensitive acreage generally devoted to the production of agricultural commodities to a long-term vegetative cover and to address issues raised by State, regional, and national conservation initiatives. Participants enroll land in CRP contracts for 10 to 15 years in exchange for annual rental payments and financial assistance to install certain conservation practices and to maintain approved vegetative, tree, or other appropriate covers. The purpose and scope of CRP are not changing with this rule.

The regulations in 7 CFR 1410.6(c)(2) specifies that land is ineligible for enrollment into CRP if the use of the land is restricted through deed or other restrictions prior to enrollment in CRP prohibiting the production of agricultural commodities during any part of the contract term. However, through an incorrect cross reference that is being removed with this rule, this section also provides an exception to the easement ineligibility if the land is re-enrolled in the CRP during the final year of an expiring CRP contract. As currently written, the regulation therefore allows for re-enrolling land into CRP even if there is an easement in place, or an easement has been filed that would begin as soon as the current CRP contract expires; even though such easement restricts the production of agricultural commodities.

It was never the intent or the policy of CCC to allow land with such crop use restrictions to be re-enrolled in CRP. That provision was inadvertently added in the 2003 interim rule implementing 2002 Farm Bill (the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171) changes to CRP, which was published in the **Federal Register** on May 8, 2003 (68 FR 24830–24845). The preamble to the 2003 interim rule, states specifically " . . . any acreage currently in the CRP will be basically eligible to be offered for continued enrollment if the current contract is scheduled to expire the day before a new contract would become effective. However, land will be ineligible for enrollment if it is subject to a CRP useful life easement that extends beyond the current contract term. The interim rule provides that re-enrollment of currently enrolled acreage will be based on the same criteria as for enrolling new acreage."

Nearly all FSA and CCC programs have specific prohibitions on duplicate payments, meaning that beneficiaries may not receive payments from two different programs for the same land, crop, or loss. Allowing for re-enrollment in CRP where the land is already under an easement would be a type of duplicate payment, because landowners have already been compensated for the easement, usually by a State. CCC has not and should not pay participants annual CRP rental payments on land where an easement already ensures that the conservation benefits established under the original CRP contract will continue long term or even permanently. As noted in the preamble to the final rule for CRP published in the **Federal Register** on May 14, 2004 (69 FR 26755–26763), no comments were received on the 2003 interim rule opposing the ineligibility provision for re-enrollment of land with easements, as specified in the preamble. CCC has not allowed such re-enrollment, as stated consistently in the handbooks for CRP. However, the correction in this rule is needed to make the regulations consistent with policy.

If re-enrollment of land with restrictive easements were allowed, the primary beneficiaries would be landowners whose land is enrolled at the State level in the Conservation Reserve Enhancement Program (CREP).

Many States require long term or even permanent easements as a condition of enrollment in CREP, and compensate landowners for those easements. Since such land already has easements, re-enrolling that land in CRP would force CCC to pay annual rental payments in exchange for no increase in environmental benefits. If this correction is not made, and our existing policy cannot be enforced, about 400–500 contracts could be re-enrolled for an additional 10 to 15 years of rental payments, at a potential cost to the government of $180–250 million total for no additional environmental benefits. Since CRP has an enrollment cap, and CREP re-enrollments would be non-competitive, those 400–500 contracts could potentially ''crowd out'' other applicants representing new, additional actual environmental benefits. Therefore, this correction is needed to ensure that the limited CRP funding goes to CRP contracts with specific environmental benefits.

Notice and Comment

This rule is technical in nature, not substantive, and a delay in implementing this rule would be contrary to the public interest. Therefore, this rule is effective on publication. Also, regulations for this program are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 2904 of the 2008 Farm Bill (Pub. L. 110–246, the Food, Conservation, and Energy Act of 2008), which allows that the regulations be promulgated and administered without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.

Executive Order 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 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 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This technical correction, which is the result of a retrospective review of existing regulations, will improve the clarity of the regulation and harmonize it with longstanding USDA policy and existing handbooks.

This technical amendment did not require Office of Management and Budget (OMB) designation of the level of significance under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore OMB has not reviewed this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because CCC is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The technical correction identified in this final rule does not change the structure or goals of the program and can be considered simply administrative in nature. Therefore, FSA has determined that NEPA does not apply to this final rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' The provisions of this rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule would not have any substantial direct effect on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. The policies contained in this rule do not preempt Tribal law. USDA continues to consult with Tribal officials to have a meaningful consultation and collaboration on the development and strengthening of USDA regulations.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121,

SBREFA) and FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective on the date of publication in the **Federal Register**.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program in the Catalog of Federal Domestic Assistance to which this rule applies is the Conservation Reserve Program—10.069.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 2904 of the 2008 Farm Bill, which provides that these regulations be promulgated and the programs in Title II of the 2008 Farm Bill be administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 1410

Administrative practice and procedure, Agriculture, Environmental protection, Grant programs—Agriculture, Natural resources, Reporting and recordkeeping requirements, Soil conservation, Technical assistance, Water resources, Wildlife.

For the reasons explained above, CCC amends 7 CFR part 1410 as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

■ 1. The authority citation for 7 CFR part 1410 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

§ 1410.6 [Amended]

■ 2. Amend § 1410.6, paragraph (c)(2), by removing the words ''and (3)''.

Signed on July 29, 2013.

Juan M. Garcia,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2013–19017 Filed 8–6–13; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 95

[NRC–2011–0268]

RIN 3150–AJ07

Facility Security Clearance and Safeguarding of National Security Information and Restricted Data

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is updating its regulations to standardize the frequency of required security education training for employees of NRC licensees possessing security clearances so that such training will be conducted annually consistent with the objectives of Executive Order 13526, Classified National Security Information. The rule allows licensees flexibility in determining the means and methods for providing this training. This action establishes uniformity in the frequency of licensee security education and training programs and enhances the protection of classified information.

DATES: This rule is effective October 21, 2013 unless significant adverse comments are received by September 6, 2013.

ADDRESSES: Please refer to Docket ID NRC–2011–0268 when contacting the NRC about the availability of information for this direct final rule. You may access information and comment submittals related to this direct final rule, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0268. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Daniel W. Lenehan, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3501, email: *Daniel.Lenehan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Section-by-Section Analysis
IV. Procedural Background
V. Compatibility of Agreement State Regulations
VI. Plain Writing
VII. Voluntary Consensus Standards
VIII. Environmental Impact: Categorical Exclusion
IX. Paperwork Reduction Act Statement
X. Regulatory Analysis
XI. Regulatory Flexibility Act Certification
XII. Backfitting
XIII. Congressional Review Act

I. Background

On December 29, 2009, the President signed Executive Order 13526, Classified National Security Information, which was published in the **Federal Register** on January 5, 2010 (75 FR 707). The Executive Order prescribes training requirements applicable to the NRC for the proper safeguarding of national security information and requires the NRC to ensure that classified information disseminated outside the executive branch is protected ''in a manner equivalent to that provided within the executive branch.'' The Information Security Oversight Office (ISOO) within the National Archives and Records Administration, which is responsible for issuing guidance to Federal agencies on the implementation of the Executive Order, issued a final rule (75 FR 37254; June 28, 2010) amending 32 CFR parts 2001 and 2003 (ISOO Regulations). The final rule requires executive branch agencies to conduct classified information security refresher briefings for all cleared employees at least annually, and to provide derivative classification training for employees authorized to apply derivative classifications prior to exercising such authority and at least once every 2 years thereafter. This rulemaking will establish standard training requirements for NRC licensee security education and

training programs in a manner equivalent to that provided within the executive branch.

II. Discussion

The NRC is issuing this direct final rule to update part 95 of Title 10 of the *Code of Federal Regulations* (10 CFR), Facility Security Clearance and Safeguarding of National Security Information and Restricted Data, § 95.33, Security Education. These updates require NRC licensees (or their designees) to conduct classified information security refresher briefings for all cleared employees at least annually, and to provide derivative classification training for employees authorized to apply derivative classifications before exercising this authority and then at least once every 2 years thereafter. This rule also gives licensees flexibility in determining the means and methods for providing this training. The NRC regulations at 10 CFR 95.33 currently require NRC licensees, or their designees, to conduct classified information security refresher briefings for all cleared employees every 3 years. These regulations do not mandate a uniform training frequency for derivative classifiers.

The NRC has determined that requiring cleared licensee employees to undergo classified information security refresher briefings at least annually and standardizing the derivative classification training for licensee employees enhances the protection of classified information by ensuring that cleared individuals are properly aware of their responsibilities to protect classified information and conform NRC regulations with executive branch policies.

Section 4.1(e) of Executive Order 13526, Classified National Security Information (75 FR 707; January 5, 2010) (the Executive Order) requires the NRC to ensure that classified information disseminated outside the executive branch is protected ''in a manner equivalent to that provided within the executive branch.'' The Information Security Oversight Office (ISOO) within the National Archives and Records Administration is responsible for issuing guidance to Federal agencies on the implementation of the Executive Order. On June 28, 2010, ISOO issued a final rule (75 FR 37254; June 28, 2010; amending 32 CFR parts 2001 and 2003 (ISOO Regulations)). The ISOO Regulations require executive branch agencies to conduct classified information security refresher briefings for all cleared employees at least annually, and to provide derivative classification training for employees authorized to apply derivative classifications prior to exercising such authority and at least once every 2 years thereafter. This rulemaking will standardize the frequency of required security education training for NRC licensee employees possessing security clearances in a manner equivalent to that provided within the executive branch.

This direct final rule will establish standard training requirements for NRC licensee security education and training programs. Implementation of this rule will enhance the protection of classified information, and ensure the protection of classified information in a manner equivalent to that provided within the executive branch. Current NRC regulations only require refresher security education and training once every 3 years for all NRC licensee personnel who handle or generate classified information. Updating 10 CFR 95.33 to require annual training will enhance the protection of classified information by ensuring that all NRC licensee employees who create, process, or handle classified information have a satisfactory knowledge and understanding of classification, safeguarding, and declassification policies and procedures.

Additionally, the current text of 10 CFR 95.33 does not provide for education and training of NRC licensee personnel authorized to apply derivative classification markings. This rulemaking enhances the protection of classified information through uniform training requirements for derivative classifiers. The uniform standard will have the beneficial effect of reducing instances of over-classification or improper classification, improper safeguarding, and inappropriate or inadequate declassification practices.

Finally, these updated requirements are equivalent to requirements applicable to the Commission itself via the Executive Order and the ISOO Regulations. The NRC has determined that the updated requirements in this final rule are consistent with the NRC obligation, stated in Section 4.1(e) of the Executive Order, to ensure that the protection of classified information by NRC licensees is performed in a manner equivalent to that required within the executive branch.

III. Section-by-Section Analysis

The initial paragraph of 10 CFR 95.33, Security education, is amended to state that program officials are responsible for determining the methods for providing security education and training. This requirement is equivalent to requirements applicable to the Commission pursuant to 32 CFR 2001.70(c).

A new paragraph (e) has been added to specify that access by licensees' employees to classified information is subject to a favorable eligibility determination, signing an approved non-disclosure agreement and the employee's need-to-know. This requirement is equivalent to requirements applicable to the Commission pursuant to Section 4.1(a) of the Executive Order.

Current paragraph (e) is redesignated as paragraph (f) and revised to specify that initial security training will be provided to every person who has met the criteria set forth in new paragraph (e) before being granted access to classified information. This requirement is equivalent to requirements applicable to the Commission pursuant to 32 CFR 2001.70(d)(1).

Current paragraph (f) is redesignated as paragraph (g) and revised to specify that the requirement for conducting refresher briefings for all of a licensee's cleared employees is changed from every 3 years to at least annually. This requirement is equivalent to requirements applicable to the Commission pursuant to 32 CFR 2001.70(d)(4).

Current paragraph (g) is redesignated as paragraph (i) and former paragraph (h) is redesignated as paragraph (j).

New paragraph (h) specifies that derivative classifiers are to receive training prior to derivatively classifying information and at least once every 2 years. This requirement is equivalent to requirements applicable to the Commission pursuant to 32 CFR 2001.70(d)(3).

Minor editorial changes were also made to § 95.33.

IV. Procedural Background

Because the NRC considers this action to be non-controversial, the NRC is using the direct final rule process for this rule. The amendments in this rule will become effective on October 21, 2013. However, if the NRC receives significant adverse comments on this direct final rule by September 6, 2013, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter

explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(A) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For detailed instruction on submitting a comment, please see the companion proposed rule published elsewhere in this issue of the **Federal Register**.

V. Compatibility of Agreement State Regulations

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs,'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires Federal agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. This direct final rule amends the frequency of the training required for employees of NRC licensees handling classified information. This action is administrative in nature and does not involve the establishment or application of a technical standard containing generally applicable requirements.

VIII. Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusions 10 CFR 51.22(c)(1), (2), and (3)(iv). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0047.

Public Protection Notification

The NRC may neither conduct nor sponsor, and a person is not required to respond to, an information collection request or requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC.

Statement of the Problem and Reasons for the Rulemaking

The NRC regulations in 10 CFR part 95 establish procedures for safeguarding Secret and Confidential National Security Information and Restricted Data received or developed in conjunction with activities licensed, certified, or regulated by the Commission. The requirements set forth in 10 CFR 95.33 currently require security refresher training for all cleared employees every 3 years. However, they do not address initial or refresher training for persons who apply derivative classification markings.

The NRC has determined that requiring cleared employees of NRC licensees to undergo classified information security refresher briefings at least annually and standardizing the derivative classification training for cleared employees of NRC licensees will enhance the protection of classified information. Annual classified information security refresher briefings will help ensure that cleared employees of NRC licensees have adequate knowledge and understanding of proper classification policies and procedures and thereby help reduce instances of improper processing, handling, storage, and declassification of classified information. Standardized derivative classification training will help ensure that cleared employees of NRC licensees will have a proper understanding of derivative classification policies and procedures and thereby help reduce instances of improper classification of derivative documents containing classified information.

Furthermore, this rulemaking will bring the requirements for licensee protection of classified information into alignment with two new requirements imposed on the Commission for the protection of classified information by Executive Order 13526 and the ISOO Regulations implementing the requirements of the Executive Order set forth at 32 CFR part 2001.

The Executive Order and the ISOO Regulations at 32 CFR 2001.70(d)(3) specify that Federal government employees who ''apply derivative classification markings shall receive training in the proper application of the derivative classification principles of the Executive Order prior to derivatively classifying information and at least once every 2 years.'' Additionally, 32 CFR 2001.70(d)(4) directs each U.S. Government agency to ''provide some form of refresher security education and training at least annually for all its personnel who handle or generate classified information.''

The purpose of this rulemaking is twofold. First, this rulemaking ensures that classified information possessed or accessed by employees of NRC licensees is effectively safeguarded. The NRC has determined that successful safeguarding of classified information requires effective security education and training programs. The NRC has further determined that updating its 10 CFR part 95 security education and training programs to achieve parity with the

Executive Order and the ISOO Regulations is necessary to ensure these programs are effective. Second, this rulemaking ''ensure[s] the protection of [classified] information in a manner equivalent to that provided within the executive branch,'' as required by Section 4.1(e) of the Executive Order by updating training requirements applicable to licensees to be equivalent to training requirements applicable to the Commission itself.

Background

Regulatory Objective

The NRC objective for this final rule is to require that all cleared employees of NRC licensees receive security refresher training on an annual basis. In addition, all licensee employees who apply derivative classification markings shall receive training in their derivative classification duties prior to derivatively classifying information and at least once every 2 years thereafter.

Identification and Preliminary Analysis of Alternative Approaches

No-Action Alternative: Under this option, the NRC would not amend the current regulations under 10 CFR part 95 to require security refresher training every year rather than every 3 years. The NRC would also not amend the current regulations under 10 CFR part 95 to require training for derivative classifiers prior to derivatively classifying information and at least once every 2 years. This option would avoid certain costs that the rule will impose. However, taking no action would mean that licensees who handle and store classified information are not protecting that information in accordance with the requirements the NRC considers necessary to be consistent with the objectives of Executive Order 13526 to enhance the adequate protection of classified information consistent with the goal of protecting national security. This no-action alternative is the baseline for this regulatory analysis.

Estimate and Evaluation of Values and Impacts

Overview: This final rule revises the governing regulations under 10 CFR part 95 to require licensees to handle classified information in the same manner as is required of employees of Federal agencies by the Executive Order. This rulemaking adds value because it ensures those licensees who are handling and derivatively marking classified information are appropriately trained in the protection of classified information in accordance with current federal standards and requirements.

Impacts on Licensees: Impacts upon licensees from this final rule will be minimal. Only the three 10 CFR part 70 licensees and one Part 76 Certificate holder, for which the NRC is the Cognizant Security Agency (CSA), would be affected by the rule. A fourth 10 CFR part 70 licensee will be affected later this year when it becomes a possessor of classified matter. Of those three, two already commit in their internal procedures to annual security education briefings of all their employees and are conducting initial and refresher training of their employees who apply derivative classification markings more frequently than every 2 years. The other licensee is conducting annual refresher training and training its derivative classifiers at least every 2 years but does not commit to those requirements in its security program. It is estimated that there will be no one-time cost associated with amending their licenses through security plan changes since the only change is from three years to annually. Two of the three licensees have contractors who possess classified information and therefore, have their own independent security plans. It is estimated that there will also be no one-time cost associated with amending their licenses through security plan changes since the only change is from three years to annually. Since the majority of the training is administered electronically, there is little to no cost of preparing and administering the training sessions. Those 10 CFR part 50 licensees who only access classified information but do not possess it will be impacted minimally from the increase in frequency of security education briefings, since those licensees only have three to five employees who are cleared to access classified information. The associated security plan change would merely update the frequency of refresher training from 3 years to annually. In addition, none of their employees are derivative classifiers.

Impacts on the NRC: The primary impact on the NRC will be the resources expended in conducting this rulemaking and reviewing the amended security plans and programs. The staff time to review revisions to security plans and programs to ensure commitment to the new requirements is minimal. It is estimated that this will require no more than 20 hours and will be accomplished by existing staff as part of their normal workload.

Impacts on Other Stakeholders: The NRC staff has identified one impact to other stakeholders. Those contractors that support licensees who handle classified information but are not cleared for storage will have to amend their security plans to change the frequency of refresher training from 3 years to annually. These contractors are not required to have derivative classifiers.

XI. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act, 5 U.S.C 605(b), the Commission certifies that this direct final rule amending 10 CFR part 95 does not have a significant economic impact on a substantial number of small entities. This direct final rule applies to those licensees who generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR part 95). The requirements in this direct final rule apply to licensees who operate power reactors as well as licensees operating fuel cycle facilities. None of these licensees are ''small entities'' as defined in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810). This direct final rule also applies to contractors of those licensees required to comply with this direct final rule who generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR part 95), received or developed in conjunction with activities licensed, certified, or regulated by the Commission. Some of these contractors may be ''small entities'' as defined in the Regulatory Flexibility Act or the NRC's size standards. However, the impact on these contractors is not significant because it is the licensees, not the contractors, who are required to offer the training and absorb its costs.

XII. Backfitting

This direct final rule will apply to all NRC licensees who receive or possess Classified National Security Information. The NRC has determined that the modifications constitute backfitting as defined in 10 CFR 50.109 for power reactors, 10 CFR 76.76 for gaseous diffusion plants, 10 CFR 72.62 for independent spent fuel storage installations or monitored retrievable storage installations, and 10 CFR 70.76 for special nuclear material licensees. Consequently, the NRC has prepared the following backfit analysis. The Commission has determined that there will be a substantial increase in the overall common defense and security derived from the backfit, and that the direct and indirect costs that will result from the implementation of the backfit are justified.

A Statement of the Specific Objectives That the Backfit is Designed to Achieve.

The Commission is amending its regulations at 10 CFR 95.33 to update the frequency of training requirements applicable to licensees in order to enhance the protection of classified information, and to ensure that there is no discrepancy in the level of protection afforded such information regardless of whether it is in the possession of the NRC or of its licensees. The objective of the backfit is to ensure that protection of Secret and Confidential National Security Information and Restricted Data received or developed in conjunction with activities licensed, certified, or regulated by the Commission, in the possession of Commission licensees is enhanced and is as well protected as such information would be if it was in the hands of the Commission itself.

A General Description of the Activity That Would Be Required of the Licensee or the Applicant To Complete the Backfit.

Licensee personnel who apply derivative classification markings will receive training in the proper application of the derivative classification principles, with an emphasis on avoiding over-classification, at least once every 2 years. In addition, licensees will be required to provide some form of refresher security education and training at least annually for all of its personnel who handle or generate classified information.

The Potential Change in the Risk to the Public From the Accidental Offsite Release of Radioactive Material.

None.

The Potential Impact on the Radiological Exposure of Facility Employees.

None.

The Installation and Continuing Costs Associated With the Backfit, Including the Cost of Facility Downtime or the Cost of Construction Delay.

Impacts upon licensees from this direct final rule will be minimal. There are only three 10 CFR part 70 licensees and one Part 76 Certificate holder who possess classified information. A fourth 10 CFR part 70 licensee will be affected later this year when it becomes a possessor of classified matter. Of those three, two already commit in their internal procedures to annual security education briefings of all their employees and are conducting initial and refresher training of their employees who apply derivative classification markings more frequently than every 2 years. The other licensee is conducting annual refresher training and training its derivative classifiers at least every 2 years but does not commit to those requirements in its security program. It is estimated that there will be no one-time cost associated with amending licenses through security plan changes since the only change is from three years to annually. Two of the three licensees have contractors who possess classified information and therefore, have their own independent security plans. It is estimated that there will also be no one-time cost associated with amending licenses through security plan changes ranges since the only change is from three years to annually. Since the majority of the training is administered electronically, there is little to no cost of preparing and administering the training sessions. Those 10 CFR part 50 licensees who only access classified information but do not posses it will be impacted minimally from the increase in frequency of security education briefings since those licensees only have three to five employees who are cleared for access to classified information. The associated security plan change would merely update the frequency of refresher training from 3 years to annually. In addition, none of their employees are derivative classifiers.

The NRC staff has identified one impact to other stakeholders. Those contractors that support licensees who handle classified information but are not cleared for storage will have to amend their security plans to change the frequency of refresher training from 3 years to annually. These contractors are not required to have derivative classifiers.

The Potential Safety Impact of Changes in Plant or Operational Complexity, Including the Relationship to Proposed and Existing Regulatory Requirements.

None.

The Estimated Resource Burden on the NRC Associated With the Backfit and the Availability of NRC Resources.

The primary impact on the NRC will be the resources expended in conducting this rulemaking and reviewing the amended security plans and programs. The staff time to review revisions to security plans to ensure commitment to the new requirements is minimal.

The Potential Impact of Differences in Facility Type, Design, or Age on the Relevance and Practicality of the Backfit.

None.

Whether the Backfit is Interim or Final and, if Interim, the Justification for Imposing the Backfit on an Interim Basis.

The backfit is final.

XIII. Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 95.

PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

■ 1. The authority citation for part 95 continues to read as follows:

Authority: Atomic Energy Act Secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C.5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; EO 13526, 3 CFR 2010 Comp., pp. 298–327; E.O. 12968, 3 CFR, 1995 Comp., p. 391; E.O. 13526, 3 CFR, 2010 Comp., p. 298.

■ 2. Revise § 95.33 to read as follows:

§ 95.33 Security education.

All cleared employees must be provided with security training and briefings commensurate with their involvement with classified information. The facility official(s) responsible for the program shall determine the means and methods for providing security education and training. A licensee or other entity subject to part 95 may obtain defensive security, threat awareness, and other education and training information and material from their Cognizant Security Agency (CSA) or other appropriate sources.

(a) *Facility Security Officer Training.* Licensees or other entities subject to part 95 are responsible for ensuring that the Facility Security Officer, and other personnel performing security duties, complete security training deemed appropriate by the CSA. Training requirements must be based on the facility's involvement with classified information and may include a Facility Security Officer Orientation Course and, for Facility Security Officers at facilities with safeguarding capability, a Facility Security Officer Program Management Course. Training, if required, should be completed within 1 year of appointment to the position of Facility Security Officer.

(b) *Government-Provided Briefings.* The CSA is responsible for providing initial security briefings to the Facility Security Officer, and for ensuring that other briefings required for special categories of information are provided.

(c) *Temporary Help Suppliers.* A temporary help supplier, or other contractor who employs cleared individuals solely for dispatch elsewhere, is responsible for ensuring that required briefings are provided to their cleared personnel. The temporary help supplier or the using licensee's, certificate holder's, or other person's facility may conduct these briefings.

(d) *Classified Information Nondisclosure Agreement (SF–312).* The SF–312 is an agreement between the United States and an individual who is cleared for access to classified information. An employee issued an initial access authorization must, in accordance with the requirements of § 25.23 of this chapter, execute an SF–312 before being granted access to classified information. The Facility Security Officer shall forward the executed SF–312 to the CSA for retention. If the employee refuses to execute the SF–312, the licensee or other facility shall deny the employee access to classified information and submit a report to the CSA. The SF–312 must be signed and dated by the employee and witnessed. The employee's and witness' signatures must bear the same date.

(e) *Access to Classified Information.* Employees may have access to classified information only if:

(1) A favorable determination of eligibility for access has been made with respect to such employee by the CSA;

(2) The employee has signed an approved non-disclosure agreement; and

(3) The employee has a need-to-know the information.

(f) *Initial Security Briefings.* Initial training shall be provided to every employee who has met the standards for access to classified information in accordance with paragraph (e) of this section before the employee is granted access to classified information. The initial training shall include the following topics:

(1) A Threat Awareness Briefing;

(2) A Defensive Security Briefing;

(3) An overview of the security classification system;

(4) Employee reporting obligations and requirements; and

(5) Security procedures and duties applicable to the employee's job.

(g) *Refresher Briefings.* The licensee or other entities subject to part 95 shall conduct refresher briefings for all cleared employees at least annually. As a minimum, the refresher briefing must reinforce the information provided during the initial briefing and inform employees of appropriate changes in security regulations. This requirement may be satisfied by use of audio/video materials and/or by issuing written materials to cleared employees.

(h) Persons who apply derivative classification markings shall receive training specific to the proper application of the derivative classification principles of Executive Order 13526, *Classified National Security Information* (75 FR 707; January 5, 2010), before derivatively classifying information and at least once every 2 years thereafter.

(i) *Debriefings.* Licensee and other facilities shall debrief cleared employees at the time of termination of employment (discharge, resignation, or retirement); when an employee's access authorization is terminated, suspended, or revoked; and upon termination of the Facility Clearance.

(j) Records reflecting an individual's initial and refresher security orientations and security termination must be maintained for 3 years after termination of the individual's access authorization.

Dated at Rockville, Maryland, this 23rd day of July, 2013.

For the Nuclear Regulatory Commission.

R. William Borchardt,

Executive Director for Operations.

[FR Doc. 2013–18947 Filed 8–6–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG)(Admiralty and Maritime Law) has determined that USS INDEPENDENCE (LCS 2) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective August 7, 2013 and is applicable beginning July 24, 2013.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jocelyn Loftus-Williams, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR Part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), of the DoN, under authority delegated by the Secretary of the Navy, has certified that USS INDEPENDENCE (LCS 2) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 2 (a)(i), pertaining to the location of the forward masthead light at a height not less than 12 meters above the hull; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table One by revising the entry for USS INDEPENDENCE (LCS 2);

■ B. In Table Five, by revising the entry for USS INDEPENDENCE (LCS 2).

The revisions read as follows:

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height § 2(a)(i) annex I
*	*	*
USS INDEPENDENCE	LCS 2	4.14
*	*	*

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS INDEPENDENCE	LCS 2		X	X	15.2

Approved: July 24, 2013.

A.B. Fischer,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Dated: July 30, 2013.

D.G. Zimmerman,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2013–19026 Filed 8–6–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0628]

Safety Zone; AVI Resort and Casino Labor Day Fireworks Display; Colorado River

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a Safety Zone for the AVI Resort and Casino Labor Day Fireworks Display located on the Colorado River in Laughlin, Nevada from 8 p.m. until 9:45 p.m. on September 1, 2013. This action is necessary for the safety of spectators and participants, including all crews, vessels and persons on navigable waters during the AVI Resort and Casino Fireworks. During the enforcement period, in accordance with the established Safety Zone, entry into transiting through or anchoring in the Safety Zone is prohibited to all vessels not registered with the event sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port Sector San Diego or a designated representative.

DATES: The regulations in 33 CFR 165.1124, Table 1, Item 4, will be enforced from 8 p.m. through 9:45 p.m. on September 1, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call Lieutenant John Bannon, U.S. Coast Guard Sector San Diego at 619–278–7261, or by email at *John.E.Bannon@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone on the Colorado River for the AVI Resort and Casino Labor Day Fireworks Display in 33 CFR 165.1124, Table 1,

Item 4, from 8 p.m. through 9:45 p.m. on September 1, 2013.

Under provisions of 33 CFR 165.1124, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port or a designated representative. Persons or vessels desiring to enter into or pass through the Safety Zone may request permission from the Captain of the Port or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or Local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 5 U.S.C. 552 (a) and 33 CFR 165.1124. In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego Patrol Commander or his designated representative determines that the regulated area need not be enforced for the full duration stated on this notice, he or she may use a Broadcast Notice to Mariners or other communications coordinated by the event sponsor to grant general permission to enter the regulated area.

Dated: July 25, 2013.

S.M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2013–19100 Filed 8–6–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0637]

RIN 1625–AA00

Safety Zone; San Diego International Airport Terminal Two West Grand Opening Fireworks; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the San Diego Bay in support of a fireworks display for the Grand Opening of Lindbergh Airport Terminal Two West on August 8, 2013. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 8:30 p.m. to 9:15 p.m. on August 8, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0637]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *d11marineeventssandiego@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final 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 the final details of the event were not known to the Coast Guard until recently. Publishing an NPRM would be impracticable because there is insufficient time to hold a comment period and immediate action is needed to provide for the safety of life and property on navigable waters.

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** because it is impractical and contrary to the public interest. The Coast Guard did not have the necessary event information in time to provide both a comment period and allow for a 30 day delayed effective date. Immediate action is required to ensure the safety zone is in place to protect participants, crew, spectators, participating vessels, and other vessels and users of the waterway during the event.

B. Basis and Purpose

The Ports and Waterways Safety Act gives the Coast Guard authority to create and enforce safety zones. The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Diego Bay for a fireworks event on August 8, 2013, for the San Diego International Airport Terminal Two grand opening. This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard is establishing a safety zone that will be enforced on August 8, 2013, from 8:30 p.m. to 9:15 p.m. The limits of the safety zone will be navigable waters of the San Diego Bay. The limits of the safety zone will include all the navigable waters within 600 feet of the nearest point of the fireworks barge in approximate position 32 42′ 46.71″ N 117 10′ 39.44″ W.

This safety zone is necessary to ensure unauthorized personnel and vessels remain safe by keeping clear during the fireworks show. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Before the effective period, the Coast Guard will publish a Coast Guard District Eleven Local Notice to Mariners information on the event and associated safety zone. Immediately before and during the fireworks event, Coast Guard Sector San Diego Joint Harbor Operations Center will issue Broadcast

Notice to Mariners on the location and enforcement of the safety zone.

Vessels will be able to transit the surrounding area and may be authorized to transit through the safety zone with the permission of the Captain of the Port of the designated representative. Before activating the zones, the Coast Guard will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

D. 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.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size, duration and location of the safety zone. The safety zone is relatively small in size, less than half a mile across, short in duration, 45 minutes long, and traffic would be allowed to pass through the zone with the permission of the Captain of the Port. Additionally, before the effective period, the Coast guard will publish a Local Notice to Mariners.

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

(1) This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the impacted portion of the San Diego Bay on August 8, 2013 between 8:30 p.m. and 9:15 p.m.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will only be in effect for forty five minutes late in the evening when vessel traffic is low. Vessel traffic can safely transit around the safety zone while the zone is in effect.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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**, above.

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.

4. 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).

5. Federalism

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 determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. 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.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(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 establishment of a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

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: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–582 to read as follows:

§ 165.T11–582 Safety Zone; San Diego International Airport Terminal Two West Grand Opening Fireworks; San Diego, CA

(a) *Location.* The limits of the safety zone will include all the navigable waters within 600 feet of the nearest point of the fireworks barge in approximate position 32 42′ 46.71″ N 117 10′ 39.44″ W.

(b) *Enforcement Period.* This section will be enforced from 8:30 p.m. to 9:15 p.m. on August 8, 2013.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) All persons and vessels shall comply to the instructions of the Coast Guard Captain of the Port of his designated representative.

(3) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, a flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: July 25, 2013.

S.M. Mahoney,

Captain, U.S. Coast Guard. Captain of the Port San Diego.

[FR Doc. 2013–18985 Filed 8–6–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0666]

RIN 1625–AA00

Safety Zone; Kuoni Destination Management Fireworks; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the San Diego Bay in support of the Kuoni Destination Management Fireworks Display on August 6, 2013. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 8:30 p.m. to 9:15 p.m. on August 6, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0666]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer First Class Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *d11marineeventssandiego@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final 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 an NPRM with respect to this rule because doing so would be impracticable. The final details for this event were not received by the Coast Guard with sufficient time to publish an NPRM. Thus, delaying this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect the public from the potential hazards associated with fireworks displays. Immediate action is required to ensure the safety zone is in place to protect participants, crew, spectators, participating vessels, and other vessels and users of the waterway during the event.

B. Basis and Purpose

The Ports and Waterways Safety Act gives the Coast Guard authority to create and enforce safety zones. The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Diego Bay for the Kuoni Destination Management fireworks event on August 6, 2013. This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard is establishing a safety zone that will be enforced on August 6, 2013, from 8:30 p.m. to 9:15 p.m. The limits of the safety zone will be the navigable waters of San Diego Bay within 500 feet of the tug and barge, located approximately 550 feet off of the San Diego Broadway Pier at position: 32°42′56.20″ N, 117°10′39.36″ W.

This safety zone is necessary to ensure unauthorized personnel and vessels remain safe by keeping clear during the fireworks show. Persons and vessels would be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Before the effective period, the Coast Guard will publish a Coast Guard District Eleven Local Notice to Mariners information on the event and associated safety zone. Immediately before and during the fireworks event, Coast Guard Sector San Diego Joint Harbor Operations Center will issue Broadcast Notice to Mariners on the location and enforcement of the safety zone.

Vessels will be able to transit the surrounding area and may be authorized to transit through the safety zone with the permission of the Captain of the Port of the designated representative. Before activating the zones, the Coast Guard will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

D. 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.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size, duration and location of the safety zone. The safety zone is relatively small in size, less than half a mile across, short in duration, 45 minutes long, and traffic would be allowed to pass through the zone with the permission of the Captain of the Port. Additionally, before the effective period, the Coast Guard will publish a Local Notice to Mariners.

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

(1) This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the impacted portion of the San Diego Bay on August 6, 2013, between 8:30 p.m. and 9:15 p.m.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will only be in effect for forty five minutes late in the evening when vessel traffic is low. Vessel traffic can safely transit around the safety zone while the zone is in effect.

3. Assistance for Small Entities

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**, above.

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.

4. 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).

5. Federalism

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 determined that this rule does not have implications for federalism.

6. 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.

7. 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.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and

does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (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 establishment of a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

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: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–583 to read as follows:

§ 165.T11–583 Safety Zone; Kuoni Destination Management Fireworks; San Diego, CA.

(a) *Location.* The limits of the safety zone will include all the navigable waters within 500 feet of the nearest point of the fireworks barge in approximate position 32°42′56.20″ N 117°10′39.36″ W.

(b) *Enforcement Period.* This section will be enforced from 8:30 p.m. to 9:15 p.m. on August 6, 2013.

(c) *Definitions.* The following definition applies to this section: *Designated representative* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) All persons and vessels shall comply to the instructions of the Coast Guard Captain of the Port of his designated representative.

(3) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, a flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: July 25, 2013.

S.M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2013–18986 Filed 8–6–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1880–AA87

Student Assistance General Provisions

AGENCY: Office of Hearings & Appeals, Office of Management, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations governing participation in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs). The amended regulations implement the Office of Hearings & Appeals (OHA) Electronic Filing System, which provides a Web-based interface for the submission of documents in administrative litigation involving enforcement and compliance with requirements of Title IV, HEA programs. The OHA Electronic Filing System (OES) permits documents to be submitted electronically in an Adobe Portable Document Format (PDF) directly to OHA through standard Web-based screens and prompts.

DATES: These regulations are effective August 7, 2013.

FOR FURTHER INFORMATION CONTACT: Frank Furey, Director, Office of Hearings & Appeals, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–4616. Telephone: (202) 619–9700.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: These regulations implement changes governing filing procedures in proceedings before the OHA. The changes allow parties participating in administrative adjudications involving Title IV, HEA programs to file documents electronically. The changes include removing the requirement that evidence must be filed at the time a postsecondary institution or third-party servicer files a request for review of a final audit determination or a final program review determination. The Secretary modified this requirement by holding that evidence filed after a request for review is filed may be considered by the hearing official, notwithstanding the rule codified by 34 CFR 668.116(e). *See, In re Baytown Technical School, Inc.,* Docket No. 91–40–SP, U.S. Dep't of Educ. (April 12, 1994). For nearly two decades, the Department's hearings officials have followed the Secretary's decision. This revision brings the regulations into conformity with the Secretary's ruling.

The amended regulations also remove a requirement imposed by existing regulations mandating that certain filings be submitted by hand delivery or certified mail. The new procedures offer litigants an alternative to using current paper-based procedures for the submission of documents. The amended regulations allow any filing to be submitted to OHA electronically by use of the OES, which is a Web-based

interface that is accessible 24 hours every day. The OES provides administrative litigants with an acknowledgement of receipt of filings and records at the time of submission. The OES generates email notifications when a document filed electronically has been received and has been accepted.

To use the OES, a party must notify OHA and the opposing party of its intention to submit filings electronically through OES. Each party is free to elect to use the OES filing system, and may decline to do so. The regulations require each party to deliver a copy of any filing to the opposing party. If both parties have notified OHA and each other of their intent to use the OES, the parties may satisfy both their obligation to submit a filing to OHA as well as their obligation to deliver a copy of any filing to the opposing party simply by filing that document with OHA through the OES and obtaining confirmation of its acceptance. The OES generates notice to the opposing party that the document so filed has been accepted and is available on the OES. No further action is needed to serve a copy of that filing with the opposing party.

If, however, a party who wishes to file through the OES has not received an affirmative agreement by the opposing party to use the OES, the party that files through the OES must, as under current regulations, deliver a copy of the filing to the opposing party by mail, by facsimile transmission, or by hand-delivery. In addition, the parties are free to agree to meet their respective obligations by any other means, including transmitting the filing directly by email or other electronic means. Unless a party affirmatively notifies the opposing party that it also chooses to use the OES, the party that elects to file by means of the OES must ensure that any filing it makes through the OES is delivered to the non-electing party by mail, by facsimile transmission, or by hand-delivery, as required under existing regulations.

Furthermore, a party who chooses to file electronically through the OES may do so for some or all filings in the matter. For those filings not made through the OES, the party must meet all requirements in current regulations for filing with OHA and delivering copies to the opposing party.

Waiver of Proposed Rulemaking, Negotiated Rulemaking, and Delayed Effective Date

Under the Administrative Procedure Act (5 U.S.C. 553) (APA), the Department generally offers interested parties the opportunity to comment on proposed regulations. These regulations allow for electronic filing of documents in actions before the OHA, and they remove a deadline for filing evidence when a party requests review of a final audit determination or a final program review determination. As such, these regulations make procedural changes only and do not establish substantive policy. The revised regulations are therefore rules of agency practice and procedure, and the APA does not require notice and comment rulemaking here. *See, Bachow Communications Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are ''rules of agency organization, procedure, or practice'' and exempt from the APA's notice and comment requirement); *see also, Merck & Co., Inc.* v. *Kessler,* 80 F.3d 1543, 1549 (Fed. Cir. 1996) (holding that rules of practice are not substantive rules to which notice and comment would apply).

In addition, the Secretary has decided to waive the 30-day delay in the effective date of these regulatory changes under 5 U.S.C. 553(d)(3). It is unnecessary because here ''the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *Mack Trucks* v. *EPA,* 682 F.3d 87, 94 (D.C. Cir. 2012). The 30-day delay is unnecessary because we have merely broadened the way the public may file papers, adding electronic filing to the other options that already existed. This is a ministerial change that requires no change in behavior by the public. For the same reasons, the Secretary has determined, under section 492(b)(2) of the HEA, 20 U.S.C. 1098a(b)(2), that these regulations should not be subject to negotiated rulemaking.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these regulations only on a reasoned determination that their

benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. However, there are no identifiable or measurable costs expected. The benefit of these regulations is that parties will now have the option of filing documents electronically.

Regulatory Flexibility Act

The Secretary certifies that these regulations do not have a significant economic impact on a substantial number of small entities. The small entities that could be affected by these regulations are small postsecondary institutions. These regulations do not have a significant economic impact on these small entities because the regulations provide a voluntary, alternative means of filing documents in addition to the current methods, which remain available to all parties, including small postsecondary institutions. The amended regulations impose minimal requirements to ensure the proper expenditure of student financial assistance program funds.

Paperwork Reduction Act of 1995

Sections 668.98, 668.113, and 668.124 contain information collection requirements that have already been approved by OMB. The changes in these final regulations do not alter those approved information collection requirements. Therefore, the Department will not need to submit a copy of those sections to OMB for its review (44 U.S.C. 3504(h)).

Intergovernmental Review

These programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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 program 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**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at *www.gpo.gov/fdsys.*

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.

(Catalog of Federal Domestic Assistance Number: 84.268, Federal Direct Student Loans)

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: August 2, 2013.

Arne Duncan,

Secretary of Education.

For the reasons discussed, the Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

■ 2. Section 668.91 is amended by:

■ A. Revising paragraphs (a)(1) and (4).

■ B. Adding paragraphs (a)(5), (a)(6), and (b)(2)(v).

The revisions and additions read as follows:

§ 668.91 Filing of requests for hearings and appeals; confirmation of mailing and receipt dates.

(a) * * *

(1)(i) A request by an institution or third-party servicer for a hearing or show-cause opportunity, or other material submitted by an institution or third-party servicer in response to a notice of proposed action under this subpart, must be filed with the designated department official by hand-delivery, mail, or facsimile transmission.

(ii) An appeal to the Secretary by a party must be filed with the designated department official by hand-delivery, mail, facsimile transmission, or by use of the Office of Hearings and Appeals Electronic Filing System (OES).

* * * * *

(4)(i) A party may file an appeal to the Secretary, and any other pleading or other document submitted in a proceeding under this subpart, by use of the Office of Hearings and Appeals Electronic Filing System (OES), by hand-delivery, by mail, or by facsimile transmission.

(ii) A party must serve a copy on the other party of any pleading or other document it files, including an appeal to the Secretary, in a proceeding under this subpart. A party must do so by certified mail, return receipt requested; by hand-delivery; or, if agreed upon by the parties, service may also be made by use of the OES or any other means agreed to by the parties.

(iii) A party who agrees to receive a document by any means other than service by certified mail, return receipt requested or hand-delivery may limit that agreement to one or more particular documents.

(iv) A party who agrees to service of a document through the OES thereby agrees that the notice of such filing provided to the party by the OES suffices to meet any obligation of the filing party under these regulations to provide a copy of that document.

(5) Documents filed using the OES must be transmitted to the designated department official identified in instructions provided by the hearing official as the individual responsible to receive them. A party filing a document using the OES must ensure that the party has received an electronic confirmation that the document was accepted and approved for filing by the OES, and may be required by the

designated department official to provide a hard copy of the document.

(6) Electronic documents must be formatted in Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at *www.adobe.com.*

(b) * * *

(2) * * *

(v) The date a document sent electronically via the OES is recorded as received by the OES as indicated in the confirmation of receipt email for E-filing.

* * * * *

■ 3. Section 668.98 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 668.98 Interlocutory appeals to the Secretary from rulings of a hearing official.

* * * * *

(c) A copy of the petition must be provided to the hearing official at the time of filing with the Secretary, and a copy of a petition or any certification must be served upon the parties as provided in § 668.91(a)(4). The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties in the manner provided in § 668.91(a)(4)(ii).

(e) A party's response to a petition or certification for interlocutory review must be filed within 7 days after service of the petition or statement, as applicable, and may not exceed 10 pages, double-spaced, in length. The response must be filed, and a copy served on the other party, as provided in § 668.91(a)(4).

* * * * *

■ 4. Section 668.113 is amended by revising paragraph (b) to read as follows:

§ 668.113 Request for review.

* * * * *

(b) The institution or servicer must file its request for review no later than 45 days from the date that the institution or servicer receives the final audit determination or final program review determination.

* * * * *

■ 5. Section 668.116 is amended by revising paragraphs (e)(1)(ii), (iii), (v), and (vi) to read as follows:

§ 668.116 Hearing.

* * * * *

(e)(1) * * *

(ii) In the case of an institution, institutional audit work papers, records, and other materials.

(iii) In the case of a third-party servicer, the servicer's audit work papers and the records and other materials of the servicer or any institution that contracts with the servicer.

* * * * *

(v) Institutional or servicer records and other materials (including records and other materials of any institution that contracts with the servicer) provided to the Department of Education in response to a program review.

(vi) Other Department of Education records and materials.

* * * * *

■ 6. Section 668.122 is amended by revising paragraphs (a) and (c) to read as follows:

§ 668.122 Determination of filing, receipt, and submission dates.

(a)(1) Appeals and written submissions to a hearing official referred to in this subpart may be hand-delivered, mailed, or filed electronically by use of the Office of Hearings and Appeals Electronic Filing System (OES).

(2)(i) Service on the other party of a document required to be served on another party may be made by mail or by hand delivery, or, if agreed upon by the parties, by use of the OES or by any other means agreed to by the parties. A party who agrees to receive a document filed by another party by any means other than service by mail or hand-delivery may limit that agreement to one or more particular documents.

(ii) A party who agrees to service of a document through the OES thereby agrees that the notice of such filing provided to the party by the OES suffices to meet any obligation of the filing party under these regulations to provide a copy of that document.

* * * * *

(c) Determination of filing, receipt, or submission dates is based on the date of hand-delivery, the date of receipt recorded by the U.S. Postal Service, the date a document sent electronically by using the OES is recorded as received as indicated in the confirmation of receipt email for E-filing, or for other means, the date on which the delivery is recorded in the medium used for delivery.

* * * * *

■ 7. Section 668.124 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 668.124 Interlocutory appeals to the Secretary from rulings of a hearing official.

* * * * *

(c) A copy of the petition must be provided to the hearing official at the time of filing with the Secretary, and a copy of a petition or any certification must be served upon the parties as provided in § 668.122(a)(2). The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties in the manner provided in § 668.122(a)(2).

(e) A party's response to a petition or certification for interlocutory review must be filed within 7 days after service of the petition or statement, as applicable, and may not exceed 10 pages, double-spaced, in length. A copy of the response must be served on the parties and the hearing official as provided in § 668.122(a)(2).

* * * * *

[FR Doc. 2013–19071 Filed 8–6–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2013–0399; FRL–9393–4]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 53 chemical substances which were the subject of premanufacture notices (PMNs). Seven of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture or process any of these 53 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective on October 7, 2013. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on August 21, 2013.

Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before September 6, 2013 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**). If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before September 6, 2013, EPA will withdraw the relevant sections of this direct final rule before its effective date.

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0399, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. ATTN: Docket ID Number EPA–HQ–OPPT–2013–0399. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2013–0399. EPA's policy is that all comments received will be included in the docket without change and may be made available at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. 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:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries. This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of a proposed or final SNUR, are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs. Additional rationale and background to these rules are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** issue of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use. Persons who must report are described in § 14;721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 14;721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the 53 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 53 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or, for TSCA non-section 5(e) SNURs, the basis for the SNUR (i.e., SNURs without TSCA section 5(e) consent orders).
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).
- CFR citation assigned in the regulatory text section of this rule.

This rule includes PMN substances, P–09–198 and P–09–199, whose reported chemical names include the term ''carbon nanotube'' or ''CNT''. Because of a lack of established nomenclature for carbon nanotubes, the TSCA Inventory names for carbon nanotubes are currently in generic form, e.g., carbon nanotube (CNT), multi-walled carbon nanotube (MWCNT), double-walled carbon nanotube (DWCNT), or single-walled carbon nanotube (SWCNT). EPA uses the specific structural characteristics provided by the PMN submitter to more specifically characterize the Inventory listing for an individual CNT. All submitters of new chemical notices for CNTs in this SNUR have claimed those specific structural characteristics as CBI. EPA is publishing the generic chemical name along with the PMN number to identify that a distinct chemical substance was the subject of the PMN without revealing the confidential chemical identity of the PMN substance. Confidentiality claims preclude a more detailed description of the identity of these CNTs. If an intended manufacturer or processor of CNTs is unsure of whether its CNTs are subject to this SNUR or any other SNUR, the company can either contact EPA or obtain a written determination from EPA pursuant to the *bona fide* procedures at § 721.11. EPA is using the specific structural characteristics, for all CNTs submitted as new chemical substances

under TSCA, to help develop standard nomenclature for placing these chemical substances on the TSCA Inventory. EPA has compiled a generic list of those structural characteristics entitled ''Material Characterization of Carbon Nanotubes for Molecular Identity (MI) Determination & Nomenclature.'' A copy of this list is available in the docket for these SNURs under docket ID number EPA–HQ–OPPT–2013–0399. If EPA develops a more specific generic chemical name for these materials, that name will be made publicly available.

The regulatory text section of this rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (i.e., limits on manufacture volume) and other uses designated in this rule may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

This rule includes 7 PMN substances (P–09–198, P–09–199, P–09–447, P–09–448, P–12–539, P–13–107, and P–13–109) that are subject to ''risk-based'' consent orders under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. Those consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called ''5(e) SNURs'' on these PMN substances are promulgated pursuant to § 721.160 and are based on and consistent with the provisions in the underlying consent orders. The 5(e) SNURs designate as a ''significant new use'' the absence of the protective measures required in the corresponding consent orders.

In addition, this rule includes SNURs on 3 PMN substances (P–12–539, P–13–107, and P–13–109) that are subject to ''exposure-based'' consent orders under TSCA section 5(e)(1)(A)(ii)(II), wherein EPA determined that the PMN substances are expected to be produced in substantial quantities, and that there may either be significant or substantial human exposure and/or the PMN substance may enter the environment in substantial quantities. The TSCA section 5(e) consent orders require submission of certain test data to EPA before the manufacturer may exceed a specified production volume. These SNURs designate as a ''significant new use'' the absence of the protective measures or exceedance of the production volume limit required in the TSCA section 5(e) consent orders.

This rule also includes SNURs on 46 PMN substances that are not subject to consent orders under TSCA section 5(e). In these cases, for a variety of reasons, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a ''significant new use.'' These so-called ''non-section 5(e) SNURs'' are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a ''significant new use'' in all non-section 5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities, ''(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance.

PMN Numbers P–09–198 and P–09–199

Chemical names: Multi-walled carbon nanotubes (generic).

CAS numbers: Not available.

Effective date of TSCA section 5(e) consent order: June 4, 2010.

Basis for TSCA section 5(e) consent order: The consolidated PMN states that the generic (non-confidential) use of the substances will be as additives for reinforcement. Based on test data on analogous respirable, poorly soluble particulates and other CNTs, EPA identified concerns for pulmonary toxicity, fibrosis, carcinogenicity, mutagenicity, and immunotoxicity. Further, available data suggests that pulmonary deposition of some nanoparticles, including CNT may induce cardiovascular toxicity if inhaled. The order was issued under section 5(e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to human health. To protect against this risk, the consent order requires:

1. Use of personal protective equipment including gloves and protective clothing impervious to the substances when there is potential dermal exposure and a National Institute of Occupational Safety and Health (NIOSH)-certified full-face respirator with N–100 cartridges when there is potential inhalation exposure.

2. No domestic manufacture.

3. Use of the substances only as described in the consent order.

4. No use of the substances resulting in surface water releases during processing and use.

Recommended testing: EPA has determined that the following tests would help characterize possible effects of the PMN substances. The PMN submitter has agreed not to exceed a specified production/time limit without performing a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) in rats with a post exposure observation period of up to 3 months, bronchoalveolar lavage fluid (BALF) analysis, a determination of cardiovascular toxicity (clinically-based blood/plasma protein analyses), histopathology of the heart, and certain physical/chemical data.

CFR citation: 40 CFR 721.10671.

PMN Numbers P–09–447 and P–09–448

Chemical name: Sodium olefin sulfonate derivative (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: February 15, 2013.

Basis for TSCA section 5(e) consent order: The PMNs state that the generic (non-confidential) use of the substances will be enhanced oil recovery applications. Based on a CBI analog, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 10 parts per billion (ppb) of the aggregate of these PMN substances in surface waters. The consent order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that uncontrolled manufacture, processing, distribution in commerce, use, and disposal of these substances may present an unreasonable risk of injury to the environment. To protect against these risks, the consent order requires:

1. Establishment and use of a hazard communication program.

2. Use of the substances only as described in the consent order.

3. No use of the substances resulting in surface water concentrations exceeding 10 ppb of the aggregate of these PMN substances.

Recommended testing: EPA has determined that a daphnid chronic toxicity test (OPPTS Test Guidelines 850.1300) and a fish early life stage toxicity test (OPPTS Test Guidelines 850.1400) on either P–09–447 or P–09–448, would help characterize the environmental effects of the PMN substances. The order does not require the submission of these tests at any specified time or production volume. However, the order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect

until the order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10672.

PMN Numbers P–12–539, P–13–107, and P–13–109

Chemical names: Alkanes, C21–34—branched and linear, chloro (P–12–539), Alkanes, C22–30—branched and linear, chloro (P–13–107); and Alkanes, C24–28, chloro (P–13–109).

CAS numbers: 1417900–96–9 (P–12–539), 1401947–24–0 (P–13–107), and 1402738–52–6 (P–13–109).

Effective date of TSCA section 5(e) consent order: March 19, 2013.

Basis for TSCA section 5(e) consent order: The PMNs state that the uses of the substances are as flame retardants/plasticizers in polymers and extreme pressure lubricants in metal working fluids (MWFs). There are also several CBI uses that are generically described as: Plasticizer and lubricant with flame retardant properties. By analogy to medium chain chlorinated paraffins (MCCPs—alkyl chain length of 14 to 17), EPA expects very long chain chlorinated paraffins (vLCCPs) and possible degradation products to be potentially highly persistent, potentially bioaccumulative, and potentially toxic. Transport and magnification across trophic levels may also result in toxicity to higher organisms, including fish, higher predators, and potentially humans. EPA has concerns about the potential for the vLCCPs to degrade to shorter chain chlorinated compounds, as well as concerns about potential impurities or small fractions of MCCPs and/or long-chain chlorinated paraffins (LCCPs—alkyl chain length of 18 to 20). The consent order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II) based on a finding that these substances may present an unreasonable risk of injury to the environment and the substances may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposures to the PMN substances. To protect against these risks, the consent order requires:

1. Manufacture or import of the substances at a cumulative, aggregate volume not to exceed 1,200,000 kilograms (kg), 14,100,000 kg, 59,100,000 kg, 78,400,000 kg, and 86,100,000 kg unless the company has submitted the results of certain environmental effects studies.

2. No manufacture of the substances with the amount of chlorinated paraffins with an alkyl chain ≤ 20 to exceed more than 1% of that PMN substance by weight.

Recommended testing: EPA has determined that analysis for chain length and percent chlorination (for example by gas chromatography-mass spectrometry or high performance liquid chromatography-mass spectrometry (GC/MS HPLC/MS)); a modified semi-continuous activated sludge (SCAS) test (OPPTS Test Guideline 835.3210), modified SCAS test for insoluble and volatile chemicals (OPPTS Test Guideline 835.5045), or Zahn Wellens/EMPA test (OPPTS Test Guideline 835.3200); aerobic and anaerobic soil metabolism studies (Organisation for Economic Co-operation and Development (OECD) Test Guideline 307); a bioaccumulation in sediment-dwelling benthic oligochaetes test (OECD Test Guideline 315) on the PMN substances and their potential degradation products; and a sediment-water chironomid life-cycle toxicity test using spiked water or spiked sediment test (OECD Test Guideline 233) or a sediment-water lumbriculus toxicity test using spiked sediment (OECD Test Guideline 225) on the PMN substances and their presumed degradation products would help characterize the effects of the PMN substances. Testing specifications are stated in the section 5(e) consent order for P–12–539, P–13–107, and P–13–109 available in the docket under docket ID number EPA–HQ–OPPT–2013–0399.

CFR citations: 40 CFR 721.10673 (P–12–539); 40 CFR 721.10674 (P–13–107); and 40 CFR 721.10675 (P–13–109).

PMN Number P–12–551

Chemical name: Aromatic hydrocarbon mixture (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as feedstock for fractionation process. Based on test data on the PMN substance and ecological structural activity relationship (EcoSAR) analysis on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 78 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 78 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 78 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300), a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400), and an inherent biodegradability—Concawe test (OPPTS Test Guidelines 835.3215) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed to facilitate solubility in the test media, because of the PMN's low water solubility.

CFR citation: 40 CFR 721.10676.

PMN Number P–12–584

Chemical name: Alkyl phosphonate (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as an intermediate. Based on test data on an analog substance, EPA identified concerns for eye, lung, and mucous membrane irritation as well as kidney and developmental toxicity to workers exposed to the PMN substance. For the use described in the PMN, significant worker exposure is unlikely. Further, based on EcoSAR analysis of test data on analogous phosphinate esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as an intermediate, any use of the substance without the use of impervious gloves when there is potential dermal exposure, or any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a combined repeated dose toxicity with the reproduction/development toxicity screening test (OPPTS Test Guideline 870.3650); an algal toxicity test (OCSPP

Test Guideline 850.4500); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075) would help characterize the human health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10677.

PMN Number P–13–10

Chemical name: 1,4-Cyclohexanedicarboxylic acid, 1,4-dimethyl ester, hydrogenolysis products.

CAS number: 1373220–73–5.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as a chemical intermediate. Based on EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 20 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 20 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 20 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that results of an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10678.

PMN Number P–13–30

Chemical name: Carboxylic acid, substituted alkylstannylene ester, reaction products with inorganic acid tetra alkyl ester (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as an adhesive/sealant component. Based on test data on the PMN substance, EPA identified concerns for thymus toxicity to workers exposed to the PMN substance. As described in the PMN, adequate dermal protection is used and worker exposure will be minimal and there are no consumer exposures. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance in consumer products or any use of the substance without the use of impervious gloves, when there is potential dermal exposure, may result in significant adverse human health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).

Recommended testing: EPA has determined that the results of a skin absorption: *In vivo* method test (OECD Test Guideline 427) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10679.

PMN Numbers P–13–44, P–13–46, P–13–47, P–13–50, and P–13–51

Chemical names: Fatty acid amides (generic).

CAS numbers: Not available.

Basis for action: The PMNs state that the use of the substances will be as adhesive promoters for asphalt applications and emulsifiers for asphalt applications. Based on the EcoSAR analysis of test data on analogous aliphatic amines and amides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substances respectively in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early-life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substances to surface waters exceed releases from the uses described in the PMNs. For the use described in the PMNs, environmental releases did not exceed the respective concentrations of concern for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substances other than as an adhesive promoter for asphalt applications or as emulsifiers for asphalt applications, as described in the PMNs, could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substances. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed. Testing may be performed on any one of the PMN substances (P–13–44, P–13–46, P–13–47, P–13–50, or P–13–51).

CFR citation: 40 CFR 721.10680.

PMN Numbers P–13–55 and P–13–56

Chemical names: Alkaneamide, halo-dialkylthienyl-alkoxydialkyl-, manuf. of by-products from (generic).

CAS numbers: Not available.

Basis for action: The PMNs states that the generic (non-confidential) use of the substances will be as starting material in sulfuric acid production. Based on EcoSAR analysis of test data on analogous haloacetamides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substances in surface waters. As described in the PMN, releases of the PMN substances are not expected to result in surface water concentrations exceeding 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of these substances may present an unreasonable risk. EPA has determined, however, that any use of these substances other than as stated in the PMN or use of the substances resulting in releases to surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of an algal toxicity test (OCSPP Test Guideline 850.4500); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075) would help characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.10681.

PMN Numbers P–13–63, P–13–64, P–13–65, P–13–69, P–13–70, P–13–71, P–13–72, P–13–73, P–13–74, P–13–75, P–13–76, and P–13–77

Chemical names: Fatty acid amide hydrochlorides (generic).

CAS numbers: Not available.

Basis for action: The PMNs state that the substances will be used as

surfactants for asphalt emulsions. Based on the EcoSAR analysis of test data on analogous aliphatic amines and amides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb (for P–13–63 P–13–64, P–13–65, P–13–69, P–13–70, P–13–71 P–13–72, P–13–73, and P–13–74) and 2 ppb (for P–13–75, P–13–76, and P–13–77) of the PMN substances respectively in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early-life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substances to surface water exceed releases from the use described in the PMNs. For the use described in the PMNs, environmental releases did not exceed the respective concentrations of concern for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substances other than as surfactants for use in asphalt emulsions, as described in the PMNs, could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substances. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed. Testing may be performed on any one of the PMN substances (P–13–63, P–13–64, P–13–65, P–13–69, P–13–70, P–13–71, P–13–72, P–13–73, P–13–74, P–13–75, P–13–76, or P–13–77).

CFR citation: 40 CFR 721.10682.

PMN Number P–13–131

Chemical name: Dialkylamino cocoalkyl alkylamide acid salt (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as an inhibitor for oil field applications. Based on the EcoSAR analysis of test data on analogous amides and aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OECD Test Guideline 301B), a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300), a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400), and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10683.

PMN Number P–13–135

Chemical name: Substituted benzenamine schiff base (generic).

CAS number: Not available.

Basis for action: The PMN states that the use of the substance is as an intermediate monomer for use in the manufacture of another monomer. Based on the EcoSAR analysis of test data on analogous schiff bases, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance to surface waters are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of an algal toxicity test (OCSPP Test Guideline 850.4500); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); a fish early-stage toxicity test (OPPTS Test Guideline 850.1400); a partition coefficient (n-octanol/water), estimation by liquid chromatography test (OPPTS Test Guideline 830.7570); a ready biodegradability test (OECD Test Guideline 301); and a hydrolysis as a function of pH test (OPPTS Test Guideline 835.2120) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10684.

PMN Number P–13–170

Chemical name: Phosphoric acid, mixed esters (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as a plastic additive. Based on test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).

Recommended testing: EPA has determined that the results of a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) and a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed.

CFR citation: 40 CFR 721.10685.

PMN Numbers P–13–180, P–13–181, P–13–182, P–13–183, P–13–184, and P–13–185

Chemical names: Fatty acid amides (generic).

CAS numbers: Not available.

Basis for action: The PMNs state that the use of the substances is as adhesive promoters for asphalt applications and emulsifiers for asphalt applications. Based on the EcoSAR analysis of test data on analogous aliphatic amines and amides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb (for P–13–180, P–13–182, and P–13–185); 2 ppb (for P–13–181 and P–13–183); and 4 ppb (for P–13–184) of the PMN substances in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early-life stage tests) that typically range from 21

to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substances to surface water exceed releases from the use described in the PMNs. For the use described in the PMNs, environmental releases did not exceed the respective concentrations of concern for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substances other than as adhesive promoters for asphalt applications or emulsifiers for asphalt applications, as described in the PMNs, could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substances. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed. Testing may be performed on any one of the PMN substances (P–13–180, P–13–181, P–13–182, P–13–183, P–13–184, or P–13–185), however, it is recommended that it be conducted on P–13–182 as EPA predicts this substance to be most acutely toxic to aquatic organisms.

CFR citation: 40 CFR 721.10686.

PMN Numbers P–13–201, P–13–203, P–13–204, P–13–205, P–13–206, P–13–207, P–13–208, and P–13–209

Chemical names: Fatty acid amide hydrochlorides (generic).

CAS numbers: Not available.

Basis for action: The PMNs state that the use of the substances is as surfactants for asphalt emulsions. Based on the EcoSAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb (for P–13–204, P–13–206, and P–13–207); 2 ppb (for P–13–205); 3 ppb (for P–13–209); 5 ppb (for P–13–201); 6 ppb (for P–13–208); and 12 ppb (for P–13–203) of the PMN substances respectively in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early-life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substances to surface waters exceed releases from the use described in the PMNs. For the use described in the PMNs, environmental releases did not exceed the respective surface water concentrations for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances other than as surfactants for asphalt emulsions could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substances. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed. Testing may be performed on any one of the PMN substances (P–13–201, P–13–203, P–13–204, P–13–205, P–13–206, P–13–207, P–13–208, or P–13–209).

CFR citation: 40 CFR 721.10687.

PMN Number P–13–221

Chemical name: Copper, chloro[tris(2-chloroethyl) phosphite-.kappa.P]-.

CAS number: 24484–01–3.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a manufacturing process aid. Also, EPA identified concerns for oncogenicity, mutagenicity, and developmental toxicity based on the alkylation potential of the PMN substance and concern for neurotoxicity and reproductive toxicity based on analog test data. There is also concern for immunotoxicity based on the presence of the copper ion. These concerns are for effects to workers from inhalation exposure to the PMN. Additionally, based on the EcoSAR analysis of test data on analogous organic copper compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 6 ppb of the PMN substance in surface waters. As described in the PMN, significant workplace exposures are not expected and releases of the PMN substance are not expected to result in surface water concentrations that exceed 6 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN or any use of the substance resulting in surface water concentrations exceeding 6 ppb may cause serious health or significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that a carcinogenicity test (OPPTS Test Guideline 870.4200) in rats; an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the human health and environmental effects of the PMN substance. EPA recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed.

CFR citation: 40 CFR 721.10688.

PMN Number P–13–225

Chemical name: Organo zinc salts (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as a stabilizer for thermoplastics. Based on the EcoSAR analysis of test data on analogous organic zinc compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 3 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 3 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300), a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400), and an algal

toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10689.

PMN Number P–13–232

Chemical name: Benzenedicarboxylic acid, polymer with substituted alkanediol, dodecanedioic acid, 1,2-ethanediol, alkanedioic acid, alkanediol,.alpha.-hydro-.omega.-hydroxypoly[oxyalkanediyl], 1,3-isobenzofurandione, methylene diphenyl diisocyanate, 2-oxepanone, 2,2'-oxybis[ethanol] and polymethylene polyphenylene isocyanate (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an industrial adhesive. Based on analogous diisocyanates, EPA identified concerns for sensitization as well as lung and mucous membrane irritation. For the use described in the PMN, EPA does not expect significant occupational or consumer inhalation exposure as the substance is not applied using a method that generates a vapor, mist, or aerosol or used in a consumer product. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance in consumer products or any use of the substance involving an application method that generates a vapor, mist, or aerosol may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10690.

PMN Number P–13–267

Chemical name: Fatty acid amide (generic).

CAS number: Not available.

Basis for action: The PMN states that the use of the substance is as a polymer additive. Based on the EcoSAR analysis of test data on analogous amides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance to surface waters are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that an algal toxicity test (OCSPP Test Guideline 850.4500), a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and the shake flask die-away test (OPPTS Test Guideline 835.3170) would help characterize the environmental effects of the PMN substance. EPA recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed.

CFR citation: 40 CFR 721.10691.

PMN Number P–13–288

Chemical name: Fluorinated alkyl dianiline (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as a polymer precursor. EPA identified concern for acute toxicity based on test data on the PMN substance. Also, EPA identified concern for dermal sensitization and oncogenicity based on benzidines; concern for neurotoxicity based on aromatic amines; and concern for retinopathy based on dianiline compounds. The concern is for workers exposed to the PMN substance. For the industrial use described in the PMN, significant worker dermal or inhalation exposure is not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as an intermediate may result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(i), and (b)(3)(ii).

Recommended testing: EPA has determined that the results of a rat acute oral retinopathy screening study (protocol to be approved by EPA to include histopathological examination of the eyes by both light and electron microscopy) would help characterize the health effects of the PMN substance.

CFR citation: 40 CFR 721.10692.

PMN Number P–13–338

Chemical name: Diphenylmethane diisocyanate polymer with alkanoic diacid and alkanediol (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a polymer intermediate for adhesive manufacture. Based on analogous diisocyanates, EPA identified concerns for dermal and respiratory sensitization, irritation, and lung effects. For the use described in the PMN, EPA does not expect significant occupational or consumer inhalation exposure as the substance is not applied using a method that generates a vapor, mist, or aerosol or used in a consumer product. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance in consumer products or any use of the substance involving an application method that generates a vapor, mist, or aerosol may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10693.

V. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for 7 of the 53 chemical substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. The SNUR provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent orders. These SNURs are promulgated pursuant to § 14;721.160 (see Unit VI.).

In the other 46 cases, where the uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern

established at § 14;721.170 were met, as discussed in Unit IV.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.
- EPA will ensure that all manufacturers and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in § 721.160(c)(3) and § 721.170(d)(4). In accordance with § 721.160(c)(3)(ii) and § 721.170(d)(4)(i)(B), the effective date of this rule is October 7, 2013 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before September 6, 2013.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before September 6, 2013, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments, or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) consent orders have been issued for 7 of the 53 chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which would be designated as significant new uses. The identities of 5 of the 53 chemical substances subject to this rule have been claimed as confidential and EPA has received no post-PMN *bona fide* submissions (per §§ 720.25 and 721.11). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Therefore EPA designates August 7, 2013 as the cutoff date for determining whether the new use is ongoing. Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions, expires. If such a person met the conditions of advance compliance under § 721.45(h), the person would be considered exempt from the requirements of the SNUR. Consult the **Federal Register** document of April 24, 1990 for a more detailed discussion of the cutoff date for ongoing uses.

VIII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).
2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. lists those tests. Unit IV. also lists recommended testing for non-section 5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.'' The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org.*

In the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent TSCA section 5(e) consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier TSCA section 5(e) consent orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of

the tests specified in the TSCA section 5(e) consent orders are included in Unit IV. The SNURs contain the same production volume limits as the TSCA section 5(e) consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 14;721.1725(b)(1) with that under § 14;721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, i.e., the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in§ 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in §§ 720.40 and 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2013–0399.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This rule establishes SNURs for several new chemical substances that were the subject of PMNs, or TSCA section 5(e) consent orders. 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).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
2. The SNUR submitted by any small entity would not cost significantly more than $8,300.

A copy of that certification is available in the docket for this rule.

This rule is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit XI. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8,300.

Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rule. As such, EPA has determined that this rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

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), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

XIII. 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

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 30, 2013.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add the following sections in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.10671	2070–0012
721.10672	2070–0012
721.10673	2070–0012
721.10674	2070–0012
721.10675	2070–0012
721.10676	2070–0012
721.10677	2070–0012
721.10678	2070–0012
721.10679	2070–0012
721.10680	2070–0012
721.10681	2070–0012
721.10682	2070–0012
721.10683	2070–0012
721.10684	2070–0012
721.10685	2070–0012
721.10686	2070–0012
721.10687	2070–0012
721.10688	2070–0012
721.10689	2070–0012
721.10690	2070–0012
721.10691	2070–0012
721.10692	2070–0012
721.10693	2070–0012

40 CFR citation	OMB control No.
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.10671 to subpart E to read as follows:

§ 721.10671 Multi-walled carbon nanotubes (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as multi-walled carbon nanotubes (PMNs P–09–198 and P–09–199) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substances after they have been completely reacted (cured); embedded or incorporated into a polymer matrix that itself has been reacted (cured); or embedded in a permanent solid polymer form that is not intended to undergo further processing, except mechanical processing.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4) (National Institute of Occupational Safety and Health (NIOSH)-certified air-purifying, tight-fitting full-face respirator equipped with N100 filters), (a)(6)(i), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63 (a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (k), and (q).

(iii) *Release to water.* Requirements as specified in § 721.90 (b)(1) and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 5. Add § 721.10672 to subpart E to read as follows:

§ 721.10672 Sodium olefin sulfonate derivative (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as sodium olefin sulfonate derivative (PMNs P–09–447 and P–09–448) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the chemical substances after they have been completely reacted (cured) or partitioned into oil or petroleum streams following use as specific enhanced oil recovery applications that have been claimed confidential.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c). (d), (e) (concentration set at 1.0 percent), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=10).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(1) of this section.

■ 6. Add § 721.10673 to subpart E to read as follows:

§ 721.10673 Alkanes, C21–34—branched and linear, chloro.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alkanes, C21–34—branched and linear, chloro (PMN P–12–539; CAS No. 1417900–96–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is manufacture of the PMN substance with greater than 1 weight percent (''wt%'') of chlorinated (''Cl'') paraffins with an alkyl chain ≤ 20 and § 721.80(r) (Testing phase 1 is reached at 1,200,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. Testing includes analysis for chain length and percent chlorination (for example by gas chromatography-mass spectrometry or high performance liquid chromatography-mass spectrometry). Present EPA with a certificate of analysis and all raw data for congener analysis on P–12–539, P–13–107, and P–13–109. Testing phase 2a is reached at 14,100,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. Testing includes a modified semi-continuous activated sludge (SCAS) test or modified SCAS test for insoluble and volatile chemicals or Zahn Wellens test with analytical procedures capable of measuring individual congeners and degradation products over time on three chlorinated linear C21 paraffin fractions to represent each of the 40%, 55%, and > 70% chlorine by weight, three chlorinated C26 linear paraffin fractions to represent each of the 40%, 55%, and > 70% chlorine by weight, three chlorinated linear paraffin fractions, whose chain length represents the central tendency of the congener distribution of the very long chain chlorinated paraffins (vLCCP) product as identified in testing phase 1, to represent each of the 40%, 55%, and > 70% chlorine by weight. Testing phase 2b is reached at 59,100,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. Testing includes aerobic and anaerobic transformation in soil test with analytical procedures capable of measuring individual congeners and degradation products over time and bioaccumulation in sediment-dwelling benthic oligochaetes on three chlorinated linear C21 paraffin fractions to represent each of the 40%, 55%, and > 70% chlorine by weight, three chlorinated C26 linear paraffin fractions to represent each of the 40%, 55%, and > 70% chlorine by weight, three chlorinated linear paraffin fractions, whose chain length represents the central tendency of the congener distribution of the vLCCP product as identified in testing phase 1, to represent each of the 40%, 55%, and

phase 3 is reached at 78,400,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. If the degradation half-life of the test substance is 28 days or shorter from testing phase 2a the sediment-water chironomid life-cycle toxicity test using spiked water or spiked sediment is an acceptable test, otherwise sediment-water lumbriculus toxicity test using spiked sediment is an acceptable test for any of the parent substances that are absorbed by the benthic oligochaetes in the bioaccumulation in sediment-dwelling benthic oligochaetes test. In the bioaccumulation in sediment-dwelling benthic oligochaetes test, use as test material any of the degradation products in testing phases 2a or 2b that are identified to potentially present an unreasonable risk or to further degrade to generate a substance of potential concern. Testing phase 4 is reached at 86,100,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. If the degradation half-life of the test substance is 28 days or shorter from testing phase 3 the sediment-water chironomid life-cycle toxicity test using spiked water or spiked sediment is an acceptable test, otherwise the sediment-water lumbriculus toxicity test using spiked sediment is an acceptable test. Use degradation substances in testing phase 3 that are absorbed by the benthic oligochaetes as the test material.)

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 7. Add § 721.10674 to subpart E to read as follows:

§ 721.10674 Alkanes, C22–30—branched and linear, chloro.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alkanes, C22–30—branched and linear, chloro (PMN P–13–107; CAS No. 1401947–24–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is manufacture of the PMN substance with greater than 1 weight percent (''wt%'') of chlorinated (''Cl'') paraffins with an alkyl chain ≤ 20 and § 721.80(r) (Testing phase 1 is reached at 1,200,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. Testing includes analysis for chain length and percent chlorination (for example by gas chromatography-mass spectrometry or high performance liquid chromatography-mass spectrometry). Present EPA with a certificate of analysis and all raw data for congener analysis on P–12–539, P–13–107, and P–13–109. Testing phase 2a is reached at 14,100,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. Testing includes a modified semi-continuous activated sludge (SCAS) test or modified SCAS test for insoluble and volatile chemicals or Zahn Wellens test with analytical procedures capable of measuring individual congeners and degradation products over time on three chlorinated linear C21 paraffin fractions to represent each of the 40%, 55%, and > 70% chlorine by weight, three chlorinated C26 linear paraffin fractions to represent each of the 40%, 55%, and > 70% chlorine by weight, three chlorinated linear paraffin fractions, whose chain length represents the central tendency of the congener distribution of the very long chain chlorinated paraffins (vLCCP) product as identified in testing phase 1, to represent each of the 40%, 55%, and > 70% chlorine by weight. Testing phase 2b is reached at 59,100,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. Testing includes aerobic and anaerobic transformation in soil test with analytical procedures capable of measuring individual congeners and degradation products over time and bioaccumulation in sediment-dwelling benthic oligochaetes on three chlorinated linear C21 paraffin fractions to represent each of the 40%, 55%, and > 70% chlorine by weight, three chlorinated C26 linear paraffin fractions to represent each of the 40%, 55%, and > 70% chlorine by weight, three chlorinated linear paraffin fractions, whose chain length represents the central tendency of the congener distribution of the vLCCP product as identified in testing phase 1, to represent each of the 40%, 55%, and > 70% chlorine by weight. Testing phase 3 is reached at 78,400,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. If the degradation half-life of the test substance is 28 days or shorter from testing phase 2a the sediment-water chironomid life-cycle toxicity test using spiked water or spiked sediment is an acceptable test, otherwise sediment-water lumbriculus toxicity test using spiked sediment is an acceptable test for any of the parent substances that are absorbed by the benthic oligochaetes in the bioaccumulation in sediment-dwelling benthic oligochaetes test. In the bioaccumulation in sediment-dwelling benthic oligochaetes test, use as test material any of the degradation products in testing phases 2a or 2b that are identified to potentially present an unreasonable risk or to further degrade to generate a substance of potential concern. Testing phase 4 is reached at 86,100,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. If the degradation half-life of the test substance is 28 days or shorter from testing phase 3 the sediment-water chironomid life-cycle toxicity test using spiked water or spiked sediment is an acceptable test, otherwise the sediment-water lumbriculus toxicity test using spiked sediment is an acceptable test. Use degradation substances in testing phase 3 that are absorbed by the benthic oligochaetes as the test material.)

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 8. Add § 721.10675 to subpart E to read as follows:

§ 721.10675 Alkanes, C24–28, chloro.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alkanes, C24–28, chloro (PMN P–13–109; CAS No. 1402738–52–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is manufacture of the PMN substance with greater than 1 weight percent (''wt%'') of chlorinated (''Cl'') paraffins with an alkyl chain ≤ 20 and § 721.80(r) (Testing phase 1 is reached at 1,200,000 kg for the aggregate of the

PMN substances P–12–539, P–13–107, and P–13–109. Testing includes analysis for chain length and percent chlorination (for example by gas chromatography-mass spectrometry or high performance liquid chromatography-mass spectrometry). Present EPA with a certificate of analysis and all raw data for congener analysis on P–12–539, P–13–107, and P–13–109. Testing phase 2a is reached at 14,100,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. Testing includes a modified semi-continuous activated sludge (SCAS) test or modified SCAS test for insoluble and volatile chemicals or Zahn Wellens test with analytical procedures capable of measuring individual congeners and degradation products over time on three chlorinated linear C21 paraffin fractions to represent each of the 40%, 55%, and > 70% chlorine by weight, three chlorinated C26 linear paraffin fractions to represent each of the 40%, 55%, and > 70% chlorine by weight, three chlorinated linear paraffin fractions, whose chain length represents the central tendency of the congener distribution of the very long chain chlorinated paraffins (vLCCP) product as identified in testing phase 1, to represent each of the 40%, 55%, and > 70% chlorine by weight. Testing phase 2b is reached at 59,100,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. Testing includes aerobic and anaerobic transformation in soil test with analytical procedures capable of measuring individual congeners and degradation products over time and bioaccumulation in sediment-dwelling benthic oligochaetes on three chlorinated linear C21 paraffin fractions to represent each of the 40%, 55%, and > 70% chlorine by weight, three chlorinated C26 linear paraffin fractions to represent each of the 40%, 55%, and > 70% chlorine by weight, three chlorinated linear paraffin fractions, whose chain length represents the central tendency of the congener distribution of the vLCCP product as identified in testing phase 1, to represent each of the 40%, 55%, and > 70% chlorine by weight. Testing phase 3 is reached at 78,400,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. If the degradation half-life of the test substance is 28 days or shorter from testing phase 2a the sediment-water chironomid life-cycle toxicity test using spiked water or spiked sediment is an acceptable test, otherwise sediment-water lumbriculus toxicity test using spiked sediment is an acceptable test for any of the parent substances that are absorbed by the benthic oligochaetes in the bioaccumulation in sediment-dwelling benthic oligochaetes test. In the bioaccumulation in sediment-dwelling benthic oligochaetes test, use as test material any of the degradation products in testing phases 2a or 2b that are identified to potentially present an unreasonable risk or to further degrade to generate a substance of potential concern. Testing phase 4 is reached at 86,100,000 kg for the aggregate of the PMN substances P–12–539, P–13–107, and P–13–109. If the degradation half-life of the test substance is 28 days or shorter from testing phase 3 the sediment-water chironomid life-cycle toxicity test using spiked water or spiked sediment is an acceptable test, otherwise the sediment-water lumbriculus toxicity test using spiked sediment is an acceptable test. Use degradation substances in testing phase 3 that are absorbed by the benthic oligochaetes as the test material.)

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 9. Add § 721.10676 to subpart E to read as follows:

§ 721.10676 Aromatic hydrocarbon mixture (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic hydrocarbon mixture (PMN P–12–551) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=78).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 10. Add § 721.10677 to subpart E to read as follows:

§ 721.10677 Alkyl phosphonate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl phosphonate (PMN P–12–584) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), and (a)(3). When determining which persons are reasonably likely to be exposed as required for § 721.63 (a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 11. Add § 721.10678 to subpart E to read as follows:

§ 721.10678 1,4-Cyclohexanedicarboxylic acid, 1,4-dimethyl ester, hydrogenolysis products.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,4-cyclohexanedicarboxylic acid, 1,4-dimethyl ester, hydrogenolysis products (PMN P–13–10; CAS No. 1373220–73–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=20).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 12. Add § 721.10679 to subpart E to read as follows:

§ 721.10679 Carboxylic acid, substituted alkylstannylene ester, reaction products with inorganic acid tetra alkyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carboxylic acid, substituted alkylstannylene ester, reaction products with inorganic acid tetra alkyl ester (PMN P–13–30) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(ii) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63 (a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (e) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. Add § 721.10680 to subpart E to read as follows:

§ 721.10680 Fatty acid amides (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as fatty acid amides (PMNs P–13–44, P–13–46, P–13–47, P–13–50, and P–13–51) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any use other than as adhesion promoters for asphalt applications or emulsifiers for asphalt applications.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 14. Add § 721.10681 to subpart E to read as follows:

§ 721.10681 Alkaneamide, halo-dialkylthienyl-alkoxydialkyl-, manuf. of by-products from (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkaneamide, halo-dialkylthienyl-alkoxydialkyl-, manuf. of by-products from (PMNs P–13–55 and PMN P–13–56) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i) and (k) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 15. Add § 721.10682 to subpart E to read as follows:

§ 721.10682 Fatty acid amide hydrochlorides (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as fatty acid amide hydrochlorides (PMNs P–13–63, P–13–64, P–13–65, P–13–69, P–13–70, P–13–71, P–13–72, P–13–73, P–13–74, P–13–75, P–13–76, and P–13–77) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any use other than as surfactants for use in asphalt emulsions.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 16. Add § 721.10683 to subpart E to read as follows:

§ 721.10683 Dialkylamino cocoalkyl alkylamide acid salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dialkylamino cocoalkyl alkylamide acid salt (PMN P–13–131) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 17. Add § 721.10684 to subpart E to read as follows:

§ 721.10684 Substituted benzenamine schiff base (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted benzenamine schiff base (PMN P–13–135) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 18. Add § 721.10685 to subpart E to read as follows:

§ 721.10685 Phosphoric acid, mixed esters (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as phosphoric acid, mixed esters (PMN P–13–170) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 19. Add § 721.10686 to subpart E to read as follows:

§ 721.10686 Fatty acid amides (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as fatty acid amides (PMNs P–13–180, P–13–181, P–13–182, P–13–183, P–13–184, and P–13–185) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any use other than as adhesion promoters for asphalt applications or emulsifiers for asphalt applications.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 20. Add § 721.10687 to subpart E to read as follows:

§ 721.10687 Fatty acid amide hydrochlorides (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as fatty acid amide hydrochlorides (PMNs P–13–201, P–13–203, P–13–204, P–13–205, P–13–206, P–13–207, P–13–208, and P–13–209) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any use other than as surfactants for asphalt emulsions.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 21. Add § 721.10688 to subpart E to read as follows:

§ 721.10688 Copper, chloro[tris(2-chloroethyl) phosphite-.kappa.P]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as copper, chloro[tris(2-chloroethyl) phosphite-.kappa.P]- (PMN P–13–221; CAS No. 24484–01–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=6).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 22. Add § 721.10689 to subpart E to read as follows:

§ 721.10689 Organo zinc salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as organo zinc salts (PMN P–13–225) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=3).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 23. Add § 721.10690 to subpart E to read as follows:

§ 721.10690 Benzenedicarboxylic acid, polymer with substituted alkanediol, dodecanedioic acid, 1,2-ethanediol, alkanedioic acid, alkanediol,.alpha.-hydro-.omega.-hydroxypoly[oxyalkanediyl], 1,3-isobenzofurandione, methylene diphenyl diisocyanate, 2-oxepanone, 2,2'-oxybis[ethanol] and polymethylene polyphenylene isocyanate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as benzenedicarboxylic acid, polymer with substituted alkanediol, dodecanedioic acid, 1,2-ethanediol, alkanedioic acid, alkanediol,.alpha.-hydro-.omega.-hydroxypoly[oxyalkanediyl], 1,3-isobenzofurandione, methylene diphenyl diisocyanate, 2-oxepanone, 2,2'-oxybis[ethanol] and polymethylene polyphenylene isocyanate (PMN P–13–232) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (o) and (y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 24. Add § 721.10691 to subpart E to read as follows:

§ 721.10691 Fatty acid amide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acid amide (PMN P–13–267) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 25. Add § 721.10692 to subpart E to read as follows:

§ 721.10692 Fluorinated alkyl dianiline (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fluorinated alkyl dianiline (PMN P–13–288) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 26. Add § 721.10693 to subpart E to read as follows:

§ 721.10693 Diphenylmethane diisocyanate polymer with alkanoic diacid and alkanediol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as diphenylmethane diisocyanate polymer with alkanoic diacid and alkanediol (PMN P–13–338) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (o) and (y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0262; FRL–9388–9]

Topramezone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of topramezone in or on multiple commodities which are identified and discussed later in this document. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 7, 2013. Objections and requests for hearings must be received on or before October 7, 2013, 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–2012–0262, 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), EPA West 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: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; 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–2012–0262 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 October 7, 2013. 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–2012–0262, 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.htm.*

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 May 23, 2012 (77 FR 30481) (FRL–9347–8), 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 2F7997) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.612 be amended by establishing tolerances for residues of the herbicide topramezone ([3-(4,5-dihydro-3-isoxazolyl)-2-methyl-4-(methylsulfonyl)phenyl](5-hydroxy-1-methyl-1*H*-pyrazol-4-yl)methanone), in or on fish and shellfish at 0.05 parts per million (ppm). That document referenced a summary of the petition prepared by BASF Corporation, 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 revised the proposed commodity definitions and established tolerances for livestock meat by-products, which are needed as a result of the increased livestock dietary burden associated with the proposed use for topramezone. The reasons 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 topramezone including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with topramezone 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. Topramezone is a member of the class of herbicides known as HPPD inhibitors. Inhibition of the enzyme 4-hydroxyphenylpyruvate dioxygenase (HPPD) results in decreased carotenoid synthesis and ultimately bleaching of target plants. In mammals, HPPD is involved in the catabolism of the amino acid tyrosine, and its inhibition causes blood levels of tyrosine to rise; a condition known as tyrosinemia. Some of the toxicities resulting from tyrosinemia in laboratory animals include ocular, developmental, liver, and kidney effects. Topramezone exhibits a mammalian toxicity profile that is consistent with HPPD inhibition.

The primary target organs affected following oral administration of topramezone in animal toxicity studies were the eyes, thyroid, pancreas, and liver. The most sensitive species was the rat, and in rats and dogs, males were more sensitive than females. The effects on the eyes in chronic toxicity studies consisted of pannus (vascularization) and keratitis (cloudiness) of the cornea in both sexes. Hypertrophy and hyperplasia of the thyroid, hypertrophy and focal necrosis in the liver, and degeneration of the pancreas were among the histopathology findings reported across different subchronic and chronic studies in rats and dogs. Results of chronic toxicity studies in dogs, mice, and rats also suggest decrements in body weights, body-weight gains, and food utilization (dogs only).

There was evidence for increased susceptibility following *in utero* exposure to topramezone in rats and rabbits. In rabbits, fetal abnormalities

including supernumerary thoracic vertebrae and supernumerary 13th rib were observed in the presence of maternal toxicity in six of eight developmental toxicity studies conducted in two different strains. In rats, developmental effects consisting of skeletal variations occurred in the presence of maternal toxicity. Increased maternal serum levels of tyrosine were reported in several developmental toxicity studies (several in rabbits and one in mice), consistent with the proposed mode of action for topramezone involving HPPD inhibition. In the rat 2-generation reproductive toxicity study, there was no evidence of increased pre- or post-natal susceptibility; offspring effects occurred in the presence of maternal effects. The offspring effects consisted of decreased pup body weight/body-weight gain in F_2 (both sexes) and increased time to preputial separation (F_1 males). Maternal effects were consistent with HPPD inhibition (decreased body weights, decreased body-weight gains, increased thyroid and kidney weights, and microscopic findings in the eyes, kidneys, and thyroid). No reproductive effects were reported.

Topramezone did not show any evidence of neurotoxicity in the acute (ACN) or subchronic (SCN) neurotoxicity studies, but in a rat developmental neurotoxicity (DNT) study, where dosing with topramezone took place during the prenatal as well as postnatal time periods, there was evidence for increased qualitative susceptibility. In the maternal animals, toxicity was limited to corneal opacity, whereas effects in the offspring included neurobehavioral and neuropathological changes. Offspring neurobehavioral effects consisted of a decreased auditory startle reflex at postnatal day 24 in both sexes (20–30%) and at postnatal day 60 for males (55%). There were also mild decreases in offspring absolute brain weights and neuropathological effects involving decreased brain morphometric measurements (e.g., hippocampus, and parietal cortex).

Topramezone is classified as ''not likely to be carcinogenic to humans at doses that do not alter rat thyroid hormone homeostasis.'' EPA has determined that the thyroid tumors arise through a non-linear mode of action, and the chronic reference dose (cRfD) is expected to be protective of alterations in hormone homeostasis that may result in thyroid tumor formation. Mutagenicity studies conducted on technical topramezone and its major metabolites did not demonstrate any mutagenic potential.

Specific information on the studies received and the nature of the adverse effects caused by topramezone 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 document ''Topramezone: Human-Health Risk Assessment for (1) New Uses in Non-Crop Aquatic Sites and (2) Increased Maximum Application Rate for Currently Registered Terrestrial Uses in the Maintenance of Bare Grounds (Roadsides, Utility and Railroad Rights-of-Ways, Industrial Sites, and Tank Farms),'' pages 36–39 in docket ID number EPA–HQ–OPP–2012–0262.

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://www.epa.gov/pesticides/factsheets/riskassess.htm.*

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

SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TOPRAMEZONE 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 (General population including infants and children).	LOAEL = 8 mg/kg bw.	UF = 100X (for inter- and intra-species extrapolation). FQPA SF = 10X aRfD = 0.008 mg/kg bw aPAD = 0.008 mg/kg bw	Developmental Neurotoxicity Study in Rats. Offspring LOAEL = 8 mg/kg bw based on decreased maximum auditory startle reflex response, decreased brain weights, and changes in brain morphology.
Acute Dietary (Females 13–49 years old).	NOAEL = 0.5 mg/kg/day.	UF = 100X (for inter- and intra-species extrapolation). FQPA SF = 1X aRfD = 0.005 mg/kg/day aPAD = 0.005 mg/kg/day	Developmental Toxicity Study in Rabbits. Developmental LOAEL = 5 mg/kg/day based on alterations in skeletal ossification sites and increased number of pairs of ribs.

SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TOPRAMEZONE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Chronic Dietary (All populations).	NOAEL= 0.4 mg/kg/day.	UF = 100X (for inter- and intra-species extrapolation). FQPA SF = 1X cRfD = 0.004 mg/kg/day cPAD = 0.004 mg/kg/day.	Chronic toxicity/Carcinogenicity Study in Rats. LOAEL = 3.6 mg/kg/day based on increased incidences of corneal opacity, decreased body weight and body-weight gains in males and histopathological evaluations in the eyes, thyroid and pancreas of both sexes.
Incidental Oral (Short- and Intermediate-Term).	NOAEL = 0.4 mg/kg/day.	Residential LOC for MOE = 100.	Two-Generation Reproduction Study in Rats. Offspring LOAEL = 4.2 mg/kg/day based decreases in body weights and body-weight gains in the F_2 generation offspring and increased time to preputial separation in the F_1 male offspring.
Short- and Intermediate-Term, Dermal.	Oral NOAEL = 0.4 mg/kg/day. (DAF = 2.6%)	Residential LOC for MOE = 100.	Two-Generation Reproduction Study in Rats. Parental LOAEL = 4.2 mg/kg/day based on decreased body weight, body-weight gain in males, increased thyroid and kidney weights of both sexes, and microscopic findings in eyes, kidney and thyroid of both sexes.
Short- and Intermediate-Term Inhalation.	Oral NOAEL= 0.4 mg/kg/day (inhalation absorption = 100%).	Residential LOC for MOE = 100.	Two Generation Reproduction Study in Rats. Parental LOAEL = 4.2 mg/kg/day based on decreased body weight, body-weight gain in males, increased thyroid and kidney weights of both sexes, and microscopic findings in eyes, kidney and thyroid of both sexes.
Cancer (Oral, dermal, inhalation).	In accordance with the 2005 EPA Guidelines for Carcinogen Risk assessment, topramezone was classified as ''not likely to be carcinogenic to humans at doses that do not alter rat thyroid hormone homeostasis.'' EPA has determined that the thyroid tumors arise through a non-linear mode of action and that the NOAEL (0.4 mg/kg/day) for deriving the cRfD will be protective of thyroid hormone alterations and thyroid tumor formation.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to topramezone, EPA considered exposure under the petitioned-for tolerances as well as all existing topramezone tolerances in 40 CFR 180.612. EPA assessed dietary exposures from topramezone 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. Such effects were identified for topramezone.

In estimating acute dietary exposure for both the general U.S. population (including infants and children) and for females 13–49 years of age, EPA used food consumption information from the U.S. Department of Agriculture's *National Health and Nutrition Examination Survey, What We Eat in America,* (NHANES/WWEIA). As to residue levels in food, EPA assumed 100 percent crop treated (PCT), Dietary Exposure Evaluation Model (DEEM) 7.81 default processing factors, and tolerance-level residues.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the same food consumption data and assumptions of tolerance-level residues, 100 PCT and DEEM 7.81 default processing factors.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that topramezone does not pose a cancer risk to humans at levels that do not alter rat thyroid hormone homeostasis, and doses at or below the cRfD are not expected to alter thyroid homeostasis. Therefore, a dietary exposure assessment beyond the chronic assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for topramezone. Tolerance-level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The highest drinking water concentrations are expected to result from the direct aquatic applications. Estimates of drinking water exposure levels were based on label instructions (i.e., proposed application rates, duration, and water concentration of direct aquatic applications at potable surface water intakes). For acute and chronic dietary risk assessment, the water concentration value of 45 parts per billion (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). Topramezone is currently registered for turf and golf course uses that could result in residential exposures. Topramezone is also proposed for use in direct aquatic applications that could result in exposure during recreational swimming activities. EPA assessed

residential exposure using the following assumptions: For adults, short-term aggregate assessment considered the post-application exposure resulting from the physical activities on turf. For children, short-term aggregate assessment considered combined dermal and incidental oral (hand-to-mouth) post-application exposures to children 1 < 2 years old resulting from the registered turf use. These post-application exposure estimates from the turf use are protective of post-application exposure for older children more likely to engage in recreational swimming activities. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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.''

Topramezone belongs to a class of herbicides that inhibit the liver enzyme HPPD, which is involved in the catabolism (metabolic breakdown) of tyrosine (an amino acid derived from proteins in the diet). Inhibition of HPPD can result in elevated tyrosine levels in the blood, a condition known as tyrosinemia. HPPD-inhibiting herbicides have been found to cause a number of toxicities in laboratory animal studies including ocular, developmental, liver, and kidney effects. Of these toxicities, the ocular effect (corneal opacity) is highly correlated with the elevated blood tyrosine levels. In fact, rats dosed with tyrosine alone show ocular opacities similar to those seen with HPPD inhibitors. Although the other toxicities may be associated with chemically induced tyrosinemia, other mechanisms may also be involved. There are marked differences among species in the ocular toxicity associated with HPPD inhibition. For example, treatments with HPPD inhibitor herbicides result in ocular effects in the rat, but not the mouse or monkey. The explanation of this species-specific response is related to the species differences in the clearance of tyrosine. Some species (such as the mouse and monkey) have a metabolic pathway that exists to remove tyrosine from the blood. This pathway involves a liver enzyme called tyrosine aminotransferase (TAT). Unlike rats, mice and humans have a highly effective metabolic process for handling excess tyrosine and are unlikely to achieve the levels necessary to produce ocular opacities. In fact, HPPD inhibitors (e.g. nitisinone) are used as an effective therapeutic agent to treat human patients suffering from rare genetic diseases of tyrosine catabolism. The human experience indicates that a therapeutic dose (1 mg/kg/day dose) has an excellent safety record in infants, children, and adults and that serious adverse health outcomes have not been observed in a population followed for approximately a decade. Rarely, ocular effects are seen in patients with high plasma tyrosine levels; however, these effects are transient and can be readily reversed upon adherence to a restricted protein diet. This indicates that HPPD inhibitor in it of itself cannot easily overwhelm the tyrosine-clearance mechanism in humans.

Therefore, exposure to environmental residues of HPPD-inhibiting herbicides are unlikely to result in the high blood levels of tyrosine and ocular toxicity in humans due to an efficient metabolic process to handle excess tyrosine. EPA has therefore not conducted cumulative risk assessment with other HPPD inhibitors for purposes of this assessment of topramezone for aquatic uses.

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 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.* In the prenatal developmental toxicity study with rats, there was evidence for increased qualitative, but not quantitative, susceptibility in the offspring. Qualitative susceptibility was demonstrated by the occurrence of decreased fetal body weight and increased incidences of skeletal variations in the presence of decreased body weight gain in the maternal animals.

In six of eight rabbit studies, there was evidence for increased qualitative susceptibility. In the does, maternal toxicity was characterized as decreases in body weight, body weight gain, and food consumption, all in the presence of increased serum levels of tyrosine. In the fetuses, developmental toxicity was manifested as increased incidences of visceral findings (i.e., absent kidney and ureter) and/or multiple skeletal variations (i.e., delayed ossification, supernumerary 13th rib and/or 27th presacral vertebrae). In two studies, skeletal variations were observed at high doses in the absence of any maternal toxicity.

In the 2-generation reproduction study with rats, there was no evidence of increased susceptibility. Offspring toxicity was characterized as decreased pup weight and weight gain in F_2 male and female pups and increased time to preputial separation in the F_1 males. These effects were observed in the presence of parental/systemic toxicity that included: Decreased body weight, decreased body-weight gain in males, increased thyroid and kidney weights of both sexes, and microscopic findings in the eyes, kidney, and thyroid of both sexes.

In the developmental neurotoxicity (DNT) study, there was evidence for qualitative susceptibility. In the maternal animals, toxicity was limited to corneal opacity whereas effects in the offspring manifested as: Neurobehavioral changes (decreased auditory startle reflex), decreases in absolute brain weight, and decreases in brain morphometric measurements (e.g., hippocampus, and parietal cortex).

3. *Conclusion.* While EPA is retaining the 10X FQPA safety factor for the acute dietary risk assessment for the U.S. general population including infants and children, 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 for the acute dietary risk assessment for females of child-bearing age (i.e., 13–49 years old), the chronic dietary risk assessment for the U.S. general population, and all non-dietary exposure scenarios. That decision is based on the following findings:

i. The toxicity database for topramezone is complete, except for an immunotoxicity study. A database uncertainty factor (UF_{DB}) is not required for the lack of an immunotoxicity study since the PODs used for overall risk assessments are based on effects seen in target organs (e.g., eyes, thyroid, and liver) consistent with the actions of this chemical as an HPPD inhibitor. An immunotoxicity study is not likely to

yield a lower POD and the preliminary results of the retrospective analyses provide strong support for not retaining the UF_{DB} as no immunotoxicity study available thus far has provided sensitive endpoints for use in deriving points of departure.

ii. There is some indication that topramezone is a neurotoxic chemical for developing animals. While there was no evidence of neurotoxicity or neuropathology to the adult nervous system following a single oral administration to rats at the limit dose in the ACN study or following repeated dietary administration to rats in the SCN study or in the maternal animals of the DNT study, there were neurobehavioral as well as neuropathological effects observed in the offspring of the DNT study as described above.

The LOAEL of 8 mg/kg/day of the DNT study is based on decreased auditory startle reflex, decreases in brain weight, and brain morphometric parameters at the lowest dose tested. A NOAEL was not established. Nevertheless, the LOAEL (8 mg/kg/day) was employed as the point of departure in assessing the risk for the general U.S. population, including infants and children, since the offspring were exposed to topramezone both *in utero* and during the lactation period. The 10X FQPA safety factor is retained as a UF_L (i.e., use of a LOAEL to extrapolate a NOAEL.)

iii. As discussed in Unit III.D.2., there is evidence that topramezone results in increased susceptibility in the prenatal developmental studies in rats and rabbits. But the degree of concern for the effects seen in those studies is low because there were clear NOAELs for the offspring effects and EPA selected points of departure that are protective of those effects. As explained in Unit III.D.3.ii., EPA is retaining the 10X FQPA safety factor for the lack of a NOAEL in the DNT study and believes that doing so will be protective of infants and children.

iv. There are no residual uncertainties in the exposure database. The dietary and residential exposure analyses are conservative in nature. The dietary exposure assessment uses tolerance-level residues and assumes 100 PCT. EPA used similarly conservative assumptions to assess post-application exposure to children/adults. The residential exposure assessment uses chemical-specific turf transferable residue data and the 2012 Residential Standard Operating Procedures (SOPs) and is considered health-protective. These assessments will not underestimate the exposure and risks posed by topramezone.

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.* Acute aggregate risk is made up only of dietary sources; therefore, the acute exposure estimates provided in the acute dietary exposure analysis represent acute aggregate exposures. EPA has concluded that acute exposure to topramezone from food and drinking water will utilize 98% of the aPAD for the most highly exposed population subgroup (all infants <1 year old) and 50% of the aPAD for females 13–49 years of age. The acute dietary assessment did not result in exposure estimates above EPA's level of concern.

2. *Chronic risk:* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to topramezone from food and water will utilize 62% of the cPAD for all infants (<1 year old), the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of topramezone is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Topramezone is currently registered for residential turf uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to topramezone.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 220 for the general U.S. population and 120 for children 1–2 years old (a subgroup predicted to have the highest dietary burden as well as the highest residential exposure. Because EPA's level of concern for topramezone is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Topramezone is currently registered for turf uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to topramezone for children that are 1–2 years old that may ingest soil on treated turf.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in an aggregate MOE of 270. Because EPA's level of concern for topramezone is a MOE of 100 or below, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* As noted in Unit III.C.1.iii., EPA has concluded that topramezone does not pose a cancer risk of concern at exposure levels that do not alter thyroid hormone homeostasis. The chronic aggregate assessment, which utilized a cRfD that is protective of those effects did not indicate a chronic risk above the Agency's level of concern; therefore, topramezone is not expected to pose a cancer risk to humans.

6. *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 topramezone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (BASF method D0104) is available to enforce the tolerance expression. 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 Codex maximum residue limits (MRLs) in/on fish/shellfish.

C. Revisions to Petitioned-For Tolerances

The proposed tolerance definition, ''fish'' is being revised to ''fish-freshwater finfish'' and ''fish-saltwater finfish.'' The proposed tolerance definition, ''shellfish'' is being revised to ''fish-shellfish, crustacean'' and ''fish-shellfish, mollusk.'' EPA is also establishing meat byproduct tolerances for cattle, goat, horse, sheep (0.80 ppm), hog (0.40 ppm), and poultry (0.02 ppm) as a result of the additional dietary burden resulting from the consumption of treated water by livestock since consumption of treated water by livestock is not restricted on the proposed labeling for aquatic uses. With the establishment of these tolerances, the currently established kidney (cattle, goat, horse, and sheep) and liver (cattle, goat, horse, and sheep) tolerances are being removed as it is now general policy to establish meat byproduct tolerances rather than separate liver and kidney tolerances (Chemistry Science Advisory Council (ChemSAC); min_494.12-Jan-2011).

Finally, EPA has revised the tolerance expression to clarify that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of topramezone not specifically mentioned; and that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of topramezone, including its metabolites and degradates, in or on fish-freshwater, finfish; fish-saltwater, finfish; fish-shellfish, crustacean; and fish-shellfish, mollusk at 0.05 ppm. To account for additional dietary burden to livestock from residues in drinking water for the proposed aquatic use, tolerances are being established for cattle, goat, horse, and sheep meat byproducts at 0.80 ppm; hog meat byproducts at 0.40 ppm and poultry meat byproducts at 0.02 ppm. Compliance with the following tolerance levels is to be determined by measuring only topramezone ([3-(4,5-dihydro-3-isoxazolyl)-2-methyl-4-(methylsulfonyl)phenyl](5-hydroxy-1-methyl-1*H*-pyrazol-4-yl)methanone) in or on the commodities.

VI. Statutory and Executive Order Reviews

This final rule 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 final rule has been exempted from review under Executive Order 12866, this final rule 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this 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 final rule 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 final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (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 of 1995 (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: July 29, 2013.

Lois Rossi,

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. Section 180.612 is revised to read as follows:

§ 180.612 Topramezone; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide topramezone, including its metabolites and degradates, in or on the following commodities. Compliance with the following tolerance levels is to be determined by measuring only topramezone ([3-(4,5-dihydro-3-isoxazolyl)-2-methyl-4-(methylsulfonyl)phenyl](5-hydroxy-1-

methyl-1*H*-pyrazol-4-yl)methanone) in or on the following commodities:

Commodity	Parts per million
Cattle, meat byproducts	0.80
Corn, field, forage	0.05
Corn, field, grain	0.01
Corn, field, stover	0.05
Corn, pop, grain	0.01
Corn, pop, stover	0.05
Corn, sweet, forage	0.05
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	0.05
Fish-freshwater finfish	0.05
Fish-saltwater finfish	0.05
Fish-shellfish, crustacean	0.05
Fish-shellfish, mollusk	0.05
Goat, meat byproducts	0.80
Hog, meat byproducts	0.40
Horse, meat byproducts	0.80
Poultry, meat byproducts	0.02
Sheep, meat byproducts	0.80

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

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

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

[FR Doc. 2013–18975 Filed 8–6–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 121107617–3628–03]

RIN 0648–XC351

Western Pacific Fisheries; 2013 Annual Catch Limits and Accountability Measures; Correcting Amendment

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

ACTION: Final specifications; correcting amendment.

SUMMARY: This document makes a technical correction to the final 2013 annual catch limit specifications for western Pacific fisheries that were published in the **Federal Register** on March 13, 2013.

DATES: Effective August 7, 2013 and is applicable beginning April 12, 2013.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Sustainable Fisheries, NMFS Pacific Islands Region, 808–944–2108.

SUPPLEMENTARY INFORMATION: At its 155th meeting held from October 29 through November 1, 2012, the Western Pacific Fishery Management Council (Council) recommended annual catch limits for western Pacific fisheries for the 2013 fishing year, including an annual catch limit of 140,000 lb for the Hawaii non-Deep 7 bottomfish.

NMFS published the proposed 2013 specifications and request for public comments in the **Federal Register** on January 31, 2013 (78 FR 6798). NMFS published the final specifications in the **Federal Register** on March 13, 2013 (78 FR 15885). Table 4 in each of those documents contained a typographical error. The limit for Hawaii non-Deep 7 bottomfish was inadvertently described as 145,000 lb, rather than the 140,000 lb recommended by the Council. This notice corrects the error.

NMFS assessed the potential environmental impacts of specifying an annual catch limit of 140,000 lb for Hawaii non-Deep 7 bottomfish for the 2013 fishing year. Consistent with National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act, NMFS estimated that a catch limit of 140,000 lb—which is approximately 73% of the estimated overfishing limit proxy of 192,000 lb—is associated with a 26 percent chance of overfishing. National Standard 1 provides that the probability that overfishing will occur cannot exceed 50 percent, and should be a lower value. Accordingly, based on the analyses contained in the environmental assessment, NMFS determined that establishing the catch limit at this level would have no significant effect on the quality of the human environment.

NMFS did not receive public comments on the catch limit for non-Deep 7 bottomfish. The corrected catch limit of 140,000 lb is only 3.5% lower than the published limit that contained the error. The non-Deep 7 bottomfish fishery is not subject to in-season closure or other in-season accountability measures upon attainment of the annual catch limit. Accordingly, in the unlikely event that the annual catch limit is reached, the Council and NMFS would address any overage in the subsequent fishing year. For these reasons, NMFS does not anticipate that fishermen will be adversely affected by the correction.

Correction

Accordingly, in the final specifications published on March 13, 2013 (78 FR 15885), on page 15887, in Table 4—Hawaii, the entry for Non-Deep 7 Bottomfish is revised to read 140,000 lb (63,503 kg).

Dated: August 1, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–19069 Filed 8–6–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 78, No. 152

Wednesday, August 7, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 95

[NRC–2011–0268]

RIN 3150–AJ07

Facility Security Clearance and Safeguarding of National Security Information and Restricted Data

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to update its regulations to standardize the frequency of required security education training for employees of NRC licensees possessing security clearances so that such training will be conducted annually consistent with the objectives of Executive Order 13526, Classified National Security Information. The rule would allow licensees flexibility in determining the means and methods for providing this training. This action would establish uniformity in the frequency of licensee security education and training programs and enhances the protection of classified information.

DATES: Submit comments by September 6, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0268. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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

FOR FURTHER INFORMATION CONTACT: Daniel W. Lenehan, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3501, email: *Daniel.Lenehan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2011–0268 when contacting the NRC about the availability of information for this proposed rule. You may access information related to this proposed rulemaking, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0268.
- *NRC's Agencywide Documents Access and Management System (ADAMS*): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2011–0268 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

II. Procedural Background.

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently as a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on October 21, 2013 However, if the NRC receives significant adverse comments on this proposed rule by September 6, 2013, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate

a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(A) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For procedural information, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

List of Subjects in 10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, and Security measures.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 95.

PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

■ 1. The authority citation for part 95 continues to read as follows:

Authority: Atomic Energy Act Secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C.5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); E.O. 10865, as amended, 3 CFR 1959–1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; EO 13526, 3 CFR 2010 Comp., pp. 298–327; E.O. 12968, 3 CFR, 1995 Comp., p. 391; E.O. 13526, 3 CFR, 2010 Comp., p. 298.

■ 2. Revise § 95.33 to read as follows:

§ 95.33 Security education.

All cleared employees must be provided with security training and briefings commensurate with their involvement with classified information. The facility official(s) responsible for the program shall determine the means and methods for providing security education and training. A licensee or other entity subject to part 95 may obtain defensive security, threat awareness, and other education and training information and material from their Cognoscent Security Agency (CSA) or other appropriate sources.

(a) *Facility Security Officer Training.* Licensees or other entities subject to part 95 are responsible for ensuring that the Facility Security Officer, and other personnel performing security duties, complete security training deemed appropriate by the CSA. Training requirements must be based on the facility's involvement with classified information and may include a Facility Security Officer Orientation Course and, for Facility Security Officers at facilities with safeguarding capability, a Facility Security Officer Program Management Course. Training, if required, should be completed within 1 year of appointment to the position of Facility Security Officer.

(b) *Government-Provided Briefings.* The CSA is responsible for providing initial security briefings to the Facility Security Officer, and for ensuring that other briefings required for special categories of information are provided.

(c) *Temporary Help Suppliers.* A temporary help supplier, or other contractor who employs cleared individuals solely for dispatch elsewhere, is responsible for ensuring that required briefings are provided to their cleared personnel. The temporary help supplier or the using licensee's, certificate holder's, or other person's facility may conduct these briefings.

(d) *Classified Information Nondisclosure Agreement (SF–312).* The SF–312 is an agreement between the United States and an individual who is cleared for access to classified information. An employee issued an initial access authorization must, in accordance with the requirements of § 25.23 of this chapter, execute an SF–312 before being granted access to classified information. The Facility Security Officer shall forward the executed SF–312 to the CSA for retention. If the employee refuses to execute the SF–312, the licensee or other facility shall deny the employee access to classified information and submit a report to the CSA. The SF–312 must be signed and dated by the employee and witnessed. The employee's and witness' signatures must bear the same date.

(e) *Access to Classified Information.* Employees may have access to classified information only if:

(1) A favorable determination of eligibility for access has been made with respect to such employee by the CSA;

(2) The employee has signed an approved non-disclosure agreement; and

(3) The employee has a need-to-know the information.

(f) *Initial Security Briefings.* Initial training shall be provided to every employee who has met the standards for access to classified information in accordance with paragraph (e) of this section before the employee is granted access to classified information. The initial training shall include the following topics:

(1) A Threat Awareness Briefing;

(2) A Defensive Security Briefing;

(3) An overview of the security classification system;

(4) Employee reporting obligations and requirements; and

(5) Security procedures and duties applicable to the employee's job.

(g) *Refresher Briefings.* The licensee or other entities subject to part 95 shall conduct refresher briefings for all cleared employees at least annually. As a minimum, the refresher briefing must reinforce the information provided during the initial briefing and inform employees of appropriate changes in security regulations. This requirement may be satisfied by use of audio/video materials and/or by issuing written materials to cleared employees.

(h) Persons who apply derivative classification markings shall receive training specific to the proper application of the derivative classification principles of Executive Order 13526, *Classified National Security Information* (75 FR 707; January 5, 2010), before derivatively classifying information and at least once every 2 years thereafter.

(i) *Debriefings.* Licensee and other facilities shall debrief cleared employees at the time of termination of employment (discharge, resignation, or retirement); when an employee's access authorization is terminated, suspended, or revoked; and upon termination of the Facility Clearance.

(j) Records reflecting an individual's initial and refresher security orientations and security termination must be maintained for 3 years after termination of the individual's access authorization.

Dated at Rockville, Maryland, this 23rd day of July, 2013.

For the Nuclear Regulatory Commission.

R. William Borchardt,

Executive Director for Operations.

[FR Doc. 2013–18944 Filed 8–6–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0513; Airspace Docket No. 13–ASO–13]

Proposed Amendment of Class E Airspace; Tazewell, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Tazewell, TN, as new Standard Instrument Approach Procedures have been developed at New Tazewell Municipal Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before September 23, 2013.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0513; Airspace Docket No. 13–ASO–13, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0513; Airspace Docket No. 13–ASO–13) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0513; Airspace Docket No. 13–ASO–13.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface within a 13.4-mile radius to support new Standard Instrument Approach Procedures developed at New Tazewell Municipal Airport, Tazewell, TN. Airspace reconfiguration is necessary due to the development of the RNAV (GPS) RWY 7 approach and for continued safety and management of IFR operations at the airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at New Tazewell Municipal Airport, Tazewell, TN.

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1E,

''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment:

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

Paragraph 6005. Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Tazewell, TN [Amended]

New Tazewell Municipal Airport, TN
(lat. 36°24'32'' N., long. 83°33'26'' W.)

That airspace extending upward from 700 feet above the surface within a 13.4-mile radius of New Tazewell Municipal Airport.

Issued in College Park, Georgia, on July 31, 2013.

Paul Lore,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–19090 Filed 8–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0469; Airspace Docket No.13–AEA–9]

Proposed Amendment of Class E Airspace; Danville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Danville Regional Airport, Danville, VA, to accommodate new landing and departure procedures, and by removing the operating hours established by a Notice to Airmen (NOTAM). This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also would update the airport's geographic coordinates.

DATES: Comments must be received on or before September 23, 2013.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0469; Airspace Docket No. 13–AEA–9, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0469; Airspace Docket No. 13–AEA–9) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0469; Airspace Docket No. 13–AEA–9.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:30 a.m. and 5:00 p.m. Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend the Class E surface area airspace to within a 5-mile radius of the airport, with a segment extending from the 5-mile radius to 7 miles southwest and 7 miles northeast of Danville Regional Airport, Danville, VA. Due to increased air traffic, controlled airspace would be continuous 24 hours, and no longer would be effective during the specific dates and times established in advanced by NOTAM. Also, the geographic coordinates of the airport would be adjusted to coincide with the FAAs aeronautical database.

Class E airspace designations are published in Paragraph 6002 of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations

listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Danville Regional Airport, Danville, VA.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, signed August 8, 2012, effective September 15, 2012, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

AEA VA E2 Danville, VA [Amended]

Danville Regional Airport
(Lat. 36°34′22″ N., long. 79°20′10″ W.)

That airspace extending upward from the surface within a 5-mile radius of Danville Regional Airport and within 2.4-mile each side of a 208° bearing from the airport, extending from the 5-mile radius to 7 miles southwest of the airport, and within 2.4-mile each side of a 016° bearing from the airport, extending from the 5-mile radius to 7 miles northeast of the airport.

Issued in College Park, Georgia, on July 31, 2013.

Paul Lore,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–19077 Filed 8–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0430; Airspace Docket No. 13–ASO–8]

Proposed Establishment of Class E Airspace; Magee, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Magee, MS, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) serving Magee Municipal Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before September 23, 2013.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0430; Airspace Docket No. 13–ASO–8, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0430; Airspace Docket No. 13–ASO–8) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0430; Airspace Docket No. 13–ASO–8.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently

published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays, at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Magee, MS, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Magee Municipal Airport. Controlled airspace extending upward from 700 feet above the surface is required for IFR operations within a 6.3-mile radius of the airport.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Magee Municipal Airport, Magee, MS.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO MS E5 Magee, MS [New]

Magee Municipal Airport, MS
(Lat. 31°51′41″ N., long. 89°48′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3- mile radius of Magee Municipal Airport.

Issued in College Park, Georgia, on July 31, 2013.

Paul Lore,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–19078 Filed 8–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0558; Airspace Docket No. 13–AEA–10]

Proposed Establishment of Class E Airspace; McConnellsburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at McConnellsburg, PA, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) special Standard Instrument Approach Procedure (SIAP) serving Fulton County Medical Center Heliport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before September 23, 2013.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0558; Airspace Docket No. 13–AEA–10, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments,

as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0558; Airspace Docket No. 13–AEA–10) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0558; Airspace Docket No. 13–AEA–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at McConnellsburg, PA, providing the controlled airspace required to support the new Copter RNAV (GPS) special standard instrument approach procedures for Fulton County Medical Center Heliport. Controlled airspace extending upward from 700 feet above the surface is required for IFR operations within a 6-mile radius of the point in space coordinates of the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Fulton County Medical Center Heliport, McConnellsburg, PA.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 McConnellsburg, PA [New]

Fulton County Medical Center Heliport, PA
(Lat. 39°56′17″ N., long. 78°00′27″ W.)
Point in Space Coordinates
(Lat. 39°55′25″ N., long. 78°00′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space Coordinates (lat. 39°55′25″ N., long. 78°00′26″ W.) serving Fulton County Medical Center Heliport.

Issued in College Park, Georgia, on July 31, 2013.

Paul Lore,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–19082 Filed 8–6–13; 8:45 am]

BILLING CODE 4910–13–P

PEACE CORPS

22 CFR Part 303

RIN 0420–AA29

Freedom of Information Act Administration

AGENCY: Peace Corps.

ACTION: Proposed rule.

SUMMARY: The proposed rule updates Peace Corps regulations on the Freedom of Information Act (FOIA) to implement guidance given by the President and the Attorney General regarding discretionary disclosures of records or information exempt from disclosure under the FOIA, whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. The proposed rule is based on language used by Department of Justice in its FOIA regulations. Additionally, the proposed rule deletes unnecessary and superfluous language and ensures the rule is consistent with current law.

DATES: Comments must be received by September 6, 2013. The proposed Disclosure of Information under the Freedom of Information Act 0420–AA29 will be effective September 6, 2013, unless the Peace Corps receives comments that require a different determination.

ADDRESSES: Written comments should be addressed to Anthony F. Marra, Associate General Counsel, Office of the General Counsel, Peace Corps, 1111 20th Street NW., Washington, DC 20526. Comments may also be sent electronically to the following email address: *amarra@peacecorps.gov.* Written comments should refer to **Federal Register**: Procedures for Disclosure of Information under the Freedom of Information Act 0420–AA29, and if sent electronically, should contain this reference on the subject line.

FOR FURTHER INFORMATION CONTACT: Anne Passmore, Office of the General Counsel, Policy and Program Analyst, 1111 20th Street NW., Washington, DC 20526, and 202–692–2164.

SUPPLEMENTARY INFORMATION: The revisions to the Peace Corps' FOIA regulations would incorporate the disclosure principles contained in President Obama's January 21, 2009 Memorandum regarding FOIA, the Attorney General's FOIA Guidelines to Favor Disclosure and Transparency dated March 19, 2009, and the Guide to the Freedom of Information Act promulgated by the Department of Justice's Office of Information Policy. The proposed rule deletes unnecessary and superfluous language and ensures the rule is consistent with current law. The proposed rule inserts additional contact information for the filing of initial Freedom of Information Act (''FOIA'') requests; inserts additional contact information for the filing of administrative appeals; and, adds two FOIA exemptions 5 U.S.C. 552(b)8, Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and (b)9, Geological and geophysical information and data, including maps, concerning wells. The Peace Corps FOIA regulations were last revised May 14, 2007 (72 FR 27055).

Request for Comments

The Peace Corps invites public comment on all aspects of this interim final rule and will take those comments into account before publishing a final rule.

Executive Order 12866

This regulation has been determined to be non-significant within the meaning of Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 or more in any one year.

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

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 22 CFR Part 303

Administrative practice and procedure, Freedom of information.

For the reasons set out in the preamble, the Peace Corps proposes to amend 22 CFR part 303 as follows:

PART 303—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 5 U.S.C. 552; 22 U.S.C. 2501, et seq.; E.O. 12137, 44 FR 29023, 3 CFR, 1979 Comp., p. 389; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 2. Amend § 303.2 by revising paragraph (e) to read as follows:

§ 303.2 Definitions.

* * * * *

(e) *OIG records* means those records as defined generally in this section which originated with or are in the possession and control of the Office of Inspector General (OIG) of the Peace Corps which have been compiled for law enforcement, audit, and investigative functions and/or any other purpose authorized under the Inspector General Act of 1978, as amended.

* * * * *

■ 3. Revise § 303.3 to read as follows:

§ 303.3 Policy.

The Peace Corps will make its records concerning its operations, activities, and business available to the public consistent with the requirements of the FOIA. As a matter of policy, the Peace Corps makes discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

■ 4. Amend § 303.5 by:

(a) Revising paragraphs (a), (b) introductory text, and (d) as set forth below; and

(b) Removing paragraph (e).

§ 303.5 Public reading room.

(a) The Peace Corps maintains a public reading room at its headquarters at 1111 20th Street NW., Washington, DC 20526. This room is supervised and is open to the public during Peace Corps' regular business hours for inspecting and copying records described in paragraph (b) of this section.

(b) Subject to the limitation stated in paragraph (c) of this section, the Peace Corps makes the following records available in the public reading room:

* * * * *

(d) *Electronic reading room.* Records required by the FOIA to be maintained

and made available in the public reading room created by the Peace Corps on or after November 1, 1996, are made available electronically on the Peace Corps Web site at *http://www.peacecorps.gov*.

■ 5. Amend § 303.8 by revising paragraphs (a), (b), (c), and (l)(1)(iv) to read as follows:

§ 303.8 Requests for records.

(a) Except for records required by the FOIA to be published in the **Federal Register** or to be made available in the public reading room, the Peace Corps will make its records promptly available, upon request, to any person in accordance with this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA.

(b) *Requests.* Requests for records under this section shall be made in writing via regular mail, email, facsimile, online Web portal and, as applicable, the envelope and the letter shall be clearly marked ''Freedom of Information Request.'' All requests shall be addressed to the FOIA Officer. Requests by letter shall use the address given in § 303.5(a). Requests by email must be sent to the FOIA electronic mailbox, *foia@peacecorps.gov*. Request submitted via online Web portal (accessible on the agency Web site, *www.peacecorps.gov*), requesters shall fill in all of the fields as required. Any request not marked and addressed as specified in this paragraph will be so marked by Peace Corps personnel as soon as the request is properly identified. The request will be forwarded immediately to the FOIA Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set out in paragraph (h) of this section until it has been received by the FOIA Officer. Upon receipt of an improperly addressed request, the FOIA Officer shall notify the requester of the date on which the time period began. Requests by letter shall be stamped ''received'' on the date received by the FOIA Office. Requests by email shall be ''received'' on the date the email arrived, if a business day, or on the next business day. Requests by online Web portal will be entered automatically in the FOIA tracking system. Requests sent via mail or email will be entered manually in the FOIA tracking system. Requesters may utilize the online Web portal for purpose of checking status of requests (open/closed) for requests from all sources.

(c) A request must reasonably describe the records requested so that employees of the Peace Corps who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. If it is determined that a request does not reasonably describe the records sought, the requester shall be so informed and provided an opportunity to confer with Peace Corps personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requester and the requirements of this paragraph. If the Agency cannot identify the requested records after a 2 hour search, it may determine that the records were not adequately described and ask the requester to provide a more specific request.

* * * * *

(l) * * *

(1) * * *

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the Peace Corps' or the Federal government's integrity which affect public confidence.

* * * * *

■ 6. Amend § 303.9 by adding paragraphs (e)(8) and (9) as follows:

§ 303.9 Exemptions for withholding records.

* * * * *

(e) * * *

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

■ 7. Amend § 303.10 by revising paragraphs (a), (c)(1)(i), (c)(1)(ii), and (c)(2)(ii) to read as follows:

§ 303.10 Responsibilities and authorities.

(a) *Legal counsel.* The General Counsel (GC) shall furnish legal advice to Peace Corps officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Peace Corps. The OIG Legal Counsel will coordinate with GC, as appropriate and necessary, when furnishing legal advice to the OIG FOIA Officer and Inspector General.

* * * * *

(c) * * *

(1) * * *

(i) Consult with the other agency before responding to the request; or

(ii) Refer the responsibility for responding to the request for the record to the other agency (but only if the agency is subject to FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(2) * * *

(ii) Whenever a request is made for a record containing information that has been classified by another agency or may be appropriate for classification under Executive Order 13525 or any other executive order concerning the classification of records, the Peace Corps shall refer the responsibility for responding to the request regarding that information to the agency that classified the information, should consider the information for classification, or has the primary interest in the information, as appropriate.

* * * * *

■ 8. Amend § 303.12 by revising paragraph (a) to read as follows:

§ 303.12 Appeals.

(a) Any person whose written request has been denied is entitled to appeal the denial within 20 business days by writing to the Associate Director of the Office of Management or, in the case of a denial of a request for OIG Records, the Inspector General, at the address given in 303.5(a). An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued. If the appeal is sent via mail, the envelope and the letter shall be clearly marked ''Freedom of Information Appeal'' and the appeal shall be addressed to the Associate Director, Office of Management. Appeals by letter shall use the address given in § 303.5(a). Appeals are accepted via email. Appeals by email must be sent to the FOIA electronic mailbox, *foia@peacecorps.gov.* Appeals submitted via online Web portal (accessible on the agency Web site, *www.peacecorps.gov*), requesters shall fill in all of the fields as required. Appeals by online Web portal will be entered automatically in the FOIA tracking system. Persons submitting an appeal may utilize the online Web portal for purpose of checking status of requests (open/closed) for requests from all sources.

* * * * *

■ 9. Amend § 303.13 by revising paragraph (b) to read as follows:

§ 303.13 Fees.

* * * * *

(b) For each commercial use request, fees will be limited to reasonable standard charges for document search, review, and duplication.

* * * * *

■ 10. Amend § 303.14 by revising paragraphs (a)(5)(i) and (ii) to read as follows:

§ 303.14 Procedures for responding to a subpoena.

(a) * * *

(5) * * *

(i) Congressional requests or subpoenas for testimony or documents;

(ii) Employees or former employees making appearances solely in their private capacity in legal or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents or domestic relations). Any question whether the appearance relates solely to the employee's or former employee's private capacity should be referred to the Office of the General Counsel.

* * * * *

Dated: August 1, 2013.

James Pimpedly,

Chief, Administrative Services, Management.

[FR Doc. 2013–19050 Filed 8–6–13; 8:45 am]

BILLING CODE 6051–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–1069]

RIN 1625–AA00

Safety Zones; Chelsea River, Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to disestablish the existing Safety Zone for the Chelsea River, Boston Inner Harbor, Boston, MA. Since the implementation of the regulation, physical changes have occurred within the confines of the safety zone, making the provisions of the safety zone no longer applicable.

DATES: Comments and related material must be received by the Coast Guard on or before September 6, 2013. Requests for public meetings must be received by the Coast Guard on or before August 28, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2012–1069 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. 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 rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
COTP Captain of the Port

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–1069), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at via *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number (USCG–2012–1069) in the ''SEARCH'' box and click ''SEARCH.'' Click on the ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2012–1069) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of 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.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

The Coast Guard does not currently plan to hold public meetings. However, a public meeting may be requested by using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold

one at a time and place announced by a later notice in the **Federal Register.**

B. Regulatory History and Information

On Thursday, January 31, 2013, the Coast Guard published an Advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (78 FR 6782). The USCG received three written comments in response to this ANPRM. Also, the USCG held two public meetings in which verbal comments were received. The minutes of these public meetings are available in the docket. On the whole, the written and verbal comments received support the disestablishment of 33 CFR 165.120 and its safety zone. Moreover, no comment was received in favor of keeping this safety zone. The Coast Guard considered all comments when crafting this proposed rule.

C. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

The original Chelsea Street Bridge was a bascule-type bridge owned by the City of Boston and constructed in 1939. It spanned the Chelsea River providing a means for vehicles to travel between Chelsea, MA and East Boston, MA. Several petroleum-product transfer facilities are located on the Chelsea River, upstream and downstream of the Chelsea Street Bridge. Transit of tank vessels through the bridge is necessary to access the petroleum facilities upstream of the bridge. The narrow, ninety-six foot horizontal span created a narrow passage through the bridge for larger vessels. Adding to the difficulty is the close proximity of neighboring shore structures and, at times, vessels moored at the Sunoco Logistics facility downstream of the bridge on the East Boston side. These factors led to the establishment of the present safety zone regulation which restricts the passage of certain vessels through the Chelsea Street Bridge based on vessel dimensional criteria, assist tug support, and daylight restrictions.

Since the implementation of the regulations, physical changes have occurred within the confines of the safety zone. A new vertical lift span bridge with a 175-foot vertical clearance and a 175-foot horizontal navigable channel span has been constructed in place of the old Chelsea Street Bridge. The federal navigational channel has been expanded to a width of 175 feet. Six new permanent fixed lighted aids to navigation structures have been installed in the immediate area of the bridge to best mark the new channel.

D. Comments and Discussion of Proposed Rule

The three written comments received in the docket were all in favor of disestablishing the safety zone. Two of those written comments were from the Boston Harbor Pilots Association and there was one joint comment from the three oil terminals up river of the safety zone; Global Partners LP, Gulf Oil Limited Partnership, and Irving Oil Terminals Inc. All the verbal comments received in the public meetings were in favor of disestablishing the safety zone. These comments can be seen in the docket under meeting minutes.

For all of the reasons discussed above, the Coast Guard proposes to disestablish the safety zone contained in 33 CFR 165.120, Safety Zone: Chelsea River, Boston Inner Harbor, Boston, MA by removing that section completely.

E. 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 or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be minimal because removing this safety zone would lessen the restriction on vessels transiting this area.

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

This proposed rule would affect the following entities, some of which may be small entities: vessel owners and operators in the affected waterway.

The proposed rule would not have a significant impact on a substantial number of small entities because, as mentioned in the *Regulatory Planning and Review* section, it proposes to entirely remove 33 CFR 165.120 and its safety zone and thus, lessen the restriction on vessels transiting in the affected area.

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.

3. Assistance for Small Entities

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 so that. 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 under **FOR FURTHER INFORMATION CONTACT**. 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.

4. 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.).

5. Federalism

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 determined that this rule does not have implications for federalism.

6. 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.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

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.

12. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide 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 may be one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

This proposed rule involves disestablishing a safety zone, so this action may be categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.120 [Removed]

■ 2. Remove § 165.120 Safety Zone: Chelsea River, Boston Inner Harbor, Boston, MA.

Dated: July 22, 2013.

J.C. O'Connor III,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2013–19104 Filed 8–6–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2012–0564; FRL–9844–2]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Canton-Massillon Area to Attainment of the 1997 Annual and 2006 24-Hour Standards for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 26, 2012, the Ohio Environmental Protection Agency submitted a request for EPA to redesignate the Canton-Massillon area (Stark County), Ohio, nonattainment area to attainment of the 1997 annual and 2006 24-hour standards for fine particulate matter ($PM_{2.5}$). EPA is proposing to grant Ohio's request. EPA is proposing to determine that the Canton-Massillon area attains the 1997 annual and the 2006 24-hour $PM_{2.5}$ standard, based on the most recent three years of certified air quality data. EPA is proposing to approve, as revisions to the Ohio state implementation plan (SIP), the state's plan for maintaining the 1997 annual and 2006 24-hour $PM_{2.5}$ national ambient air quality standard (NAAQS or standard) through 2025 for the area. EPA is proposing to approve the 2005 and 2008 emissions inventories for the Canton-Massillon area as meeting the comprehensive emissions inventory requirement of the Clean Air Act (CAA or Act). Ohio's maintenance plan submission includes a motor vehicle emission budget (MVEB) for the mobile source contribution of $PM_{2.5}$ and nitrogen oxides (NO_X) to the Canton-Massillon area for transportation conformity purposes; EPA is proposing to approve the MVEBs for 2015 and 2025 into the Ohio SIP for transportation conformity purposes.

DATES: Comments must be received on or before September 6, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0564, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-Mail: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2012–0564. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at 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 Carolyn Persoon, Environmental Engineer, at (312) 353–8290 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What actions is EPA proposing to take?
III. What is the background for these actions?
IV. What are the criteria for redesignation to attainment?
V. What is EPA's analysis of the state's request?
1. Attainment
2. The Area Has Met All Applicable Requirements Under Section 110 and Part D and Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))
3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))
4. Ohio Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))
5. Adequacy of Ohio's MVEB
6. 2005 and 2008 Comprehensive Emissions Inventory
7. Summary of Proposed Actions
VI. What are the effects of EPA's proposed actions?
VII. Statutory and Executive Order Reviews.

I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What actions is EPA proposing to take?

EPA is proposing to take several actions related to redesignation of the Canton-Massillon area to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is proposing to determine that the area is attaining the NAAQS for $PM_{2.5}$, based on quality-assured and state certified ambient air monitoring data for 2010–2012, the most recent three years of quality-assured data for the area. EPA is proposing to find that Ohio meets the requirements for redesignation of the Canton-Massillon area to attainment of the 1997 and 2006 24-hour $PM_{2.5}$ NAAQS under section 107(d)(3)(E) of the CAA.

Second, EPA is proposing to approve Ohio's annual $PM_{2.5}$ maintenance plan for the Canton-Massillon area as a revision to the Ohio SIP, including the MVEB for $PM_{2.5}$ and NO_X emissions for the mobile source contribution of the Canton-Massillon area.

Finally, EPA is proposing to approve Ohio's emissions inventories as satisfying the requirement in section 172(c)(3) of the CAA for a current, accurate and comprehensive emission inventory. These emission inventories include primary $PM_{2.5}$, NO_X and sulfur dioxide (SO_2) inventories included in its June 26, 2012, initial submittal and 2007 emissions for volatile organic compounds (VOCs) and ammonia inventories included in a supplemental submission to EPA on April 29, 2013.

Therefore, EPA is proposing to grant the request from the state of Ohio to change the designation of Stark County (the Canton-Massillon area) from nonattainment to attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

III. What is the background for these actions?

Fine particulate pollution can be emitted directly from a source (primary $PM_{2.5}$) or formed secondarily through chemical reactions in the atmosphere involving precursor pollutants emitted from a variety of sources. Sulfates are a type of secondary particulate formed from SO_2 emissions from power plants

and industrial facilities. Nitrates, another common type of secondary particulate, are formed from combustion emissions of NO_X from power plants, mobile sources and other combustion sources.

The first air quality standards for $PM_{2.5}$ were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (μg/m³) of ambient air, based on a three year average of the annual mean $PM_{2.5}$ concentrations at each monitoring site. In the same rulemaking, EPA promulgated a 24-hour $PM_{2.5}$ standard at 65 μg/m³, based on a three year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each monitoring site.

On January 5, 2005, at 70 FR 944, EPA published air quality area designations for the 1997 annual $PM_{2.5}$ standard based on air quality data for calendar years 2001–2003. In that rulemaking, EPA designated the Canton-Massillon area as nonattainment for the 1997 annual $PM_{2.5}$ standard.

On October 17, 2006, at 71 FR 61144, EPA retained the annual $PM_{2.5}$ standard at 15 μg/m³ (2006 annual $PM_{2.5}$ standard), but revised the 24-hour standard to 35 μg/m³, based again on the three-year average of the annual 98th percentile of the 24-hour $PM_{2.5}$ concentrations. In response to legal challenges of the 2006 annual $PM_{2.5}$ standard, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court) remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). On December 14, 2012, EPA finalized a rule revising the $PM_{2.5}$ annual standard to 12 μg/m³ based on current scientific evidence regarding the protection of public health. Since the Canton-Massillon area is designated as nonattainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards, today's proposed action addresses redesignation to attainment only for these standards.

In this proposed redesignation, EPA takes into account the January 4, 2013, Court ruling in *Natural Resources Defense Council* v. *EPA,* in which the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013).

Also noted are the decisions of the D.C. Circuit regarding the status of the Cross-State Air Pollution Rule (CSAPR). In the first of the two Court decisions, the D.C. Circuit, on August 21, 2012, issued *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), which vacated and remanded CSAPR and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) ''pending . . . development of a valid replacement.'' *EME Homer City* at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, the Court also ordered EPA to continue administering CAIR ''pending the promulgation of a valid replacement.'' *EME Homer City,* 696 F.3d at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties filed petitions for certiorari to the U.S. Supreme Court. On June 24, 2013, the Supreme Court granted certiorari and agreed to review the D.C. Circuit's decision in *EME Homer City.* The Supreme Court's grant of certiorari, by itself, does not alter the status of CAIR or CSAPR. At this time, CAIR remains in place. EPA has determined that the status of both CSAPR and CAIR do not affect the ability of the Canton-Massillon area to attain or maintain the PM NAAQS, which is discussed in more detail in section V.3.aii.

IV. What are the criteria for redesignation to attainment?

The CAA sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

V. What is EPA's analysis of the state's request?

EPA is proposing to redesignate the Canton-Massillon area to attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and is proposing to approve Ohio's maintenance plan for the area and other related SIP revisions. The bases for these actions follow.

1. Attainment

EPA is proposing to determine that the Canton-Massillon area is attaining the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS based upon the most recent three years of complete, certified and quality-assured data. Under EPA's regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 μg/m³ at all monitoring sites in the area. Under EPA regulations in 40 CFR 50.13 and in accordance with 40 CFR part 50, appendix N, the 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration is less than or equal to 35 μg/m³.

EPA has reviewed the ambient air quality monitoring data in the Canton-Massillon area, consistent with the requirements contained at 40 CFR part 50. EPA's review focused on state certified data recorded in the EPA Air Quality System (AQS) database for the Canton-Massillon $PM_{2.5}$ nonattainment area for 2009–2011 and for 2010–2012.

The Canton-Massillon area has two monitors located in Stark County, Ohio. Preliminary calculations of design values for 2010–2012, the most recent three full years of data, the two monitors had design values of 13.0 and 11.8 μg/m³ for the 1997 annual standard, and 29 and 26 μg/m³ for the 2006 24-hour standard. The monitors in the Canton-Massillon area recorded complete data for 2010–2012 in accordance with criteria set forth by EPA in 40 CFR part 50, appendix N, where a complete year of air quality data comprises four calendar quarters, with each quarter containing data with at least 75% capture of the scheduled sampling days. Available data are considered to be sufficient for comparison to the NAAQS if three consecutive complete years of data exist.

TABLE 1—THE 1997 ANNUAL AND 2006 24-HOUR $PM_{2.5}$ DESIGN VALUES FOR THE CANTON-MASSILLON MONITORS (IN μg/m³)

County	Site	Annual standard 2009–2011	24-Hour standard 2009–2011	Annual standard 2010–2012	24-Hour standard 2010–2012
Stark, OH[1]	391510017	13.4	30	13.0	29
Stark, OH	391510020	11.9	28	11.8	26

[1] Design values for the site 391510017 were incomplete for 2009–2011 due to one quarter in 2009, substitution analysis for 2009–2011 showed attainment for the annual standard. 2010–2012 data was complete for both standards.

EPA's review of these monitoring data supports EPA's determination that the Canton-Massillon area has monitored attainment for the most recent three years of data. Therefore, EPA proposes to determine that the Canton-Massillon area is attaining the 1997 annual and 2006 24-hour $PM_{2.5}$ standards.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D and Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We believe that Ohio has met all currently applicable SIP requirements for purposes of redesignation for the Canton-Massillon area under section 110 of the CAA (general SIP requirements). We are also proposing to find that the Ohio SIP meets all SIP requirements currently applicable for purposes of redesignation under part D of title I of the CAA, in accordance with section 107(d)(3)(E)(v). We are proposing to find that all applicable requirements of the Ohio SIP for purposes of redesignation have been met, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is proposing to approve Ohio's 2005 and 2008 emissions inventory, as well as the supplemental submission to the emissions inventory of 2007 VOC and ammonia data made on April 30, 2013, as meeting the section 172(c)(3) comprehensive emissions inventory requirement. In making these proposed determinations, we have ascertained which SIP requirements are applicable for purposes of redesignation, and concluded that SIP measures meeting those requirements are approved or will be approved by the time of final rulemaking.

a. Ohio Has Met All Applicable Requirements for Purposes of Redesignation of the Canton-Massillon Area Under Section 110 and Part D of the CAA

i. Section 110 General SIP Requirements

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and, among other things, must: include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; include criteria for stationary source emission control measures, monitoring and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. EPA believes that the requirements linked with a particular nonattainment area's designation are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with a particular area's designation are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996) and (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed the Ohio SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of this redesignation. EPA has previously approved provisions of Ohio's SIP addressing section 110 requirements, including provisions addressing particulate matter, at 40 CFR 52.1870, respectively). On December 5, 2007, and September 4, 2009, Ohio made submittals addressing ''infrastructure SIP'' elements required under CAA section 110(a)(2). EPA proposed approval of the December 5, 2007, submittal on April 28, 2011, at 76 FR 23757, and published final approval on July 14, 2011, at 76 FR 41075. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the Canton-Massillon area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the state's $PM_{2.5}$ redesignation request.

ii. Part D Requirements

EPA is proposing to determine that, upon approval of the base year

emissions inventories discussed in section V.6. of this rulemaking, the Ohio SIP will meet the SIP requirements for the Canton-Massillon area applicable for purposes of redesignation under part D of the CAA.

Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas.

(1). Subpart 1

(a). Section 172 Requirements.

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Canton-Massillon area are contained in section 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all Reasonably Achievable Control Measures (RACM) as expeditiously as practicable and to provide for attainment of the primary NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. (40 CFR 51.1004(c).)

The Reasonable Further Progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Canton-Massillon area has monitored attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918. In addition, because the Canton-Massillon area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and is no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. Ohio submitted a 2005 (nonattainment year) and 2008 (attainment year) emissions inventories for SO_2, NO_X, and directly emitted $PM_{2.5}$ as part of their redesignation request, and Ohio supplemented these inventories with emission inventories for VOC and ammonia on April 29, 2013. As discussed below in section V.6, EPA is approving both the 2005 and 2008 base year inventory as meeting the section 172(c)(3) emissions inventory requirement for the Canton-Massillon area.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Ohio's current NSR program on January 10, 2003 (68 FR 1366). Nonetheless, since PSD requirements will apply after redesignation, the area need not have a fully-approved NSR program for purposes of this redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Ohio has demonstrated that the Canton-Massillon area will be able to maintain the standard without part D NSR in effect; therefore, the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state's PSD program will become effective in the Canton-Massillon area upon redesignation to attainment. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Ohio's SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

(b) Section 176(c)(4)(D) Conformity SIP Requirements.

The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code and the Federal Transit Act (transportation conformity), as well as to all other Federally-supported or funded projects (general conformity).

Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which was signed into law on August 10, 2005 (Pub. L. 109–59). Among the changes Congress made to this section of the CAA were streamlined requirements for state transportation conformity SIPs. State transportation conformity regulations must be consistent with Federal conformity regulations and address three specific requirements related to consultation, enforcement and enforceability. EPA believes that it is reasonable to interpret the transportation conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons.

First, the requirement to submit SIP revisions to comply with the transportation conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the transportation conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. *See* also 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida). Ohio has an approved transportation conformity SIP (72 FR 20945). Ohio is in the process of updating its approved transportation conformity SIP, and EPA will review its provisions when they are submitted.

(2). Effect of the January 4, 2013, D.C. Circuit Decision Regarding $PM_{2.5}$ Implementation under Subpart 4

(a). Background

As discussed above, on January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit

remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule''). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of part D of title I. Although the Court's ruling did not directly address the 2006 $PM_{2.5}$ standard, EPA is taking into account the Court's position on subpart 4 and the 1997 $PM_{2.5}$ standard in evaluating redesignations for the 2006 standard.

(b). Proposal on This Issue

EPA is proposing to determine that the Court's January 4, 2013, decision does not prevent EPA from redesignating the Canton-Massillon area to attainment. Even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the Canton-Massillon redesignation request and disregards the provisions of its 1997 $PM_{2.5}$ implementation rule recently remanded by the Court, the state's request for redesignation of this area still qualifies for approval. EPA's discussion takes into account the effect of the Court's ruling on the area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

(i). Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the 1997 $PM_{2.5}$ Implementation Rule, the Court's January 4, 2013, ruling rejected EPA's reasons for implementing the $PM_{2.5}$ NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 $PM_{2.5}$ NAAQS under subpart 4 of part D of the CAA, in addition to subpart 1. For the purposes of evaluating Ohio's redesignation request for the area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not ''applicable'' for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the Canton-Massillon redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). *See also* ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992,'' Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statute is ''whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment'').[1] In this case, at the time that Ohio submitted its redesignation request, requirements under subpart 4 were not due, [and indeed, were not yet known to apply.]

EPA's view that, for purposes of evaluating the Canton-Massillon redesignation, the subpart 4 requirements were not due at the time the state submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit's decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). In *South Coast,* the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that ''applicable requirements'', for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.,* Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be ''applicable'' for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of CAA Section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet ''all requirements 'applicable' to the area under section 110 and part D''. Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the ''applicable'' SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of ''applicable'' as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If ''applicable requirements'' were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

[1] Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the Court's January 4, 2013, decision in *NRDC* v. *EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. The state submitted its redesignation request on July 5, 2011, but the Court did not issue its decision remanding EPA's 1997 $PM_{2.5}$ implementation rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require the state's fully-completed and pending redesignation request to comply now with requirements of subpart 4 that the Court announced only in January, 2013, would be to give retroactive effect to such requirements when the state had no notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002),[2] where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it ''would likely impose large costs on states, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.'' *Id.* at 68. Similarly, it would be unreasonable to penalize the state of Ohio by rejecting its redesignation request for an area that is already attaining the 1997 $PM_{2.5}$ standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club* v. *Whitman.*

(ii). Subpart 4 Requirements and Ohio Redesignation Request

Even if EPA were to take the view that the Court's January 4, 2013, decision requires that, in the context of pending redesignations, subpart 4 requirements were due and in effect at the time the state submitted its redesignation request, EPA proposes to determine that the Canton-Massillon area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Canton-Massillon area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Canton-Massillon area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM_{10}[3] nonattainment areas, and under the Court's January 4, 2013, decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See,* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (the ''General Preamble''). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM–10 requirements.'' 57 FR 13538 (April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, we are considering the Canton-Massillon area to be a ''moderate'' $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as ''moderate'' nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM_{10}, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[4] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a PSD program after redesignation. A detailed rationale for this view is

[2] *Sierra Club* v. *Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n* v. *EPA.* 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

[3] PM_{10} refers to particulates nominally 10 micrometers in diameter or smaller.

[4] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,[5] when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the $PM_{2.5}$ standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

> The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the state will make RFP towards attainment will, therefore, have no meaning at that point.

''General Preamble for the Interpretation of Title I of the CAA Amendments of 1990''; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

Id.

EPA similarly stated in its 1992 Calcagni memorandum that, ''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

It is evident that even if we were to consider the Court's January 4, 2013, decision in *NRDC* v. *EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively[6] and thus are now past due, those requirements do not apply to an area that is attaining the 1997 and 2006 $PM_{2.5}$ standard, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret ''applicable requirements'' in the redesignation context. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior ''Clean Data Policy'' rulemakings for the PM_{10} NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* ''Determination of Attainment for Coso Junction Nonattainment Area,'' (75 FR 27944, May 19, 2010). *See also* Coso Junction proposed PM_{10} redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this notice, EPA proposes to determine that the area has attained the 1997 and 2006 $PM_{2.5}$ standards. Under its longstanding interpretation, EPA is proposing to determine here that the area meets the attainment-related plan requirements of subparts 1 and 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)1 and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation request.

(iii). Subpart 4 and Control of $PM_{2.5}$ Precursors

The D.C. Circuit in *NRDC* v. *EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the Court's opinion with respect to $PM_{2.5}$ precursors. While past implementation of subpart 4 for PM_{10} has allowed for control of PM_{10} precursors such as NO_X from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that control requirements for major stationary sources of direct PM_{10} shall also apply to PM_{10} precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

EPA's 1997 $PM_{2.5}$ implementation rule, remanded by the D.C. Circuit, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the state for control measures.'' EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013, decision made reference to both section 189(e) and 40 CFR 51. 1002, and stated that, ''In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.'' *NRDC* v. *EPA,* at 27, n.10.

Elsewhere in the Court's opinion, however, the Court observed:

> Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].

[5] I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

[6] As EPA has explained above, we do not believe that the Court's January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club* v. *Whitman, supra.*

Id. at 21, n.7. For a number of reasons, EPA believes that its proposed redesignation of the Canton-Massillon area is consistent with the Court's decision on this aspect of subpart 4. First, while the Court, citing section 189(e), stated that ''for a PM_{10} area governed by subpart 4, a precursor is 'presumptively regulated,''' the Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ implementation rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as $PM_{2.5}$ precursors, (and any similar provisions reflected in the guidance for the 2006 $PM_{2.5}$ standard) the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of Canton-Massillon, EPA believes that doing so is consistent with proposing redesignation of the area for the 1997 $PM_{2.5}$ standard. The Canton-Massillon area has attained both standards without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM_{10} precursors.[7] Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of ammonia and VOC. Thus we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the area for the 1997 $PM_{2.5}$ standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other Act requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e) (57 FR 13542). EPA in this proposal proposes to determine that the SIP has met the provisions of section 189(e) with respect to ammonia and VOCs as precursors. This proposed determination is based on our findings that (1) the Canton-Massillon area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[8] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the area, which is attaining the 1997 annual $PM_{2.5}$ standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 $PM_{2.5}$ standard in the Canton-Massillon area. *See* 57 FR 13539–42.

EPA notes that its 1997 $PM_{2.5}$ implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for ''presumptive regulation'' of ammonia and VOC for $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring Ohio to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10} contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.[9] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[10] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Canton-Massillon area has already attained the 1997 and 2006 $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Ohio's request for redesignation of the Canton-Massillon area. In the context of a redesignation, the area has shown that it has attained both standards. Moreover, the state has shown and EPA is proposing to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, decision of the Court as precluding redesignation of the Canton-Massillon area to attainment for the 1997 $PM_{2.5}$ NAAQS at this time.

In sum, even if Ohio were required to address precursors for the Canton-Massillon area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded $PM_{2.5}$ implementation rule, EPA would still conclude that the area had met all applicable requirements for purposes of

[7] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

[8] The Canton-Massillon area has reduced VOC emissions through the implementation of various SIP approved VOC control programs and various on-road and nonroad motor vehicle control programs.

[9] *See, e.g.,* ''Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM–10 Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM–10 Standards,'' 69 FR 30006 (May 26, 2004) (approving a PM_{10} attainment plan that impose controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or ammonia emissions).

[10] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.,* 423 F.3d 989 (9th Cir. 2005).

redesignation in accordance with section 107(d)(3(E)(ii) and (v).

b. The Canton-Massillon Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of Ohio's comprehensive emissions inventories, EPA will have fully approved the Ohio SIP for the Canton-Massillon area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ standard. EPA may rely on prior SIP approvals in approving a redesignation request (*See* page 3 of the Calcagni Memorandum; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)), plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio has adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under particulate matter standards. In this action, as discussed in section V.6 EPA is proposing to approve Ohio's base year emissions inventories for the Canton-Massillon area as meeting the requirement of section 172(c)(3) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ standard.

c. Nonattainment Requirements

Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. On July 16, 2008, Ohio submitted a state-wide attainment demonstration for $PM_{2.5}$, including the Canton-Massillon area. However, EPA's determination that the area attained the 1997 $PM_{2.5}$ annual and 2006 24-hour standards (76 FR 56641; 77 FR 28264, respectively) suspended the requirement to submit certain planning SIPs related to attainment, including attainment demonstration requirements, the Reasonably Achievable Control Technology (RACT)-RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA and the requirement for contingency measures of section 172(c)(9) of the CAA).

As a result, the only remaining requirement under section 172 to be considered is the emissions inventory required under section 172(c)(3). As discussed in section V.6, EPA is proposing to approve the inventory that Ohio submitted as part of its maintenance plan as satisfying this requirement.

No SIP provisions applicable for redesignation of the Canton-Massillon area are currently disapproved, conditionally approved or partially approved. If EPA approves Ohio's Canton-Massillon area $PM_{2.5}$ emissions inventories as proposed, Ohio will have a fully approved SIP for all requirements applicable for purposes of redesignation.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA believes that Ohio has demonstrated that the observed air quality improvement in the Canton-Massillon area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures and other state-adopted measures.

In making this demonstration, Ohio has calculated the change in emissions between 2005, one of the years used to designate the Canton-Massillon area as nonattainment, and 2008, one of the years the Canton-Massillon area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Canton-Massillon area and contributing areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the area:

i. Federal Emission Control Measures

Reductions in fine particle precursor emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following:

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower NO_X and SO_2 emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, new vehicles will emit the following percentages less NO_X: Passenger cars (light duty vehicles)—77%; light duty trucks, minivans, and sports utility vehicles—86%; and, larger sports utility vehicles, vans, and heavier trucks—69% to 95%. EPA expects fleet wide average emissions to come to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006. Most gasoline sold in Ohio prior to January 2006 had a sulfur content of about 500 ppm.

Heavy-Duty Diesel Engine Rule. EPA issued this rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced fine particle emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to achieve a 90% reduction in direct $PM_{2.5}$ emissions and a 95% reduction in NO_X emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur content diesel. The reduction in fuel sulfur content also yielded an immediate reduction in sulfate particle emissions from all diesel vehicles.

Nonroad Diesel Rule. In May 2004, EPA promulgated a new rule for large nonroad diesel engines, such as those used construction, agriculture and mining equipment, to be phased in between 2008 and 2014. The rule also reduces the sulfur content in nonroad diesel fuel by over 99%. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. This rule limited nonroad diesel sulfur content to 500 ppm by 2006, with a further reduction to 15 ppm by 2010. The combined engine and fuel rules will reduce NO_X and PM emissions from large nonroad diesel engines by over 90%, compared to current nonroad engines using higher sulfur content diesel. It is estimated that compliance with this rule will cut NO_X emissions from nonroad diesel engines by up to 90%. This rule achieved some emission reductions by 2008 and was fully implemented by 2010. The reduction in fuel sulfur content also yielded an immediate reduction in sulfate particle emissions from all diesel vehicles.

Nonroad Large Spark-Ignition Engine and Recreational Engine Standards. In November 2002 EPA promulgated emission standards for groups of previously unregulated nonroad engines. These engines include large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines such as off-

highway motorcycles, all-terrain vehicles and snowmobiles; and recreational marine diesel engines. Emission standards from large spark-ignition engines were implemented in two tiers, with Tier 1 starting in 2004 and Tier 2 in 2007. Recreational vehicle emission standards are being phased in from 2006 through 2012. Marine Diesel engine standards were phased in from 2006 through 2009. With full implementation of the nonroad spark-ignition engine and recreational engine standards, an 80% reduction in NO_X expected by 2020. Some of these emission reductions occurred by the 2008–2010 period used to demonstrate attainment, and additional emission reductions will occur during the maintenance period.

ii. Control Measures in Contributing Areas

NO_X SIP Call. On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and with Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable.

CAIR. The Canton-Massillon area has demonstrated that attainment of the 1997 8-hour ozone NAAQS will be maintained with or without the implementation of CAIR or CSAPR. The Canton-Massillon area has no local electric generating units (EGUs) that would be impacted by CAIR or CSAPR, and in fact, the area's emissions are dominated by mobile sources (Table 2). Mobile sources in the area comprise 85% of the NO_X emissions, 38% of the SO_2 emission, and 46% of the $PM_{2.5}$ emissions from the base-year inventory. In addition, regional emissions will not affect the attainment or maintenance of the Canton-Massillon area. Modeling conducted by EPA during the CSAPR rulemaking process demonstrates that the counties in the Canton-Massillon $PM_{2.5}$ nonattainment area will have concentrations below the 1997 annual and the 2006 24-hour $PM_{2.5}$ standards in both 2012 and 2014 without taking into account emissions reductions from CAIR or CSAPR. See ''Air Quality Modeling Final Rule Technical Support Document'', App. B. This modeling is available in the docket for this proposed redesignation action.

Moreover, in its August 2012 decision, the Court also ordered EPA to continue implementing CAIR. See *EME Homer City Generation LP* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012). In sum, neither the current status of CAIR nor the current status of CSAPR affects any of the criteria for proposed approval of this redesignation request for the Canton-Massillon area.

iii. Consent Decrees

On December 31, 2012, the Marathon petroleum refinery in Canton was required by a Federal consent decree to shut down an open waste gas flare, resulting in reductions of VOCs, SO_2 and direct PM. The Canton refinery is also required under this consent decree to meet specific limits on their capped gas flare that must be incorporated into the permanent construction permit. These emission reductions will add to continued reductions for other sources in the area throughout the maintenance period. In a 2011 state consent decree, Akron Iron & Metal, LLC, in Canton, added baghouse controls resulting in reductions of direct PM in the Canton area.

b. Emission Reductions

Ohio developed emissions inventories for NO_X, direct $PM_{2.5}$ and SO_2 for 2005, one of the years used to designate the area as nonattainment, and 2008, one of the years the Canton-Massillon area monitored attainment of the standard.

Area source emissions the Canton-Massillon area for 2005 were taken from periodic emissions inventories.[11] These 2005 area source emission estimates were extrapolated to 2008. Source growth factors were supplied by the Lake Michigan Air Directors Consortium (LADCO).

Nonroad mobile source emissions were extrapolated from nonroad mobile source emissions reported in EPA's 2005 National Emissions Inventory (NEI). Contractors were employed by LADCO to estimate emissions for commercial marine vessels and railroads.

On-road mobile source emissions were calculated using EPA's mobile source emission factor model, MOVES2010a, in conjunction with transportation model results developed by the Stark County Area Transportation Study (SCATS).

All emissions estimates discussed below were documented in the submittal and appendices of Ohio's redesignation request submittal from April 16, 2012, and their April 30, 2013, supplemental submittal. For these data and additional emissions inventory data, the reader is referred to EPA's digital docket for this rule, *http://www.regulations.gov,* which includes digital copies of Ohio's submittal.

Emissions data in tpy for the Canton-Massillon area are shown in Tables 2 and 3, below.

TABLE 2—SUMMARY OF 2005 EMISSIONS OF SO_2, NO_X, AND DIRECTLY EMITTED $PM_{2.5}$ FOR THE CANTON-MASSILLON AREA BY SOURCE TYPE

[tpy]

	SO_2	NO_X	$PM_{2.5}$
Point (EGU)	0.00	0.00	0.00
Non-EGU	553.14	1,129.41	380.10
On-road	191.33	14,004.65	433.47
Nonroad	261.01	2,801.96	231.64
Area	163.72	1,313.88	370.87
MAR	38.35	537.27	14.58
Total Canton-Massillon	1,207.55	19,787.17	1,430.66

[11] Periodic emission inventories are derived by states every three years and reported to the EPA. These periodic emission inventories are required by the Federal Consolidated Emissions Reporting Rule, codified at 40 CFR Subpart A. EPA revised these and other emission reporting requirements in a final rule published on December 17, 2008, at 73 FR 76539.

TABLE 3—COMPARISON OF $PM_{2.5}$, NO_X, AND SO_2 EMISSIONS FROM A NONATTAINMENT YEAR (2005) AND EMISSIONS FOR AN ATTAINMENT YEAR (2008) FOR THE CANTON-MASSILLON AREA

[tpy]

	2005	2008	Net change (2005–2008)
$PM_{2.5}$	1,430.66	1,257.11	−173.55
NO_X	19,787.17	16,227.26	−3,559.91
SO_2	1,207.55	906.79	−300.76

Table 3 shows that the Canton-Massillon area shows a decrease in direct $PM_{2.5}$ emissions by 173.55 tons, the area reduced NO_X emissions by 3,559.91tons and SO_2 emissions by 300.76 tons between 2005, a nonattainment year, and 2008, an attainment year. Ohio did not attribute attainment to any changes in VOC or ammonia emissions; instead to changes in SO_2, NO_X, and $PM_{2.5}$ emissions. EPA agrees that emission reductions from sources of SO_2, NO_X, and $PM_{2.5}$ brought the area into attainment, with most emission reductions occurring from Federal mobile source engine standards and fuel standards (Table 2 and 3). Based on the information summarized above, Ohio has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. Ohio Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with Ohio's request to redesignate the Canton-Massillon nonattainment area to attainment status, Ohio has submitted a SIP revision to provide for maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in the area through 2025.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future annual $PM_{2.5}$ violations.

The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following items: the attainment emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

Ohio developed emissions inventories for NO_X, direct $PM_{2.5}$ and SO_2 for 2008, one of the years in the period during which the Canton-Massillon area monitored attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ standard, as described previously. The attainment levels of emissions for the area are summarized in Tables 3, above.

c. Demonstration of Maintenance

Along with the redesignation request, Ohio submitted a revision to its $PM_{2.5}$ SIP to include a maintenance plan for the Canton-Massillon area, as required by section 175A of the CAA. Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' Calcagni Memorandum, p.9. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni Memorandum, pp. 9–10.

Ohio's submission uses emissions inventory projections for the years 2015 and 2025 to demonstrate maintenance for the Canton-Massillon area. The projected emissions were estimated by Ohio, with assistance from LADCO and SCATS using the MOVES2010a model. The 2015 interim year emissions were projected using estimates based on the 2009 and 2018 LADCO modeling inventory, using LADCO's growth factors, for all sectors. The 2025 maintenance year inventory is based on emissions estimates from the 2018 LADCO modeling. Table 4 shows the 2008 attainment base year emission estimates and the 2015 and 2025 emission projections for NO_X, direct $PM_{2.5}$ and SO_2 for the Canton-Massillon area that Ohio provided in its April 16, 2012 submission.

TABLE 4—COMPARISON OF 2008, 2015 AND 2025 NO_X, DIRECT $PM_{2.5}$ AND SO_2 EMISSION TOTALS (TPY) FOR THE CANTON-MASSILLON AREA

	SO_2	NO_X	$PM_{2.5}$
2008 (baseline)	906.79	16,227.26	1,257.11
2015	812.89	11,001.32	1,088.72
2025	795.30	7,822.67	912.92
Change 2008–2025	−111.49 12% decrease	−8,404.59 52% decrease	−344.19 27% decrease

Table 4 shows that the Canton-Massillon area reduced NO_X emissions by 8,404.59 tpy between 2008 and the maintenance projection to 2025, direct $PM_{2.5}$ emissions by 344.19 tpy, and reduced SO_2 emissions by 111.49 tpy between 2008 and 2025.

EPA in this proposal is also considering the effect of the Court's remand of EPA's implementation rule, in particular the remand of presumptions against consideration of VOC and ammonia as $PM_{2.5}$ precursors, on requirements for the maintenance plan mandated under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained the 1997 and 2006 $PM_{2.5}$ standard and that the state has shown that attainment of those standards is due to permanent and enforceable emission reductions.

EPA proposes to determine that the state's maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 1997 and 2006 $PM_{2.5}$ standard in the Canton-Massillon area. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013, decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this area. As explained below, based upon documentation provided by the state and supporting information, EPA believes that the maintenance plan for the Canton-Massillon area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the standard.

First, as noted above in EPA's discussion of section 189(e), VOC emission levels in this area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Canton-Massillon area are low, estimated to be less than 1,700 tpy. *See* Table 5 below. This amount of ammonia emissions appears especially small in comparison to the total amounts of NO_X, and VOCs from sources in the area. Both VOC and NO_X are also well controlled in the Canton-Massillon area and have decreased due to permanent and enforceable measures such as RACT rules controlling stationary sources previously approved (75 FR 65572; OAC 3745–17; OAC 3745–110). Additional significant reductions resulted from Federal mobile source standards discussed above, accounting for 3,536 tpy of the NO_X reductions in the area and 665 tpy of $PM_{2.5}$ reductions between 2005 and 2008. Future compliance with mobile source standards is also projected to reduce NO_X by approximately 700 tpy and $PM_{2.5}$ by approximately 200 tpy between 2008 and 2025.

Ohio's maintenance plan shows a projected reduction of NO_X emissions by 8,404.59 tpy between 2008 and the maintenance projection to 2025, direct $PM_{2.5}$ emissions of 344.19 tpy, and reduced SO_2 emissions of 111.49 tpy between 2008 and 2025. *See* Table 4 above. In addition, emissions inventories used in EPA's regulatory impact analysis (RIA) for the 2012 $PM_{2.5}$ NAAQS show that VOC emissions are projected to decrease by 720 tpy, respectively between 2007 and 2020. Ammonia emissions are projected to increase slightly between 2007 and 2020 by 8 tpy, which is expected to have minimal air quality impact, an impact that will be more than compensated by the significant emissions reductions projected in direct $PM_{2.5}$, SO_2, and NO_X. See Table 5. Given that all emissions except ammonia decrease significantly below attainment year levels, providing a large margin of safety, the minimal increase in ammonia would not be expected to impact the areas ability to attain either the 1997 or 2006 $PM_{2.5}$ NAAQS.

TABLE 5—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE CANTON-MASSILLON AREA [1]

	Ammonia			VOCs		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Point	21.29	20.40	−0.89	919.30	901.40	−17.90
Area	1491.50	1564.69	73.20	4825.67	4846.99	21.32
Nonroad	2.66	3.04	0.38	2723.36	1612.89	−1110.47
On-road	148.98	84.33	−64.65	5199.46	1847.15	−3352.30
Fires	1.69	1.69	0.00	24.28	24.28	0.00
Total	1666.11	1674.16	8.04	13692.06	9232.71	−4459.35

[1] These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 $PM_{2.5}$ NAAQS which can be found in the docket.

The current air quality design values for the area are 13.0 and 29 μg/m³ (based on 2010–2012 air quality data), which are well below the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS of 15 and 35 μg/m³. In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The modeling analysis conducted for the RIA for the 2012 $PM_{2.5}$ NAAQS indicates that the design value for this area is expected to continue to decline through 2020. In the RIA analysis, the highest 2020 modeled design value for the Canton-Massillon area is 10.8 μg/m³. Given that NO_X, SO_2, $PM_{2.5}$, and VOC emissions are projected to decrease through 2025, and given that ammonia emissions are expected to remain relatively constant, it is reasonable to conclude that monitored $PM_{2.5}$ levels in this area will continue to decrease through 2025.

Thus, EPA believes that there is ample justification to conclude that the Canton-Massillon area will continue to maintain the standard, even taking into consideration the emissions of other precursors potentially relevant to $PM_{2.5}$. After consideration of the DC Circuit's January 4, 2013, decision, and for the reasons set forth in this notice, EPA proposes to approve the state's maintenance plan and its request to redesignate the Canton-Massillon area to attainment for the $PM_{2.5}$ 1997 annual and 2006 24-hour NAAQS.

As described in section V.3.b of this action, the result of Federal rules and consent decree actions, demonstrate that the reductions in emissions from point, area, and mobile sources in the Canton-Massillon area have occurred and are mandated to continue to occur through

2025 and beyond. Thus the emissions inventories set forth in Table 4 show that the area will continue to maintain the annual $PM_{2.5}$ standard during the maintenance period at least through 2025.

Based on the information summarized above, Ohio has adequately demonstrated maintenance of the $PM_{2.5}$ standard in this area for a period extending in excess of ten years from expected final action on Ohio's redesignation request.

d. Monitoring Network

Ohio's plan includes a commitment to continue working with West Virginia to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. Ohio currently operates three $PM_{2.5}$ monitors in the Canton-Massillon area. West Virginia currently operates three monitors in their portion of the Canton-Massillon area.

e. Verification of Continued Attainment

Ohio remains obligated to continue to quality-assure monitoring data and enter all data into AQS in accordance with Federal guidelines. Ohio will use these data, supplemented with additional information as necessary, to assure that the area continues to attain the standard. Ohio will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions. Both of these actions will help to verify continued attainment in accordance with 40 CFR part 58.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. *See* section 175A(d) of the CAA.

Ohio's contingency measures include a Warning Level Response and an Action Level Response. An initial Warning Level Response is triggered when the average weighted annual mean for one year exceeds 15.5 $\mu g/m^3$. A warning level response for the 2006 24-hour standard shall be prompted whenever the 98th percentile 24-hour $PM_{2.5}$ concentration of 35.5 $\mu g/m^3$ occurs in a single calendar year within the maintenance area. In that case, a study will be conducted to determine if the emissions trends show increases; if action is necessary to reverse emissions increases, Ohio will follow the same procedures for control selection and implementation as for an Action Level Response.

The Action Level Response will be prompted by any one of the following: a Warning Level Response study that shows emissions increases, a weighted annual mean for the 1997 annual standard, or a 98th percentile for the 24-hour standard, over a two-year period that exceeds the standard or a violation of the standard. If an Action Level Response is triggered, Ohio will adopt and implement appropriate control measures within 12 months from the end of the year in which monitored air quality triggering a response occurs.

Ohio's candidate contingency measures include the following:

i. Diesel emission reduction strategies;

ii. Alternative fuels;

iii. Statewide NO_X RACT rules;

iv. Impact crushers at recycle scrap yards using wet suppression;

v. Tighter emission offsets for new and modified major sources;

vi. ICI Boilers—SO_2 and NO_X controls;

vii. Emission controls for:

a. Process heaters;

b. EGUS;

c. Internal combustion engines;

d. Combustion turbines;

e. Other sources > 100 TPY;

f. Fleet vehicles;

g. Concrete manufacturers and;

h. Aggregate processing plants.

Ohio further commits to conduct ongoing review of its data, and if monitored concentrations or emissions are trending upward, Ohio commits to take appropriate steps to avoid a violation if possible. Ohio commits to continue implementing SIP requirements upon and after redesignation.

EPA believes that Ohio's contingency measures, as well as the commitment to continue implementing any SIP requirements, satisfy the pertinent requirements of section 175A(d).

As required by section 175A(b) of the CAA, Ohio commits to submit to the EPA an updated $PM_{2.5}$ maintenance plan eight years after redesignation of the Canton-Massillon area to cover an additional ten year period beyond the initial ten year maintenance period. As required by section 175A of the CAA, Ohio has also committed to retain the $PM_{2.5}$ control measures contained in the SIP prior to redesignation.

For all of the reasons set forth above, EPA is proposing to approve Ohio's 1997 annual and 2006 24-hour $PM_{2.5}$ maintenance plan for the Canton-Massillon area as meeting the requirements of CAA section 175A.

5. Adequacy of Ohio's MVEB

a. How are MVEBs developed and what are the MVEBs for the Canton-Massillon area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for $PM_{2.5}$ nonattainment areas and for areas seeking redesignations to attainment of the $PM_{2.5}$ standard. These emission control strategy SIP revisions (*e.g.,* RFP and attainment demonstration SIP revisions) and maintenance plans create MVEBs based on on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from on-road transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment, RFP or maintenance, as applicable.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan and could also be established for an interim year or years. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, new transportation plans and transportation improvement programs (TIPs) must be evaluated to determine if they conform to the purpose of the area's SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or any required interim milestone. If a transportation plan or TIP does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find adequate and/or approve the MVEBs for use in determining transportation conformity before the MVEBs can be used. Once EPA affirmatively approves and/or finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation plans and TIPs conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve a motor vehicle emissions budget EPA must complete a thorough review of the SIP, in this case the $PM_{2.5}$ maintenance plans, and conclude that the SIP will achieve its overall purpose, in this case providing for maintenance of the 1997 annual $PM_{2.5}$ standard the Canton-Massillon area.

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA taking action on the MVEB. The process for determining the adequacy of submitted SIP MVEBs is codified at 40 CFR 93.118.

The maintenance plan submitted by Ohio for the Canton-Massillon area contains new primary $PM_{2.5}$ and NO_X MVEBs for the area for the years 2015 and 2025. The motor vehicle emissions budgets were calculated using MOVES2010(a). After the adequacy finding and approval of the budgets become effective, the budgets will have to be used in future conformity determinations and regional emissions analyses prepared by the SCATS, will have to be based on the use of MOVES2010a or the most recent version of MOVES required to be used in transportation conformity determinations.[12] The state has determined the 2015 MVEBs for the Canton-Massillon area to be 204.33 tpy for primary $PM_{2.5}$ and 7,782.84 tpy for NO_X. Ohio has determined the 2025 MVEBs for the Canton-Massillon area to be 101.50 tpy for primary $PM_{2.5}$ and 4,673.83 tpy for NO_X. These MVEBs exceed the on-road mobile source primary $PM_{2.5}$ and NO_X emissions projected by the states for 2015 and 2025. Ohio has decided to include ''safety margins'' as provided for in 40 CFR 93.124(a) (described below) of 26.65 tpy and 13.24 tpy for primary $PM_{2.5}$ and 1,015.15 tpy and 609.63 tpy for NO_X in the 2015 and 2025 MVEBs, respectively, to provide for on-road mobile source growth. Ohio did not provide emission budgets for SO_2, VOCs, and ammonia because it concluded, that emissions of these precursors from on-road motor vehicles are not significant contributors to the area's $PM_{2.5}$ air quality problem.

EPA issued conformity regulations to implement the 1997 $PM_{2.5}$ NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005, respectively). Those actions were not part of the final rule recently remanded to EPA by the Court of Appeals for the District of Columbia in *NRDC* v. *EPA,* No. 08–1250 (Jan. 4, 2013), in which the Court remanded to EPA the implementation rule for the $PM_{2.5}$ NAAQS because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4 of part D of title I of the CAA, rather than solely under the general provisions of subpart 1. That decision does not affect EPA's proposed approval of the Canton-Massillon area MVEBs.

In the Canton-Massillon area, the motor vehicle budgets including the safety margins and motor vehicle emission projections for both NO_X and $PM_{2.5}$ are lower than the levels in the attainment year.

EPA has reviewed the submitted budgets for 2015 and 2025 including the added safety margins using the conformity rule's adequacy criteria found at 40 CFR 93.118(e)(4) and the conformity rule's requirements for safety margins found at 40 CFR 93.124(a). EPA has also completed a thorough review of the maintenance plan for the Canton-Massillon area. Based on the results of this review of the budgets and the maintenance plans, EPA is approving the 2015 and 2025 direct $PM_{2.5}$ and NO_X budgets including the requested safety margins for the Canton-Massillon area. Additionally, EPA, through this rulemaking, has found the submitted budgets to be adequate for use to determine transportation conformity in the Canton-Massillon area, because EPA has determined that the area can maintain the 1997 annual $PM_{2.5}$ NAAQS for the relevant maintenance period with on-road mobile source emissions at the levels of the MVEBs including the requested safety margins. These budgets must be used in conformity determinations made on or after the effective date of this direct final rulemaking (40 CFR 93.118(f)(iii)). Additionally, transportation conformity determinations made after the effective date of this notice must be based on regional emissions analyses using MOVES2010a or a more recent version of MOVES that has been approved for use in conformity determinations.[13]

b. What is a safety margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As shown in Table 4, the Canton-Massillon area is projected to have safety margins for NO_X and direct $PM_{2.5}$ of 8,404.59 tpy and 344.19 tpy in 2025 (the difference between the attainment year, 2008, emissions and the projected year of 2025 emissions for all sources in the Canton-Massillon area). The transportation conformity rule allows areas to allocate all or a portion of a ''safety margin'' to the area's motor

[12] EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010, **Federal Register** notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

[13] EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010 **Federal Register** notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

vehicle emissions budgets (40 CFR 92.124(a)). The MVEBs requested by Ohio contain NO_X safety margins for mobile sources in 2015 and 2025 and $PM_{2.5}$ safety margins for mobile sources in 2015 and 2025 are much smaller than the allowable safety margins reflected in the total emissions for the Canton-Massillon area. The state is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the state is requesting MVEBs that exceed the projected on-road mobile source emissions for 2015 and 2025 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the overall $PM_{2.5}$ maintenance demonstration.

Therefore, EPA believes that the requested budgets, including the requested portion of the safety margins, provide for a quantity of mobile source emissions that would be expected to maintain the $PM_{2.5}$ standard. Once allocated to mobile sources, these portions of the safety margins will not be available for use by other sources.

c. What action is EPA taking on the submitted motor vehicle emissions budgets?

EPA, through this rulemaking, has found adequate and is proposing to approve the MVEBs for use to determine transportation conformity in the Canton-Massillon area, because EPA has determined that the area can maintain attainment of the 1997 annual $PM_{2.5}$ NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs including the requested safety margins. These budgets must be used in conformity determinations if this rulemaking goes final. (40 CFR 93.118(f)(iii)) Additionally, the determinations must be based on regional emissions analyses using MOVES2010b or a more recent version of MOVES that has been approved for use in conformity determinations.[14]

6. 2005 and 2008 Comprehensive Emissions Inventory

As discussed above, section 172(c)(3) of the CAA requires areas to submit a comprehensive emissions inventory. Ohio submitted a 2005 inventory and a 2008 base year emissions inventory that meets this requirement. Emissions contained in the submittals cover the general source categories of point sources, area sources, on-road mobile sources, and nonroad mobile sources. Further discussion on the methodology of compiling the emissions inventories can be found in section V.3.b above, and in the docket. Ohio's supplemental submittal of base year emission inventories of VOCs and ammonia are also found in the docket and summarized in Table 6, below.

TABLE 6—SUMMARY OF 2007 BASE YEAR EMISSIONS OF AMMONIA AND VOCS FOR THE CANTON-MASSILLON AREA BY SOURCE TYPE

[tpy]

	Ammonia	VOC
Point	21.29	919.30
Area	1491.50	4825.67
Nonroad	2.66	2723.36
On-road	148.98	5199.46
Total	1666.11	13692.06

All emissions discussed in Tables 2, 3, and 6 above were documented in the docket and the appendices of Ohio's redesignation request and supplemental submittals. EPA has reviewed Ohio's documentation of the emissions inventory techniques and data sources used for the derivation of the 2005, 2007, and 2008 emissions estimates, and has found that Ohio has thoroughly documented the derivation of these emissions inventories. The submittal from the state shows that the 2008 emissions inventory is currently the most complete emissions inventories for $PM_{2.5}$ and $PM_{2.5}$ precursors in the Canton-Massillon area. Based upon EPA's review, we propose to find that the 2005 and 2007/2008 emissions inventories are as complete and accurate as possible given the input data available to Ohio, and we are proposing to approve them under CAA section 172(c)(3).

7. Summary of Proposed Actions

EPA has previously determined that the Canton-Massillon area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is proposing to determine that the Canton-Massillon area continues to attain the 1997 annual and 2006 24-hour $PM_{2.5}$ standard using the latest three years of certified, quality-assured data, and that the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is proposing to approve the request from Ohio to change the legal designation of the Canton-Massillon area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is proposing to approve Ohio's $PM_{2.5}$ maintenance plan for the Canton-Massillon area as a revision to the Ohio SIP because the plan meets the requirements of section 175A of the CAA. EPA is proposing to approve the 2005 and 2008 emissions inventories for primary $PM_{2.5}$, NO_X, and SO_2, documented in Ohio's April 16, 2012, submittal as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA finds adequate and is approving 2015 and 2025 primary $PM_{2.5}$ and NO_X MVEBs for the Canton-Massillon area. These MVEBs will be used in future transportation conformity analyses for the area.

VI. What are the effects of EPA's proposed actions?

If finalized, approval of the redesignation request would change the official designation of the Canton-Massillon area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment. If EPA's proposal is finalized, this action would approve the maintenance plan for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards for the Canton-Massillon area, as well as the 2005 and 2008 emissions inventories included with the redesignation request, as revisions to the Ohio SIP.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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, 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

[14] EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010, **Federal Register** notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Air pollution control, Environmental protection, National Parks, Wilderness.

Dated: July 24, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–18951 Filed 8–6–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2010–0899; FRL–9842–3]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Redesignation of the Chicago Area to Attainment of the 1997 Annual Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant a redesignation request and State Implementation Plan (SIP) revision request submitted by the state of Illinois on October 15, 2010, and supplemented on September 16, 2011, and May 6, 2013. The Illinois Environmental Protection Agency (IEPA) requested EPA to redesignate the Illinois portion of the Chicago-Gary-Lake County, Illinois-Indiana (IL–IN) nonattainment area to attainment of the 1997 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS or standard) and requested EPA approval of Illinois' $PM_{2.5}$ maintenance plan and $PM_{2.5}$-related emission inventories for this area as revisions of the Illinois SIP. The Illinois portion (Chicago area) of this nonattainment area is: Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Aux Sable and Goose Lake Townships in Grundy County, and Oswego Township in Kendall County. EPA is proposing to grant the state's redesignation request and to approve the requested Illinois SIP revisions, including the state's plan for maintaining attainment of the 1997 annual $PM_{2.5}$ NAAQS in this area through 2025. EPA is also proposing to approve Illinois' 2008 and 2025 Nitrogen Oxides (NO_X) and $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for the Chicago area. Finally, EPA is proposing to approve Illinois' 2002 NO_X, Sulfur Dioxide (SO_2), Volatile Organic Compound, ammonia, and primary $PM_{2.5}$ emission inventories for this area. In the context of this proposal to redesignate the Chicago area, EPA addresses a number of additional issues, including the effects of two decisions of the United States Court of Appeals for the District of Columbia (D.C. Circuit or Court): The Court's August 21, 2012, decision to vacate and remand to EPA the Cross-State Air Pollution Rule (CSAPR); and the Court's January 4, 2013, decision to remand to EPA two final rules implementing the 1997 $PM_{2.5}$ standard.

DATES: Comments must be received on or before September 6, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0899, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *EMail: aburano.douglas@epa.gov.*
- *Fax:* (312) 408–2279.
- *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2010–0899. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your

comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects and viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. 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 Edward Doty at (312) 886–6057 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Edward Doty, 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) 886–6057, or *Doty.Edward@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 should I consider as I prepare my comments for EPA?
II. What actions is EPA proposing?
III. What is the background for these actions?
IV. What are the criteria for redesignation to attainment?
V. What is EPA's analysis of the state's request?
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B. Has the Chicago area and the State of Illinois met all applicable requirements of section 110 and part D of the Clean Air Act, and does the Chicago area have a fully approved SIP under section 110(k) of the Clean Air Act for purposes of redesignation to attainment?
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3. Nonattainment Requirements
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b. Proposal on This Issue
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b. VOC and Ammonia Emission Reductions
c. Conclusions Regarding Emission Reductions Between 2002 and 2005 in the Chicago Area
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3. Demonstration of Maintenance
4. Monitoring Network
5. Verification of Continued Attainment
6. Contingency Plan
7. Provision for Future Update of the Annual $PM_{2.5}$ Maintenance Plan
8. CAIR and CSAPR
a. Background—Effect of the August 21, 2012, D.C. Circuit Decision Regarding EPA's CSAPR
b. Maintenance Plan Precursor Evaluation Resulting From Court Decisions
E. Has Illinois adopted acceptable MVEBs for the $PM_{2.5}$ maintenance period?
1. How are MVEBs developed and what are the MVEBs for the Chicago area?
2. What are safety margins?
F. Are the 2002 base year $PM_{2.5}$-related emissions inventories for the Chicago area approvable under section 172(c)(3) of the CAA?
1. EPA's Base Year Emissions Inventory SIP Policy
2. 2002 Base Year $PM_{2.5}$-Related Emission Inventories for the Chicago Area
VI. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified in the proposed rule.

II. What actions is EPA proposing?

EPA is proposing to take several actions related to the redesignation of the Chicago area to attainment of the 1997 annual $PM_{2.5}$ NAAQS. EPA is proposing to determine that the Chicago-Gary-Lake County, IL–IN area has attained the 1997 annual $PM_{2.5}$ NAAQS based on quality assured, certified 2007–2012 air quality data. EPA is proposing to grant the redesignation of the Chicago area to attainment of the 1997 annual $PM_{2.5}$ NAAQS.

EPA proposes to find that Illinois' $PM_{2.5}$ maintenance plan meets the requirements of section 175A of the Clean Air Act (CAA) and is proposing to approve Illinois' $PM_{2.5}$ maintenance plan for the 1997 annual $PM_{2.5}$ NAAQS for the Chicago area as a revision to the Illinois SIP. The $PM_{2.5}$ maintenance plan provides for the maintenance of the 1997 annual $PM_{2.5}$ NAAQS in the Chicago-Gary-Lake County, IL–IN area through 2025. The state of Illinois has committed to revising this maintenance plan to cover an additional 10 years within eight years after EPA approves the redesignation of the Chicago area to attainment of the 1997 annual $PM_{2.5}$ NAAQS.

EPA is proposing to approve Illinois' 2008 and 2025 primary $PM_{2.5}$ (fine

particulates directly emitted by on-road motor vehicles) and NO_X MVEBs for the Chicago area. In addition, EPA is proposing to find these MVEBs as adequate for purposes of transportation and general conformity demonstrations and determinations.

Finally, EPA is proposing to approve Illinois' 2002 primary $PM_{2.5}$, NO_X, SO_2, Volatile Organic Compound (VOC), and ammonia emission inventories for the Chicago area as satisfying the requirement of section 172(c)(3) of the CAA for a current, accurate, and comprehensive emission inventory.

III. What is the background for these actions?

Fine particulate pollution can be emitted directly from a source (primary $PM_{2.5}$) or formed secondarily through chemical reactions in the atmosphere involving precursor pollutants [1] emitted from a variety of sources. Sulfates are a type of secondary fine particulates formed from reactions involving SO_2 emissions from power plants and industrial facilities. Nitrates, another common type of secondary particulate, are formed from combustion emissions of NO_X (primarily Nitrogen Oxide (NO) and Nitrogen Dioxide (NO_2)) from power plants, mobile sources, and other combustion sources.

EPA promulgated the first air quality standards for $PM_{2.5}$ on July 18, 1997, at 62 FR 38652. In this rulemaking, EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$) of ambient air, based on a three-year average of the annual mean $PM_{2.5}$ concentrations at each monitoring site (the site's $PM_{2.5}$ design value for the annual standard). In the same rulemaking, EPA promulgated a 24-hour $PM_{2.5}$ standard at a level of 65 $\mu g/m^3$, based on a three-year average of the annual 98th percentile of 24-hour $PM_{2.5}$ concentrations at each monitoring site.

On January 5, 2005, at 70 FR 944, EPA published air quality area designations for the 1997 annual $PM_{2.5}$ standard based on air quality data for calendar years 2001–2003. In that rulemaking, EPA designated the Chicago-Gary-Lake County, IL–IN area as nonattainment for the 1997 annual $PM_{2.5}$ standard. This area includes the Chicago area in Illinois and Lake and Porter Counties in Indiana.

On October 17, 2006, at 71 FR 61144, EPA retained the annual $PM_{2.5}$ standard at 15 $\mu g/m^3$ (2006 annual $PM_{2.5}$ standard), but revised the 24-hour $PM_{2.5}$ standard to 35 $\mu g/m^3$, based again on the three-year average of the annual 98th percentile of the 24-hour $PM_{2.5}$ concentrations. In response to legal challenges of the 2006 annual $PM_{2.5}$ standard, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). Since the Chicago area is designated as nonattainment for the 1997 annual $PM_{2.5}$ standard, today's proposed action addresses redesignation of this area only for the 1997 annual $PM_{2.5}$ standard.

On November 27, 2009, EPA made a final determination that the Chicago area had attained the 1997 annual $PM_{2.5}$ standard (76 FR 62243). This determination of attainment for the 1997 annual $PM_{2.5}$ standard was based on quality-assured annual-averaged $PM_{2.5}$ concentrations for $PM_{2.5}$ monitoring sites in the Chicago-Gary-Lake County, IL–IN area for the period of 2006–2008. Based on our review of complete, quality-assured, and state-certified ambient $PM_{2.5}$ monitoring data from 2009–2012 in the Chicago-Gary-Lake County, IL–IN area, we are proposing to determine that the Chicago area continues to attain the 1997 annual $PM_{2.5}$ NAAQS.

On October 15, 2010, IEPA submitted a request to EPA for the redesignation of the Chicago area to attainment of the 1997 annual $PM_{2.5}$ NAAQS and for EPA approval of a SIP revision containing emission inventories and a maintenance plan for the area. The maintenance plan also includes 2008 and 2025 MVEBs for the Chicago area. In a supplemental submission to EPA on September 16, 2011, the IEPA revised the on-road mobile source emissions and MVEBs in the original submittal to reflect the use of EPA's MOVES model to calculate mobile source emissions. In a supplemental submission to EPA on May 6, 2013, the IEPA submitted VOC and ammonia emission inventories to supplement the emission inventories that had previously been submitted to explain the attainment of the 1997 annual $PM_{2.5}$ standard in the Chicago-Gary-Lake County, IL–IN area and to demonstrate future maintenance of the $PM_{2.5}$ standard in this area.

In this proposed redesignation, EPA takes into account two recent decisions of the D.C. Circuit. In the first of the two Court decisions, the D.C. Circuit, on August 21, 2012, issued *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), which vacated and remanded Cross-State Air Pollution Rule (CSAPR) and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) ''pending . . . development of a valid replacement.'' *EME Homer City* at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013.[2] In the second decision, on January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Rule (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013).

IV. What are the criteria for redesignation to attainment?

The CAA sets forth the requirements for redesignating a nonattainment area to attainment of a NAAQS. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from the implementation of the applicable SIP, Federal air pollution control regulations and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and, (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

V. What is EPA's analysis of the State's request?

A. Has the area achieved attainment of the 1997 annual $PM_{2.5}$ standard?

In a final rulemaking dated November 27, 2009, at 76 FR 62243, EPA determined that the Chicago-Gary-Lake County, IL–IN area had attained the 1997 annual $PM_{2.5}$ standard. This determination was based on complete, quality-assured monitoring data in this area for the calendar years of 2006–2008.

In its September 16, 2011, redesignation request, Illinois presents

[1] Generally NO_X, SO_2, VOC, ammonia (NH_3), and primary $PM_{2.5}$.

[2] On March 29, 2013, EPA and other parties filed petitions in the Supreme Court seeking *certiorari* of the D.C. Circuit's decision in *EME Homer City.* On June 24, 2013, the Supreme Court consolidated the petitions and granted certiorari. The Supreme Court's decision to grant the petition is not a decision on the merits but instead a decision to review the case on its merits. As such, it does not alter the current status of CAIR or CSAPR. At this time, CAIR remains in place.

quality-assured, state-certified $PM_{2.5}$ data for the period of 2007–2009. These data show that the Chicago-Gary-Lake County, IL–IN area attained the 1997 annual $PM_{2.5}$ standard through 2009.

We have also obtained quality-assured and state-certified data for the states of Illinois and Indiana for 2010, 2011, and 2012. Data recorded in EPA's AQS show that the Chicago-Gary-Lake County, IL–IN area initially attained the 1997 annual $PM_{2.5}$ standard beginning in 2005–2007, and this area has continued to attain this standard through 2012.[3]

Table 1 provides a summary of the $PM_{2.5}$ annual air quality data for the Chicago-Gary-Lake County, IL–IN area for the period of 2007–2012. These data have been quality-assured and certified by the states of Illinois and Indiana.

TABLE 1—$PM_{2.5}$ ANNUAL AVERAGE CONCENTRATIONS FOR THE CHICAGO-GARY-LAKE COUNTY, IL–IN $PM_{2.5}$ NONATTAINMENT AREA

(In μg/m³)

County	Monitoring site	2007	2008	2009	2010	2011	2012
Illinois Monitoring Sites							
Cook	Blue Island	14.3	12.5	11.7	11.6	11.6	10.9
Cook	Chicago—Commonwealth Edison.	14.3	11.9	11.1	12.3	11.3	11.3
Cook	Chicago—Springfield	15.2	12.0	11.3	12.0 (2)	11.5 (2)	11.9
Cook	Chicago—Mayfair	15.5	12.2	12.7	12.6	11.8	11.6
Cook	Chicago—SE Police	14.1	11.8	11.0	12.5	N/A	N/A
Cook	Chicago—Washington.	15.7	12.5	11.6	14.0	12.6	11.5
Cook	Cicero	14.8	13.3 (2)	12.8 (2)	11.9	11.4	10.4
Cook	Des Plaines	12.7	11.4	11.0	10.6	10.6	10.9
Cook	McCook (1)	15.6	12.9	12.6	12.6	12.6	12.6
Cook	Northbrook	13.2	10.1	9.3	9.3	10.2	10.2
Cook	Schiller Park (1)	15.4	13.6 (2)	12.9	12.6	13.3	13.1
Cook	Summit	14.8	12.0	11.6	12.2	11.0	11.3
DuPage	Naperville	13.8	11.3	9.8	11.7	10.5	10.1
Kane	Aurora	13.2	10.3	10.0	11.3	9.8	10.0
Kane	Elgin	14.5	10.8	9.8	11.4	10.8	9.9
Lake	Zion	11.9	9.3	8.8	9.7	N/A	N/A
McHenry	Cary	11.6	10.1	9.6	10.2	10.1	10.1
Will	Braidwood	12.1 (2)	10.3	8.7	10.0	10.4	9.3
Will	Joliet	14.6	11.7	10.5	11.8	10.2	11.1
Indiana Monitoring Sites							
Lake	Franklin School	14.4	12.0	11.3	12.5	11.4	10.7
Lake	Griffith	13.2	11.7	11.0	12.4	11.2	N/A
Lake	Madison Street	14.6	12.3	12.1	12.9	12.1	11.5
Lake	Hammond—Purdue	13.8	11.7	15.9	12.3	11.4	10.6
Lake	Clark High School	13.7	12.4	10.8	11.9	10.7	10.5
Porter	Ogden Dunes	13.8	10.9	11.3	11.6	10.6	9.9

Notes: (1) Annual standard for $PM_{2.5}$ does not apply to these sites due to their proximity to industrial or roadway sources and lack of representation of general population exposure; and (2) the data for these sites and years do not meet data completeness requirements (see a discussion of this issue below).

Table 2 gives the three-year averages of the annual $PM_{2.5}$ concentrations for 2007–2009, 2008–2010, 2009–2011, and 2010–2012 for each of the $PM_{2.5}$ monitoring sites in the Chicago-Gary-Lake County, IL–IN $PM_{2.5}$ nonattainment area.

TABLE 2—THREE-YEAR AVERAGES OF ANNUAL AVERAGE $PM_{2.5}$ CONCENTRATIONS IN THE CHICAGO-GARY-LAKE COUNTY, IL–IN $PM_{2.5}$ NONATTAINMENT AREA

County	Monitoring site	2007–2009	2008–2010	2009–2011	2010–2012
Illinois Monitoring Sites					
Cook	Blue Island	12.8	11.9	11.6	11.4
Cook	Chicago—Commonwealth Edison	12.4	11.8	11.6	11.6
Cook	Chicago—Springfield	12.8	11.8	11.6	11.6
Cook	Chicago—Mayfair	13.5	12.5	12.4	12.0
Cook	Chicago—SE Police	12.3	11.8	N/A	N/A
Cook	Chicago—Washington	13.3	12.7	12.7	12.7
Cook	Cicero	13.1	12.7	12.0	11.2
Cook	Des Plaines	11.7	11.0	10.7	10.7

[3] Preliminary data for 2012 show that the Chicago-Gary-Lake County, IL–IN area continues to attain the 1997 annual $PM_{2.5}$ standard through 2012.

TABLE 2—THREE-YEAR AVERAGES OF ANNUAL AVERAGE $PM_{2.5}$ CONCENTRATIONS IN THE CHICAGO-GARY-LAKE COUNTY, IL–IN $PM_{2.5}$ NONATTAINMENT AREA—Continued

County	Monitoring site	2007–2009	2008–2010	2009–2011	2010–2012
Cook	McCook	13.7	12.7	12.6	12.6
Cook	Northbrook	10.9	9.6	9.6	9.9
Cook	Schiller Park	14.0	13.0	12.9	13.0
Cook	Summit	12.8	11.9	11.6	11.5
DuPage	Naperville	11.6	10.9	10.7	10.8
Kane	Aurora	11.2	10.5	10.4	10.4
Kane	Elgin	11.6	10.7	10.7	10.7
Lake	Zion	10.0	9.3	N/A	N/A
McHenry	Cary	10.4	10.0	10.0	10.1
Will	Braidwood	10.4	9.7	9.7	9.9
Will	Joliet	10.2	11.3	10.8	11.0
Indiana Monitoring Sites					
Lake	Franklin School	11.4	11.9	11.7	11.5
Lake	Griffith	11.2	11.7	11.5	N/A
Lake	Madison Street	12.1	12.4	12.4	12.2
Lake	Hammond—Purdue	11.4	13.3	13.2	11.4
Lake	Clark High School	10.7	11.7	11.1	11.0
Porter	Ogden Dunes	10.6	11.3	11.2	10.7

The data in tables 1 and 2 show that all $PM_{2.5}$ monitors in the Chicago-Gary-Lake County, IL–IN area have recorded $PM_{2.5}$ concentrations attaining the 1997 annual $PM_{2.5}$ standard during the most recent three years of quality-assured, state-certified of $PM_{2.5}$ data collection. As noted above, however, the $PM_{2.5}$ data for several sites in table 1 need further discussion.

First, under 40 CFR 58.30(a)(1), for monitoring sites with data that are representative of relatively unique, generally localized concentrations, the data are compared only to the 24-hour $PM_{2.5}$ NAAQS, and not to the annual $PM_{2.5}$ NAAQS. Illinois has two sites, McCook and Schiller Park, that the IEPA believes are not representative of exposure for the general populace due to the proximity of these sites to localized industrial or roadway sources. EPA is not judging whether this designation is appropriate. The applicable regulation, at 40 CFR 58.30(a)(2), recognizes that some microscale sites collect data that are representative of multiple locations with localized high concentrations, and provides in these cases that the data are appropriate for comparison to the annual $PM_{2.5}$ standard. The Schiller Park site is near a major highway, and the site may be representative of multiple locations in the Chicago area that have similar proximity to major highways. For this reason, Table 1 above includes annual mean $PM_{2.5}$ concentrations for this site. In any case, this site shows annual mean $PM_{2.5}$ concentrations that meet the 1997 annual $PM_{2.5}$ standard.

With regard to the McCook monitoring site, we agree with the IEPA that this is a monitoring site that is located near a localized industrial source and produces $PM_{2.5}$ concentrations that are not generally representative of exposure for the general populace on a long-term basis. As such, in keeping with 40 CFR 58.30(a)(1), the annual mean $PM_{2.5}$ concentrations at this site should not be compared to the 1997 annual $PM_{2.5}$ standard when judging the attainment status of the Chicago-Gary-Lake County, IL–IN area. In any case, this site also shows annual mean $PM_{2.5}$ concentrations that meet the 1997 annual $PM_{2.5}$ standard.

EPA concludes that no violation of the 1997 annual $PM_{2.5}$ standard has been recorded in the Chicago-Gary-Lake County, IL–IN area for any three-year period during 2007–2012. For the reasons discussed above, EPA proposes to determine that the Chicago-Gary-Lake County, IL–IN area has attained the 1997 annual $PM_{2.5}$ standard.

Illinois commits to continue monitoring $PM_{2.5}$ in the Chicago area according to an EPA-approved monitoring plan, as required to confirm and assure maintenance of the 1997 annual $PM_{2.5}$ standard in this area. If changes in the $PM_{2.5}$ monitoring system become necessary, IEPA will work with EPA to ensure the continued adequacy of the monitoring system. Illinois will continue to quality-assure the monitoring data to meet the requirements of 40 CFR part 58.

B. Has the Chicago area and the State of Illinois met all applicable requirements of section 110 and part D of the Clean Air Act, and does the Chicago area have a fully approved SIP under section 110(k) of the Clean Air Act for purposes of redesignation to attainment?

We are proposing to find that Illinois has met all currently applicable SIP requirements for the purposes of redesignation of the Chicago area under section 110 of the CAA (general SIP requirements). We are also proposing to find that the Illinois SIP meets all SIP requirements currently applicable for purposes of redesignation under part D of title I of the CAA, in accordance with section 107(d)(3)(E)(v) of the CAA. We are proposing to find that all applicable requirements of the Illinois SIP, for purposes of redesignation, have been implemented, in accordance with section 107(d)(3)(E)(ii) of the CAA. As discussed below, in this section, EPA is proposing to approve Illinois' 2002 NO_X, SO_2, and $PM_{2.5}$ emissions inventory and 2007 VOC and ammonia emissions inventory as meeting the section 172(C)(3) requirement for a comprehensive emissions inventory.

In making these proposed determinations, we have ascertained which SIP requirements are applicable for purposes of redesignation, and have concluded that there are SIP measures meeting these requirements and that they are approved or will be approved by the time of final rulemaking on the State's $PM_{2.5}$ redesignation request.

1. Illinois Has Met All Applicable Requirements for Purposes of Redesignation of the Chicago Area Under Section 110 and Part D of the Clean Air Act

a. Section 110 General SIP Requirements

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and, among other things, must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; (4) include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; (5) include criteria for stationary source emission control measures, monitoring and reporting; (6) include provisions for air quality modeling; and (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. However, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's designation and classification. EPA believes that the requirements linked with an area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements are not applicable requirements for purposes of redesignation.

Further, we believe that section 110(a)(2) elements other than those described above that are not connected with nonattainment plan submissions and that are not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements regardless of an area's designation and after the area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with an area's designation and classification are the relevant measures which we must consider in evaluating a redesignation request. This approach is consistent with EPA's policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996) and (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion of this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 3780, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed the Illinois SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable to the state's request for redesignation. EPA has previously approved provisions of the Illinois SIP addressing section 110 requirements, including provisions addressing particulate matter, at 40 CFR 52.720. In a submittal dated December 12, 2007, Illinois addressed infrastructure SIP elements required under section 110(a)(2) of the CAA for $PM_{2.5}$ under the 1997 annual $PM_{2.5}$ standard. EPA approved this submittal on August 12, 2011, at 76 FR 41075. The requirements of section 110(a)(2), however, are statewide SIP requirements that are not linked to the $PM_{2.5}$ nonattainment status of the Chicago area. Therefore, EPA believes that these infrastructure elements are not applicable requirements for purposes of review of the state's $PM_{2.5}$ redesignation request.

b. Part D Requirements

EPA has determined that, if EPA approves the base year emissions inventories, discussed in section V.F below, the Illinois SIP will meet the SIP requirements applicable for purposes of redesignation under part D of the CAA for the Chicago area.

Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable for nonattainment areas.

Subpart 1 Section 172 Requirements

The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) of the CAA. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the state plans for all nonattainment areas to provide for the implementation of Reasonably Available Control Measures (RACM) as expeditiously as practicable. EPA interprets this requirement to impose a duty on all states with nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in these areas as components of the areas' attainment demonstrations (the attainment demonstrations must address RACM). Because attainment of the 1997 annual $PM_{2.5}$ NAAQS has been achieved in the Chicago-Gary-Lake County, IL–IN area, no additional RACM measures are needed to provide for attainment, and the section 172(c)(1) requirements are no longer considered to be applicable as a prerequisite for approval of Illinois' redesignation request, provided the area continues to attain the standard until the redesignation of the Chicago area occurs. See 40 CFR 51.1004(c).

Section 172(c)(2) requires plans for all nonattainment areas to provide for reasonable further progress (RFP) toward attainment of the NAAQS. This requirement is not relevant for purposes of redesignation because the Chicago-Gary-Lake County, IL–IN area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS (General Preamble, 57 FR 13564). See also 40 CFR 51.1009. In addition, because the Chicago-Gary-Lake County, IL–IN area has attained the 1997 annual $PM_{2.5}$ NAAQS, the requirement for RFP under section 172(c)(2), as well as the requirement for contingency measures under section 172(c)(9), is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and EPA approval of a comprehensive, accurate and current inventory of actual emissions. Illinois submitted a 2002 base year emissions inventory for primary $PM_{2.5}$, NO_X, and SO_2 in June 2006, and documented this emissions inventory in a June 2006 publication titled ''Illinois Base Year Particulate Matter and Haze Inventory for 2002''. As discussed below in section V.F, EPA is proposing to approve Illinois' 2002 base year emission inventories as meeting the section 172(c)(3) emission inventory requirement for the Chicago area.

Section 172(c)(4) requires the identification and quantification of emissions for major new and modified

stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources in the nonattainment area. EPA approved Illinois NSR program [4] on December 17, 1992 (57 FR 59928), September 27, 1995 (60 FR 49780), and May 13, 2003 (68 FR 25504). Further, EPA has determined that, since PSD requirements [5] will apply after redesignation, the Chicago area and the state of Illinois need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the state demonstrates maintenance of the NAAQS without implementation of part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, titled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment'' (Nichols memorandum). Illinois has demonstrated that the Chicago-Gary-Lake County, IL–IN area will be able to maintain the 1997 annual $PM_{2.5}$ standard without the continued implementation of the state's part D NSR program. Therefore, EPA concludes that Illinois need not have a fully approved part D NSR program as an applicable requirement for approval of the state's redesignation request. The state's PSD program will become effective in the Chicago area upon redesignation to attainment of the 1997 $PM_{2.5}$ standard. See redesignation rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and, Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain emission control measures necessary to provide for attainment of the standard. Because attainment has been reached in the Chicago area, no additional measures are needed to provide for attainment of the standard.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, in section V.B.1.a, we conclude that the Illinois SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

[4] The NSR program controls the growth and permitting of major source emissions in nonattainment areas.

[5] PSD requirements control the growth of new source emissions in areas designated as attainment for a NAAQS.

Subpart 1 Section 176(c)(4)(D) Conformity SIP Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities including highway projects, conform to the air quality planning goals of the SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code and the Federal Transit Act (transportation conformity), as well as to all other federally-supported or funded projects (general conformity). State conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to section 175A maintenance plans. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall v. EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749–62750 (December 7, 1995) (Tampa, Florida).

EPA approved Illinois' general conformity SIP on December 23, 1997 (62 FR 67000). Illinois does not have a Federally-approved transportation conformity SIP. However, Illinois performs conformity analyses pursuant to EPA's Federal conformity rules. Illinois has submitted on-road mobile source emission budgets for the Chicago area of 5,100 tons per year (TPY) of primary $PM_{2.5}$ and 127,951 TPY of NO_X for 2008 and 2,377 TPY of primary $PM_{2.5}$ and 44,224 TPY of NO_X for 2025, respectively. Illinois must use these MVEBs in any conformity determination that is effective on or after the effective date of the $PM_{2.5}$ maintenance plan approval and effective date of EPA's approval of the redesignation of the Chicago area to attainment of the 1997 annual $PM_{2.5}$ standard.

2. The Chicago Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of Illinois's comprehensive 2002 emissions inventories, EPA will have fully approved the Illinois SIP for the Chicago area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA may rely on prior SIP approvals when rulemaking on a redesignation request (See page 3 of the September 4, 1992, John Calcagni memorandum titled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni memorandum); *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)), plus any additional measures it may approve in conjunction with a redesignation action. See 68 Fr 25413, 25426 (May 12, 2003).

Since the passage of the CAA in 1970, Illinois has adopted and submitted, and EPA has fully approved, SIP provisions addressing various required SIP elements under the particulate matter standards. In this action, EPA is proposing to approve Illinois's 2002 base year emissions inventories for the Chicago area as meeting the requirement of section 172(c)(3) of the CAA for the 1997 annual $PM_{2.5}$ standard.

3. Nonattainment Requirements

No Illinois SIP provision applicable for redesignation of the Chicago area is currently disapproved, conditionally approved or partially approved.

4. Effect of the January 4, 2013, D.C. Circuit Decision Regarding $PM_{2.5}$ Implementation Under Subpart 4 of the CAA

a. Background

As discussed above, on January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule''). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1

of part D of title I of the CAA, rather than to the particulate matter-specific provisions of subpart 4 of part D of title I.

b. Proposal on This Issue

In this portion of the redesignation proposed rule, EPA addresses the effect of the Court's January 4, 2013 ruling on the proposed redesignation. As explained below, EPA is proposing to determine that the Court's January 4, 2013, decision does not prevent EPA from redesignating the Chicago area to attainment. Even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to Illinois' redesignation request and disregards the provisions of its 1997 $PM_{2.5}$ implementation rule recently remanded by the Court, the state's request for redesignation of this area still qualifies for approval. EPA's discussion takes into account the effect of the Court's ruling on the Chicago area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

i. Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the 1997 $PM_{2.5}$ Implementation Rule, the Court's January 4, 2013, ruling rejected EPA's reasons for implementing the $PM_{2.5}$ NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 $PM_{2.5}$ NAAQS under subpart 4 of part D of the CAA, in addition to subpart 1. For the purposes of evaluating Illinois' redesignation request for the Chicago area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not ''applicable'' for the purposes of CAA section 107(d)(3)(E), and, thus, EPA is not required to consider subpart 4 requirements with respect to the Chicago area redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* Calcagni memorandum. *See also* ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statute is ''whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment'').[6] In this case, at the time that Illinois submitted its redesignation request, requirements under subpart 4 were not due, and indeed, were not yet known to apply.

EPA's view that, for purposes of evaluating the Chicago area redesignation, the subpart 4 requirements were not due at the time the state submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone nonattainment areas redesignated subsequent to the D.C. Circuit's decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). In *South Coast,* the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that ''applicable requirements'', for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.,* Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA, therefore, did not consider subpart 2 requirements to be ''applicable'' for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of CAA Section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet ''all requirements 'applicable' to the area under section 110 and part D''. Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the ''applicable'' SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of ''applicable'' as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arise after the states submit their redesignation requests, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If ''applicable requirements'' were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting redesignation requests, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation requests beyond the 18-month timeframe provided by the Act for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area, for which a redesignation request has been submitted, would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require,

[6] Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the Court's January 4, 2013, decision in *NRDC* v. *EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. The state submitted its redesignation request on October 15, 2010, but the Court did not issue its decision remanding EPA's 1997 $PM_{2.5}$ Implementation Rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require the state's fully-completed and pending redesignation request to comply now with requirements of subpart 4 that the Court announced only in January 2013, would be to give retroactive effect to such requirements when the state had no notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002),[7] where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it ''would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.'' *Id.* at 68. Similarly, it would be unreasonable to penalize the state of Illinois by rejecting its redesignation request for an area that is already attaining the 1997 $PM_{2.5}$ standard and that met all applicable requirements known to be in effect at the time of the redesignation request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements, of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club* v. *Whitman.*

ii. Subpart 4 Requirements and Illinois' Redesignation Request

Even if EPA were to take the view that the Court's January 4, 2013, decision requires that, in the context of pending redesignations, subpart 4 requirements were due and in effect at the time the state submitted its redesignation request, EPA proposes to determine that the Chicago area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Chicago area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Chicago area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contain general air quality planning requirements for areas designated as nonattainment. *See* Section 172(c). Subpart 4, itself, contains specific planning and scheduling requirements for PM_{10}[8] nonattainment areas, and under the Court's January 4, 2013, decision in *NRDC v. EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See,* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (the ''General Preamble''). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM–10 requirements.'' 57 FR 13538 (April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify additional requirements which would apply under subpart 4, we are considering the Chicago area to be a ''moderate'' $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated as nonattainment areas under subpart 4 would initially be classified by operation of law as ''moderate'' nonattainment areas, and would remain as moderate nonattainment areas unless and until EPA reclassifies the areas as ''serious'' nonattainment areas. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impacts of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) an approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM_{10}, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose, for redesignation purposes, any additional requirements for moderate areas beyond those contained in subpart 1.[9] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment NSR program is not considered an applicable requirement for redesignation, provided that the area can maintain the standard with a PSD program after redesignation. A detailed rationale for this view is described in the Nichols memorandum. *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,[10] when EPA evaluates a redesignation request under either subpart 1 and/or subpart 4, any area that is attaining the $PM_{2.5}$ standard is viewed as having satisfied the attainment planning requirements for these

[7] *Sierra Club* v. *Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n* v. *EPA.* 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

[8] PM_{10} refers to particulates nominally 10 micrometers in diameter or smaller.

[9] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation request is discussed below.

[10] I.e., attainment demonstration, RFP, RACM, milestone requirements, and contingency measures.

subparts. For redesignations, EPA has, for many years, interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

> The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, 'therefore, have no meaning at that point.

''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990''; (57 FR 13498, 13564, April 16, 1992). The General Preamble also explained that:

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

Id.

EPA similarly stated in its 1992 Calcagni memorandum that, ''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

It is evident that, even if we were to consider the Court's January 4, 2013, decision in *NRDC v. EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively [11] and, thus, are now past due, those requirements do not apply to an area that is attaining the 1997 $PM_{2.5}$ standard, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret ''applicable requirements'' in the redesignation context. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior ''Clean Data Policy'' rulemakings for the PM_{10} NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* ''Determination of Attainment for Coso Junction Nonattainment Area,'' (75 FR 27944, May 19, 2010). *See also* Coso Junction proposed PM_{10} redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context, has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this notice, EPA proposes to determine that the area has attained the 1997 $PM_{2.5}$ standard. Under its longstanding interpretation, EPA is proposing to determine here that the area meets the attainment-related plan requirements of subparts 1 and 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation request.

iii. Subpart 4 and Control of $PM_{2.5}$ Precursors

The D.C. Circuit in *NRDC v. EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA, in this section, addresses the Court's opinion with respect to $PM_{2.5}$ precursors. While past implementation of subpart 4 for PM_{10} has allowed for control of PM_{10} precursors, such as NO_X from major stationary, mobile, and area sources, in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that control requirements for major stationary sources of direct PM_{10} shall also apply to PM_{10} precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

EPA's 1997 $PM_{2.5}$ implementation rule, remanded by the D.C. Circuit, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures.'' EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court, in its January 4, 2013, decision, made reference to both section 189(e) and 40 CFR 51. 1002, and stated that, ''In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.'' *NRDC v. EPA,* at 27, n.10.

Elsewhere in the Court's opinion, however, the Court observed:

> Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].

Id. at 21, n.7. For a number of reasons, EPA believes that its proposed redesignation of the Chicago area is consistent with the Court's decision on this aspect of subpart 4. First, while the Court, citing section 189(e), stated that ''for a PM_{10} area governed by subpart 4, a precursor is 'presumptively regulated,'" the Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ implementation rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as $PM_{2.5}$ precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area

[11] As EPA has explained above, we do not believe that the Court's January 4, 2013, decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club* v. *Whitman, supra.*

to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the Chicago area, EPA believes that doing so is consistent with proposing redesignation of the area for the 1997 $PM_{2.5}$ standard. The Chicago area has attained the 1997 $PM_{2.5}$ standard without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM_{10} precursors.[12] Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of major stationary sources of ammonia and VOC. Thus, we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the area for the 1997 $PM_{2.5}$ standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOC under other CAA requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). 57 FR 13542. EPA, in this proposal, proposes to determine that the SIP has met the provisions of section 189(e) with respect to ammonia and VOC as precursors. This proposed supplemental determination is based on our findings that: (1) The Chicago area contains no major stationary sources of ammonia; and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[13] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the area, which is attaining the 1997 annual $PM_{2.5}$ standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 $PM_{2.5}$ standard in this area. *See* 57 FR 13539–13542.

EPA notes that its 1997 $PM_{2.5}$ Implementation Rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for ''presumptive regulation'' of ammonia and VOC for the control of $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring Illinois to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10} contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.[14] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[15] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Chicago area has already attained the 1997 $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude, in the context of this redesignation, that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Illinois' request for redesignation of the Chicago area. In the context of a redesignation, the area has shown that it has attained the standard. Moreover, the state has shown and EPA has proposed to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, decision of the Court as precluding redesignation of the Chicago area to attainment for the 1997 $PM_{2.5}$ NAAQS at this time.

In sum, even if Illinois were required to address precursors for the Chicago area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded 1997 $PM_{2.5}$ Implementation Rule, EPA would still conclude that the area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3(E)(ii) and (v).

C. Are the air quality improvements in the Chicago-Gary-Lake County, IL–IN Area due to permanent and enforceable emission reductions?

Section 107(d)(3)(E)(iii) of the CAA requires the state to demonstrate that the improvement in air quality is due to permanent and enforceable emission reductions. EPA finds that Illinois has demonstrated that the observed $PM_{2.5}$ air quality improvement in the Chicago-Gary-Lake County, IL–IN area is due to permanent and enforceable emission reductions. In making this demonstration, Illinois first determined and documented the change in primary $PM_{2.5}$, NO_X, and SO_2 emissions in the Chicago-Gary-Lake County, IL–IN area between 2002 (a standard-violation year) and 2008 (an attainment year). Illinois demonstrated that the reduction in emissions and the corresponding improvement in air quality over the intervening period (2002–2008) can be attributed to a number of regulatory control measures that have been implemented in the Chicago-Gary-Lake County, IL–IN area and in surrounding contributing areas in the recent years.

[12] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

[13] The Chicago area has reduced VOC emissions through the implementation of various control programs including VOC RACT regulations and various on-road and non-road motor vehicle control programs.

[14] *See, e.g.,* ''Approval and Promulgation of Implementation Plans for California-San Joaquin Valley PM–10 Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM–10 Standards,'' 69 FR 30006 (May 26, 2004) (approving a PM_{10} attainment plan that imposed controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or ammonia emissions).

[15] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.,* 423 F.3d 989 (9th Cir. 2005).

1. Permanent and Enforceable Controls

The following is a discussion of the permanent and enforceable measures that have been implemented in the Chicago area and in upwind areas.

a. Federal Emission Control Measures

Reductions in $PM_{2.5}$ precursor emissions have occurred statewide in Illinois and in upwind areas as a result of the following Federal emission control measures, with additional emission reductions expected in the future. Federal emission control measures include the following.

i. Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards

40 CFR part 86, subpart S. These emission control requirements result in lower VOC, NO_X, and SO_2 emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO_X emission reductions will occur nationwide: passenger cars (light duty vehicles), 77 percent; light duty trucks, minivans, and sports utility vehicles, 86 percent; and, larger sports utility vehicles, vans, and heavier trucks, 69 to 95 percent. VOC emission reductions will be approximately 12 percent for passenger cars, 18 percent for smaller sports utility vehicles, light trucks, and minivans, and 15 percent for larger sports utility vans, and heavier trucks. Some of the emission reductions resulting from new vehicle standards occurred during the 2008–2010 attainment period; however, additional emission reductions will continue to occur throughout the maintenance period as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006.

ii. Heavy-Duty Diesel Engine Rule

EPA issued this rule on January 18, 2001 (66 FR 5002). This rule went into effect in 2004 and includes standards limiting the sulfur content of diesel fuel. A second phase took effect in 2007 and resulted in reduced $PM_{2.5}$ emissions from heavy-duty highway diesel engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The full implementation of this rule is estimated to achieve a 90 percent reduction in direct $PM_{2.5}$ emissions (including direct emissions of sulfates) and a 95 percent reduction of NO_X emissions for new engines using low sulfur diesel fuel, compared to existing engines using higher sulfur content fuel. The reductions in fuel sulfur content occurred by the 2008–2010 attainment period. Some of the emissions reductions resulting from new vehicle standards also occurred during the 2008–2010 attainment period; however, additional emission reductions will continue to occur throughout the maintenance period as the fleet of older heavy-duty diesel engines turns over. This rule will also lower SO_2 emissions from engines using the low sulfur diesel fuel, resulting in lower $PM_{2.5}$ concentrations; however, EPA has not estimated the level of this emission reduction and the level of its impact on $PM_{2.5}$ concentrations.

iii. Non-Road Diesel Engine Standards

On June 29, 2004 (69 FR 38958), EPA promulgated a rule to establish emission standards for large non-road diesel engines, such as those used in construction, agriculture, or mining operations, and to regulate the sulfur content in non-road diesel fuel. The engine emission standards in this rule are to be phased in between 2008 and 2014. This rule reduced the allowable sulfur content in non-road diesel fuel by over 99 percent. Prior to 2006, non-road diesel fuel averaged approximately 3,400 ppm in sulfur content. This rule limited non-road diesel fuel content to 500 ppm starting in 2007, with a further reduction to 15 ppm starting in 2010. The combined engine standards and fuel sulfur content limits reduce NO_X and $PM_{2.5}$ emissions (including direct emissions of sulfates) from large non-road diesel engines by over 90 percent compared to pre-control non-road engines using the higher sulfur content fuel. This rule achieved all of the reductions in fuel sulfur content by 2010. Some emission reductions from the new engine emission standards were realized over the 2008–2010 period; although most of the engine emission reductions will occur during the maintenance period as the fleet of non-road diesel engines turns over.

iv. Non-Road Spark-Ignition Engines and Recreational Engine Standards

On November 8, 2002 67 FR 68243), EPA promulgated emission standards for groups of previously unregulated non-road engines. These engines include large spark-ignition engines, such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines, such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and, recreational marine diesel engines. Emission standards for large spark-ignition engines were implemented in two tiers, with Tier I starting in 2004 and Tier 2 starting in 2007. Recreational vehicle emission standards were phased in from 2004 through 2012. Marine diesel engine standards were phased in from 2006 through 2009.

With full implementation of all of the non-road spark-ignition engine and recreational engine standards, an overall 72 percent reduction in VOC, 80 percent reduction in NO_X, and 56 percent reduction in carbon monoxide (CO) emissions are expected by 2020. Some of these emission reductions occurred by the 2008–2010 attainment period, and additional emission reductions will occur during the maintenance period as the fleets turn over.

b. Control Measures Statewide in Illinois and in Upwind Areas

Due to the significance of sulfates and nitrates as components of $PM_{2.5}$ in the Chicago-Gary-Lake County, IL–IN area, the $PM_{2.5}$ air quality in this area is strongly affected by regulation of SO_2 and NO_X emissions from power plants in areas upwind of the Chicago-Gary-Lake County, IL–IN area. The emission control regulations impacting the upwind area include the following.

i. NO_X SIP Call

On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X from Electric Generating Units (EGUs), large industrial boilers, and cement kilns. Affected states were required to comply with Phase I of the SIP call beginning in 2004, and with Phase II beginning in 2007. NO_X emission reductions resulting from regulations developed in response to the NO_X SIP call are permanent and enforceable. The state of Illinois and other nearby upwind states, including Michigan, Indiana, and Kentucky were subject to the NO_X SIP call.

ii. Clean Air Interstate Rule (CAIR) and Cross-State Air Pollution Rule (CSAPR)

EPA proposed CAIR on January 30, 2004, at 69 FR 4566, promulgated CAIR on May 12, 2005, at 70 FR 25162, and promulgated associated Federal Implementation Plans (FIPs) on April 28, 2006, at 71 FR 25328, in order to reduce SO_2 and NO_X emissions and improve air quality in areas across Eastern United States. However, on July 11, 2008, the D.C. Circuit vacated and remanded both CAIR and the associated CAIR FIPs in their entirety. See *North Carolina* v. *EPA,* 531 F.3d 836 (D.C. Cir. 2008). EPA petitioned for a rehearing, and the D.C. Circuit issued an order remanding CAIR and the CAIR FIPs to

EPA without vacatur. See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008). The D.C. Circuit, thereby, left CAIR in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaced it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to ''remedy CAIR's flaws'' consistent with the July 11, 2008 opinion, but declined to impose a schedule on EPA for completing this action. *Id.*

EPA promulgated CSAPR (76 FR 48208, August 8, 2011) to replace CAIR. See 76 FR 59517. As noted above, CAIR requires significant reductions in emissions of SO_2 and NO_X from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. See 76 FR 70093.

On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR ''pending the promulgation of a valid replacement.'' *EME Homer City,* 696 F.3d at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court. On June 24, 2013, the U.S. Supreme Court granted the petitions for certiorari. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion until the U.S. Supreme Court issues its decision.

In light of these unique circumstances and for the reasons explained below, to the extent that attainment is due to emission reductions associated with CAIR, EPA is here proposing to determine that these emission reductions are sufficiently permanent and enforceable for purposes of CAA section 107(d)(3)(E)(iii) (and for purposes of assessing maintenance of the 1997 annual $PM_{2.5}$ standard in the Chicago-Gary-Lake County, IL–IN area, as discussed below, for CAA section 175A).

c. Consent Decrees

Two petroleum refineries, the CITGO and Exxon Mobil refineries, have units subject to Best Available Retrofit Technology (BART) requirements for purposes of achieving reduced haze levels: The CITGO refinery in Lemont, Illinois and the Exxon Mobil refinery south of Joliet, Illinois. Both refineries will be required to reduce emissions by a Federal consent decree resolving an enforcement action brought by EPA against a number of refineries. The consent decrees require the CITGO and Exxon Mobil refineries (and other refineries in Illinois) to operate controls at the Best Available Control Technology (BACT) level. Illinois evaluated the subject-to-BART units at the CITGO and Exxon Mobil refineries in the consent decree. It found that the NO_X and SO_2 emission limits for these units satisfy BART.

A consent decree between the United States and CITGO Petroleum Corporation was entered in the U.S. District Court for the Southern District of Texas on October 6, 2004 (No. H–04–3883). The consent decree requires the company to operate Selective Catalytic Reduction (SCR) and a wet scrubbing system at its Fluid Catalytic Cracking Unit (FCCU) that will reduce NO_X emissions by more than 90 percent and SO_2 emissions by 85 percent. The controls on the FCCU are expected to result in a reduction of NO_X emissions from 1,065.7 to 106.6 TPY and SO_2 emissions from 10,982.5 to 107.9 TPY by 2013. CITGO has also added a tail gas recovery unit that reduces SO_2 emissions from its sulfur train units from 4340.0 to 91.2 TPY, a 98 percent reduction. The emission controls on all units at CITGO's Lemont refinery will reduce NO_X emissions by 1,268 TPY and SO_2 emissions by 15,123 TPY.

A consent decree between the United States and Exxon Mobil Corporation was entered in the U.S. District Court for the Northern District of Illinois on October 11, 2005 (No. O5–C–5809). The consent decree for Exxon Mobil requires SCR operation on its FCCU in addition to maintenance of the existing wet scrubbing system. The controls on the FCCU result in a 1,636.2 TPY decrease in NO_X emissions from 1,818.0 to 181.8 TPY and a 9,667.7 TPY decrease in SO_2 emissions from 9,865.0 to 197.3 TPY. Exxon Mobil has also added a tail gas recovery unit on its south sulfur recovery unit. That unit reduces SO_2 emissions by 9,153.8 TPY to 186.8 TPY. The emission controls at Exxon Mobil's Joliet refinery will reduce NO_X emissions by 1,695 TPY and SO_2 emissions by 18,821 TPY.

These two consent decrees are Federally enforceable and also require that the refineries submit permit applications to Illinois to incorporate the required emission limits into Federally enforceable air permits (other than Title V). Therefore, emission limits established by the consent decrees may be relied upon by Illinois for addressing the BART requirement for these facilities and for crediting toward the reduction of $PM_{2.5}$ levels in the Chicago area and maintenance of the 1997 annual $PM_{2.5}$ standard in the Chicago-Gary-Lake County, IL–IN area.

2. Emission Reductions

a. Illinois' Demonstration That Significant Emission Reductions Have Occurred in the Chicago-Gary-Lake County, IL–IN Area and In Upwind Areas

To demonstrate that significant emission reductions have resulted in attainment, Illinois compared the Chicago area NO_X, SO_2, and primary $PM_{2.5}$ emissions for 2002 with those of 2008. As noted above, the 2008 emissions represent those for a year in which the Chicago-Gary-Lake County, IL–IN area was attaining the 1997 annual $PM_{2.5}$ standard (2008 is the middle year of the 2007–2009 period in which the Chicago-Gary-Lake County, IL–IN area initially attained the 1997 annual $PM_{2.5}$ standard), and 2002 represents a year in which the Chicago-Gary-Lake County, IL–IN area was violating this standard.

The derivation of the 2002 (base year) emissions is discussed in more detail below in section V.F. The derivation of the 2008 (attainment year) emissions is discussed in more detail here.

The 2008 emissions were based on actual source activity levels. The point source emissions were compiled from Illinois' 2008 Annual Emissions Reports (AERs) submitted to the IEPA by individual source facilities. Area source emissions were calculated using the most recently available emission calculation methodologies, emission factors developed by EPA, and activity data (population, employment, fuel use, etc.) specific to 2008. On-road mobile source emissions were calculated using EPA's MOVES emissions model with 2008 Vehicle Miles Traveled (VMT) data provided by the Illinois Department of Transportation (IDOT). Off-road mobile source emissions were calculated using either EPA's NONROAD emission model (for all non-road sources except commercial marine vessels, locomotives, and aircraft) or information supplied by contractors (for marine vessels, locomotives, and aircraft). Biogenic emissions were not included in the emission inventories since these emissions are assumed to remain constant over time (biogenic emissions are not included in the 2002, 2008, 2015, and 2025 emissions summarized in this proposed rule).

The 2002 and 2008 Chicago area emissions (covering only the Illinois portion of the Chicago-Gary-Lake County, IL–IN area) are summarized in tables 3 through 5 below. All emissions are in units of TPY. All summarized emissions are documented in Illinois' August 17, 2011 ''Maintenance Plan for the Chicago Nonattainment Area for the

1997 $PM_{2.5}$ National Ambient Air Quality Standards (Revised).''

TABLE 3—COMPARISON OF 2002 AND 2008 NO_X EMISSION TOTALS FOR THE CHICAGO AREA BY SOURCE SECTOR

(TPY)

Source sector	2002	2008	Net change 2002–2008
Point Sources	54,050	35,939	−18,111
Area Sources	32,325	32,318	−7
On-Road Mobile Sources	187,632	127,951	−59,681
Off-Road Mobile Sources	87,426	51,184	−36,242
Total	361,433	247,391	−114,042

TABLE 4—COMPARISON OF 2002 AND 2008 PRIMARY $PM_{2.5}$ EMISSION TOTALS FOR THE CHICAGO AREA BY SOURCE SECTOR

(TPY)

Source sector	2002	2008	Net change 2002–2008
Point Sources	2,757	3,859	1,102
Area Sources	22,356	9,189	−13,167
On-Road Mobile Sources	6,573	5,100	−1,473
Off-Road Mobile Sources	4,834	3,653	−1,181
Total	36,520	21,800	−14,720

TABLE 5—COMPARISON OF 2002 AND 2008 SO_2 EMISSION TOTALS FOR THE CHICAGO AREA BY SOURCE SECTOR

(TPY)

Source sector	2002	2008	Net change 2002–2008
Point Sources	121,598	90,706	−30,892
Area Sources	3,290	4,109	819
On-Road Mobile Sources	4,472	537	−3,935
Off-Road Mobile Sources	3,743	779	−2964
Total	133,103	96,130	−36,973

Tables 3 through 5 show that NO_X, SO_2, and primary $PM_{2.5}$ emissions in the Chicago area have decreased significantly between 2002 and 2008.

In addition to the local $PM_{2.5}$ precursor emission reductions, we believe that regional NO_X and SO_2 emission reductions resulting from the implementation of EPA's Acid Rain Program (ARP) (see 40 CFR parts 72 through 78), NO_X SIP call, and CAIR have significantly contributed to the $PM_{2.5}$ air quality improvement in the Chicago-Gary-Lake County, IL–IN area. To assess the change in regional emissions from states believed to significantly contribute to annual $PM_{2.5}$ concentrations in the Chicago-Gary-Lake County, IL–IN area, we have considered statewide NO_X and SO_2 emissions from EGUs reported for 2002 and 2008 in EPA's ARP/CAIR database. To limit the number of states considered, we have selected those states with emissions that have been modeled to have significantly contributed to elevated $PM_{2.5}$ concentrations in Cook County, Illinois (a modeling receptor site considered to be representative of the regional transport into the Chicago-Gary-Lake County, IL–IN area. Table 6 summarizes statewide NO_X and SO_2 emissions for EGUs previously summarized in the proposed rule for the redesignation of Lake and Porter Counties, Indiana to attainment of the 1997 annual $PM_{2.5}$ standard. See 76 FR 59600, 59608–59609, September 27, 2011.

TABLE 6—STATEWIDE EGU EMISSIONS FOR 2002 AND 2008

(TPY)

State	NO_X			SO_2		
	2002	2008	Percent reduction	2002	2008	Percent reduction
Illinois	174,246	119,930	31.2	353,699	257,357	27.2
Indiana	281,146	190,092	32.4	778,868	565,459	27.4
Iowa	78,956	49,023	37.9	127,847	109,293	14.5
Kentucky	198,598	157,903	21.4	482,653	344,356	28.7
Michigan	132,623	107,623	18.9	342,998	326,500	4.8

TABLE 6—STATEWIDE EGU EMISSIONS FOR 2002 AND 2008—Continued

(TPY)

State	NO_X			SO_2		
	2002	2008	Percent reduction	2002	2008	Percent reduction
Minnesota	86,663	60,230	30.5	101,285	71,926	29.0
Ohio	370,497	235,049	36.6	1,132,069	709,914	37.3
Pennsylvania	200,909	183,658	8.6	889,765	831,914	6.5
Wisconsin	88,970	47,794	46.3	181,256	129,693	32.1
Total	1,612,708	1,151,302	28.6	4,400,440	3,346,412	24.0

As can be seen in table 6, the implementation of CAIR resulted in significant reductions in regional, statewide NO_X and SO_2 emissions from EGUs in the states EPA finds are contributing significantly to the annual $PM_{2.5}$ concentrations in the Chicago-Gary-Lake County, IL–IN area. Since CAIR remains in place until EPA can replace it with an acceptable new region-wide emissions control rule, we believe these emission reductions to be permanent and enforceable.

Based on the information summarized above, primary $PM_{2.5}$ and precursor $PM_{2.5}$ emissions (SO_2 and NO_X) have significantly decreased between 2002 and 2008 in the Chicago area and in states with EGU emissions significantly impacting the annual $PM_{2.5}$ concentrations in the Chicago area.

b. VOC and Ammonia Emission Reductions

For several reasons, we believe that VOC emission reductions in the Chicago area and in upwind states have also contributed to the observed improvement in annual $PM_{2.5}$ concentrations in the Chicago area and in the Chicago-Gary-Lake County, IL–IN area as a whole. In addition, for several reasons, we also believe that changes in ammonia emissions have not significantly impacted the observed annual $PM_{2.5}$ concentrations in these areas.

First, as noted elsewhere in this proposed rule in EPA's discussion of section 189(e) of the CAA, VOC emissions in the Chicago area have historically been well-controlled under SIP requirements related to ozone and other pollutants.[16] Second, total ammonia emissions throughout the Chicago area are very low, estimated to be 9,885.71 TPY in 2002. See table 12 below. This amount of ammonia emissions appears especially small in comparison to the total amounts of SO_2, NO_X, and even direct $PM_{2.5}$ emissions in the area in 2002. Third, as described below, available information shows that no $PM_{2.5}$ precursor, including VOC and ammonia, is expected to increase over the maintenance period so as to interfere with or undermine the state's maintenance demonstration.

c. Conclusions Regarding Emission Reductions Between 2002 and 2005 in the Chicago Area

In summary, emissions data provided by the state support the conclusion that significant reductions in the emissions of SO_2, NO_X, primary $PM_{2.5}$, and VOC occurred in the Chicago area between 2002 and 2008. During the same period, emissions of ammonia are believed to have had minimal impact on $PM_{2.5}$ concentrations in the Chicago area. We believe that the emission reductions of the significant $PM_{2.5}$ precursors and primary $PM_{2.5}$ in the Chicago area and in upwind states are responsible for the observed improvement in annual $PM_{2.5}$ concentrations in the Chicago-Gary-Lake County, IL–IN area. For the reasons set forth above, we conclude that the attainment of the 1997 annual $PM_{2.5}$ standard in the Chicago area can be explained on the basis of permanent and enforceable emission reductions within the Chicago area and in the states regulated by CAIR.

D. Does Illinois have a fully approvable $PM_{2.5}$ maintenance plan pursuant to section 175A of the CAA for the Chicago area?

In conjunction with Illinois' request to redesignate the Chicago area to attainment of the 1997 annual $PM_{2.5}$ standard, IEPA submitted a SIP revision to provide for maintenance of the 1997 annual $PM_{2.5}$ standard in the Chicago-Gary-Lake County, IL–IN area through 2025. This maintenance plan demonstrates that emissions in the Chicago area will remain at or below the attainment levels throughout the maintenance period and provides for corrective action should the 1997 annual standard be violated or threatened in the Chicago-Gary-Lake County, IL–IN area during the maintenance period. The following summarizes the details of the maintenance plan and maintenance demonstration.

1. What is required in a maintenance plan?

Sections 107(d)(3)(E)(iv) and 175A of the CAA require that states demonstrate that the areas to be redesignated will continue to meet the $PM_{2.5}$ NAAQS for at least 10 years after EPA approves the redesignations of the areas to attainment of the NAAQS. Section 175A of the CAA sets forth the required elements of a maintenance plan. Under section 175A, a state must also commit to submit a revised maintenance plan within eight years of redesignation to provide for maintenance of the standard for an additional 10 years after the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation, as EPA deems necessary, to assure prompt correction of any future violations of the standard.

The September 4, 1992, Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following items: (1) The attainment emission inventories; (2) a maintenance demonstration showing maintenance of the standard for the 10 years of the maintenance period; (3) a commitment to maintain the existing monitoring network; (4) the factors and procedures to be used for verification of continued attainment of the standard; and (5) a contingency plan to prevent or correct future violations of the standard.

[16] For a thorough discussion of VOC emission controls and estimates (2002 and 2008) and projected (2015, 2020, and 2025) VOC emission levels (summertime emissions) in the Chicago area, see EPA's proposed rule for the redesignation of the Chicago area to attainment of the 1997 8-hour ozone standard (77 FR 6743, February 9, 2012). We observe here that the estimated/projected summertime VOC emission reductions in the Chicago area also generally reflect reductions in annual emissions of VOC in this area.

2. Attainment Inventory

As noted above, IEPA developed NO_X, SO_2, and primary $PM_{2.5}$ emission inventories for 2008, one of the years used to demonstrate monitored attainment of the 1997 annual $PM_{2.5}$ standard. The 2008 emissions are summarized in tables 3 through 5 above.

3. Demonstration of Maintenance

Along with the redesignation request, IEPA submitted a maintenance plan dated August 17, 2011, which includes a demonstration of maintenance for the Chicago area, as required by section 175A of the CAA. This demonstration shows maintenance of the 1997 annual $PM_{2.5}$ standard through 2025 by showing that current and future emissions of NO_X, SO_2, and primary $PM_{2.5}$ emissions for the Chicago area will remain at or below attainment year emission levels. A maintenance demonstration may be based on such an emissions inventory approach. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Illinois used emission projections for 2015, 2020, and 2025 to demonstrate maintenance. For each of the applicable $PM_{2.5}$ precursors (pollutants), IEPA prepared emission estimates for the same source sectors used by IEPA for the 2008 attainment year. IEPA assumed biogenic emissions to remain constant, and did not consider them in the maintenance demonstration analysis.

IEPA used EPA's MOVES mobile source model and projected traffic levels and other related mobile source factors to estimate on-road mobile source emissions for the maintenance demonstration years. The projected on-road mobile source emissions assume the continued use of reformulated gasoline, the continued phase-in of the Tier 2 motor vehicle emission standards, and the operation of an enhanced vehicle inspection and maintenance program in the Chicago area. Total VMT for 2015, 2020, and 2025 were derived by assuming that the VMT will increase at a rate of 1.5 percent per year after 2008. The 2008 and 2025 on-road mobile source emissions were used to establish MVEBs for the Chicago area. See the additional discussion of the MVEBs in section V.E of this proposed rule.

Chicago area point and area source emissions for 2015, 2020, and 2025 were estimated using the 2008 attainment year emissions and growth factors appropriate for each source category. Off-road emission projections were developed using the growth factors contained in EPA's NONROAD model.

Tables 7 through 9 summarize the projected NO_X, SO_2, and primary $PM_{2.5}$ emissions for 2008, 2015, 2020, and 2025 by source sector.

TABLE 7—COMPARISON OF 2008, 2015, 2020, AND 2025 NO_X EMISSIONS BY SOURCE SECTOR (TPY) FOR THE CHICAGO AREA

Source sector	2008	2015	2020	2025	Net change 2008–2025
Point Sources	35,939	27,082	28,500	29,638	−6,301
Area Sources	32,318	32,997	33,277	33,687	1,369
On-Road Mobile	127,951	68,491	40,599	38,456	−89,495
Off-Road Mobile	51,184	35,927	28,271	27,173	−24,011
Totals	247,391	164,497	130,648	128,954	−118,437

TABLE 8—COMPARISON OF 2008, 2015, 2020, AND 2025 SO_2 EMISSIONS BY SOURCE SECTOR (TPY) FOR THE CHICAGO AREA

Source sector	2008	2015	2020	2025	Net change 2008–2025
Point Sources	90,706	58,092	53,452	56,310	−34,396
Area Sources	4,109	4,266	4,332	4,407	298
On-Road Mobile	537	504	477	488	−49
Off-Road Mobile	779	866	919	1,215	436
Totals	96,130	63,727	59,180	62,420	−33,710

TABLE 9—COMPARISON OF 2008, 2015, 2020, AND 2025 PRIMARY $PM_{2.5}$ EMISSIONS BY SOURCE SECTOR (TPY) FOR THE CHICAGO AREA

Source sector	2008	2015	2020	2025	Net change 2008–2025
Point Sources	3,859	4,169	4,391	4,604	745
Area Sources	9,189	9,676	10,009	10,377	1,188
On-Road Mobile	5,100	3,071	2,119	2,067	−3,033
Off-Road Mobile	3,653	2,995	2,398	2,267	−1,386
Totals	21,800	19,911	18,918	19,316	−2,484

Comparison of the 2008 and projected 2015, 2020, and 2025 emissions demonstrates that future NO_X, SO_2, and primary $PM_{2.5}$ emissions through 2025 will remain below the 2008 levels in the Chicago area.

In a September 27, 2011 proposed rulemaking (76 FR 59600, 59610) for the redesignation of Lake and Porter Counties, Indiana (the Indiana portion of the Chicago-Gary-Lake County, IL–IN area) to attainment of the 1997 annual

$PM_{2.5}$ standard, we also evaluated the 2008, 2015, 2020, and 2025 emissions for the entire Chicago-Gary-Lake County, IL–IN area. Table 10 repeats the summary of the area's emission totals as documented in the September 27, 2011 proposed rule.

TABLE 10—CHICAGO-GARY-LAKE COUNTY, IL–IN AREA 2008 AND PROJECTED EMISSION TOTALS

[TPY]

Year	NO_X	SO_2	Primary $PM_{2.5}$
2008	278,649.74	152,367.68	32,069.68
2015	187,557.31	107,285.55	25,128.65
2020	156,231.26	98,829.89	24,729.26
2025	149,198.79	99,453.24	25,074.10

Tables 7 through 10 show that emissions will remain at or below 2008 emission levels in the Chicago area and in the Chicago-Gary-Lake County, IL–IN area through 2025. Therefore, the state has demonstrated maintenance of the 1997 annual $PM_{2.5}$ standard for a period extending ten years and beyond from the time EPA may be expected to complete rulemaking on the state's $PM_{2.5}$ redesignation request.

4. Monitoring Network

Illinois commits to continue monitoring $PM_{2.5}$ levels according to the EPA-approved monitoring plan, as required to ensure maintenance of the 1997 annual $PM_{2.5}$ standard. If changes are needed in the $PM_{2.5}$ monitoring network, the IEPA will work with the EPA to ensure the adequacy of the monitoring network.

5. Verification of Continued Attainment

Continued attainment of the 1997 annual $PM_{2.5}$ standard in the Chicago area and in the Chicago-Gary-Lake County, IL–IN area depends, in part, on the state's efforts toward tracking indicators of continued attainment during the maintenance period. Illinois' plan for verifying continued attainment of the standard in these areas consists of continued ambient $PM_{2.5}$ monitoring in accordance with the requirements of 40 CFR part 58 and continued tracking of emissions through periodic updates of $PM_{2.5}$, SO_2 and NO_X emissions inventories for the Chicago area, as required by the Federal Consolidated Emission Reporting Rule (codified at 40 CFR 51 subpart A).

6. Contingency Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the state will promptly correct a violation of the NAAQS that might occur after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were controlled through the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Illinois has adopted a contingency plan for the Chicago area to address possible future violations of the 1997 annual $PM_{2.5}$ standard. The contingency plan provides for two levels of action. A Level I response would be triggered whenever: (1) The highest monitored $PM_{2.5}$ concentration in any year at any monitoring station in the Chicago maintenance area exceeds 15 $\mu g/m^3$; or (2) the Chicago maintenance area's total $PM_{2.5}$, SO_2 or NO_X emissions increase more than 5 percent above the 2008 emissions. A Level I trigger will result in an evaluation of current $PM_{2.5}$ air quality and/or emission trends to determine if adverse emission trends are likely to continue. If so, Illinois will determine what and where controls may be required, as well as level of emissions reductions needed, to avoid a violation of the NAAQS. The study will be completed within 9 months. If necessary, control measures will be adopted within 18 months of determination of the Level I triggering and implemented as expeditiously as practicable, taking into consideration the ease of implementation and the technical and economic feasibility of the selected measures.

A Level II response will be triggered if a violation of the 1997 annual $PM_{2.5}$ standard occurs at any monitoring station in the Chicago maintenance area. If triggered, Illinois will conduct an analysis to determine appropriate measures to address the cause of the violation. Analysis will be completed within six months. Selected control measures will be implemented within 18 months of the violation. Potential control measures contained in Illinois' contingency plan include the following:

- Illinois' Multi-Pollutant Program for EGUs
- NO_X RACT
- Best Available Retrofit Technology (BART)
- Broader geographic applicability of existing control measures
- Tier 2 vehicle standards and low sulfur fuel standard
- Heavy duty diesel standards and low sulfur diesel fuel standard
- High-enhanced vehicle inspection/maintenance (On-board Diagnostics II (OBDII))
- Federal railroad/locomotive standards
- Federal commercial marine vessel engine standards
- Architectural/Industrial Maintenance (AIM) coatings
- Commercial and consumer products rules
- Aerosol coating rules, and
- Portable fuel container rules.

Note that some of these rules are Federal rules and are already being implemented. If a future violation of the 1997 annual $PM_{2.5}$ occurs, IEPA will analyze the future emission reduction potential from these rules to determine if these future emission reductions will be sufficient to mitigate the $PM_{2.5}$ air quality problem.

EPA believes that Illinois' contingency plan satisfies the pertinent requirements of section 175A of the CAA.

7. Provision for Future Update of the Annual $PM_{2.5}$ Maintenance Plan

As required by section 175A(b) of the CAA, Illinois commits to submit to EPA an updated maintenance plan eight years after EPA redesignates the Chicago area to attainment of the 1997 annual standard. The revised maintenance plan is intended to cover an additional 10-year period beyond the initial 10-year maintenance period. As required by section 175A of the CAA, Illinois has also committed to retain and implement

the emission control measures contained in the maintenance plan. If changes are needed in the control measures, Illinois commits to submit these changes to EPA as requested SIP revisions and to demonstrate that these emission control measure revisions will not interfere with the maintenance of the 1997 annual $PM_{2.5}$ standard in the Chicago-Gary-Lake County, IL–IN area.

Finally, the state affirms that Illinois has the legal authority to implement and enforce the requirements of the maintenance plan pursuant to the Illinois Environmental Protection Act.

8. CAIR and CSAPR

a. Background—Effect of the August 21, 2012, D.C. Circuit Decision Regarding EPA's CSAPR

EPA recently promulgated CSAPR (76 FR 48208, August 8, 2011) to replace CAIR, which has been in place since 2005. See 76 FR 59517. CAIR requires significant reductions in emissions of SO_2 and NO_X from EGUs to limit the interstate transport of these pollutants and the ozone and $PM_{2.5}$ they form in the atmosphere. See 76 FR 70093. The D.C. Circuit initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded that rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008).

CSAPR included regulatory changes to sunset (i.e., discontinue) CAIR and CAIR FIPs for control periods in 2012 and beyond. See 76 FR 48322. Although the Chicago area redesignation request and Illinois' $PM_{2.5}$ maintenance plan rely on emission reductions associated with CAIR, EPA is proposing to approve the redesignation request and $PM_{2.5}$ maintenance plan based, in part, on the fact that CAIR is to remain in place until it is replaced by an acceptable interstate transport control rule.

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City* (No. 11–1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

As discussed above, on August 21, 2012, the D.C. Circuit issued the decision in *EME Homer City* to vacate and remand CSAPR and ordered EPA to continue administrating CAIR ''pending . . . development of a valid replacement.'' *EME Homer City* at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court. On June 24, 2013, the U.S. Supreme Court granted the petitions for certiorari. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion until the U.S Supreme Court issues its decision.

In light of these unique circumstances and for the reasons explained below, to the extent that attainment and maintenance is due to emission reductions associated with CAIR, EPA is here determining that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A.

As directed by the D.C. Circuit, CAIR remains in place and enforceable until EPA promulgates a valid replacement rule to substitute for CAIR. As noted above, the Chicago area $PM_{2.5}$ redesignation request and maintenance plan relies on the emission reductions from CAIR. Illinois adopted CAIR emission control rules in 2007 and required compliance with these rules in two phases, one with compliance required by 2009, and the final phase with compliance required by 2015. CAIR was, thus, in place and getting emission reductions when the Chicago-Gary-Lake County, IL–IN area was monitoring attainment of the 1997 annual $PM_{2.5}$ standard during the 2008–2011 period.

To the extent that Illinois is relying on CAIR in its maintenance plan to support continued attainment into the future, the recent directive from the D.C. Circuit in *EME Homer City* ensures that the emission reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule to address interstate transport to replace CSAPR and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until EPA has promulgated a final rule through a notice-and- comment rulemaking process, states have had an opportunity to draft and submit SIPs in response to it, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating FIPs if appropriate. The Court's clear instruction to EPA is that it must continue to administer CAIR until a valid replacement exists, and thus EPA believes that CAIR emission reductions many be relied upon until the necessary actions are taken by EPA and states to administer CAIR's replacement. Furthermore, the Court's instruction provides an additional backstop: by definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate any significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Moreover, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR ''might be more severe now in light of the reliance interests accumulated over the intervening four years.'' *EME Homer City,* 696 F.3d at 38. The accumulated reliance interests include the interests of states that reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for regulatory purposes, such as redesignations. Following promulgation of the replacement rule for CSAPR, EPA will review existing SIPs as appropriate to identify whether there are any issues that need to be addressed.

b. Maintenance Plan Precursor Evaluation Resulting From Court Decisions

In this proposal EPA is also considering the impact of the D.C. Circuit Court's decision in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv) of the CAA. EPA believes that the only additional consideration related to the maintenance plan requirements that results from the D.C. Circuit Court's decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this area. Based on documentation provided by the state and supporting information, EPA believes that the maintenance plan for the Chicago area

need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the standard.

Emissions inventories used in the Regulatory Impact Analysis (RIA) (EPA–452/R–12–005, December 2012) for the 2012 $PM_{2.5}$ NAAQS show that VOC and ammonia emissions in the Chicago area are projected to decrease by 59,126 TPY and 583 TPY, respectively between 2007 and 2020. See table 11 below. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that these downward trends would not continue through 2025. Given that the Chicago-Gary-Lake County, IL–IN area is already attaining the 1997 annual $PM_{2.5}$ standard, even with the current levels of VOC and ammonia emissions in the Chicago area, the downward trends in VOC and ammonia would be consistent with continued attainment of the 1997 annual $PM_{2.5}$ standard. Even if ammonia emissions were to increase unexpectedly between 2020 and 2025, the overall emission reductions projected in SO_2, NO_X, primary $PM_{2.5}$, and VOC would be sufficient to offset the increase in annual $PM_{2.5}$ concentrations resulting from the increase in ammonia emissions. For these reasons, EPA believes that local ammonia (and VOC) emissions will not increase to the extent that they will cause monitored $PM_{2.5}$ levels to violate the 1997 annual $PM_{2.5}$ standard during the maintenance period.

TABLE 11—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSIONS TOTALS BY SOURCE SECTOR (TPY) FOR THE CHICAGO AREA BASED ON RIA EMISSIONS ESTIMATES FOR THE 2012 $PM_{2.5}$ NAAQS

Source sector	VOC			Ammonia		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Fires	442	442	0	31	31	0
Area	109,052	107,202	−1,850	8,865	9,135	270
Non-Road Mobile	46,784	25,007	−21,777	58	71	13
On-Road Mobile	53,688	19,133	−34,555	2,525	1,363	−1,162
Point	16,101	15,157	−944	332	628	296
Totals	226,067	166,941	−59,126	11,811	11,228	−583

E. Has Illinois adopted acceptable MVEBs for the $PM_{2.5}$ maintenance period?

1. How are MVEBs developed and what are the MVEBs for the Chicago area?

Under section 176(c) of the CAA, transportation plans and Transportation Improvement Programs (TIPs) must be evaluated for conformity with SIPs. Consequently, Illinois's $PM_{2.5}$ redesignation request and maintenance plan provide MVEBs, conformance with which will assure that motor vehicle emissions are at or below levels that can be expected to provide for attainment and maintenance of the 1997 annual $PM_{2.5}$ standard. Illinois' redesignation request includes mobile source emission budgets for NO_X and primary $PM_{2.5}$ for 2008 and 2025. Table 12 shows the 2008 and 2025 MVEBs and 2025 ''safety margins'' (see discussion below) for the Chicago area. Table 12 also shows the estimated 2008 and 2025 mobile source emissions for the Chicago area. Illinois did not provide MVEBs for SO_2 because it concluded, consistent with EPA's presumptions regarding this $PM_{2.5}$ precursor, that emissions of this pollutant from motor vehicles are not significant contributors to the Chicago area's $PM_{2.5}$ air quality problem.

TABLE 12—2008 AND 2025 MOTOR VEHICLE EMISSION BUDGETS FOR THE CHICAGO AREA

[TPY]

Year	Estimated emissions		Safety margin		Motor vehicle emission budgets	
	Primary $PM_{2.5}$	NO_X	Primary $PM_{2.5}$	NO_X	Primary $PM_{2.5}$	NO_X
2008	5,100	127,951	—	—	5,100	127,951
2025	2,067	38,456	310	5,768	2,377	44,224

Table 12 shows substantial decreases in on-road mobile source NO_X and primary $PM_{2.5}$ emissions from 2008 to 2025. These emission reductions are expected because newer vehicles subject to more stringent emission standards are continually replacing older, higher emitting vehicles. EPA is proposing to approve the 2008 and 2025 MVEBs for the Chicago area into the SIP because, based on our review of the submitted $PM_{2.5}$ maintenance plan, we have determined that the maintenance plan and MVEBs meet EPA's criteria found in 40 CFR 93.118(e)(4) for determining that MVEBs are adequate for use in transportation conformity determinations and are approvable because, when considered together with the submitted maintenance plan's projected emissions, they provide for maintenance of the 1997 annual $PM_{2.5}$ standard in the Chicago-Gary-Lake County, IL–IN area.

2. What are safety margins?

As noted in table 12, Illinois has included safety margins in the 2025 MVEBs. A safety margin is the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions which would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance or a portion thereof (40 CFR 93.124(a)). The safety margins selected by IEPA would provide for a 15 percent increase in mobile source emissions for 2025 above projected levels of these emissions. These safety margins are acceptable under EPA's transportation conformity requirements because they would not cause the total emissions in

the Chicago area to exceed the attainment year levels.

F. Are the 2002 base year $PM_{2.5}$-related emissions inventories for the Chicago area approvable under section 172(c)(3) of the CAA?

Section 172(c)(3) of the CAA requires states to submit a comprehensive, accurate, and current inventory of emissions for nonattainment areas. For $PM_{2.5}$ nonattainment areas, states have typically submitted primary $PM_{2.5}$, SO_2, and NO_X emission inventories covering one of the years of the three-year period used to determine the nonattainment status of an area. For the 1997 annual $PM_{2.5}$ standard, the annual $PM_{2.5}$ concentrations for the years of 2001–2003 were used to establish the nonattainment status of areas. Illinois chose to submit $PM_{2.5}$ emissions for 2002 for purposes of meeting the requirements of section 172(c)(3) of the CAA. Illinois documented these emissions and submitted this documentation to EPA in June 2006.

1. EPA's Base Year Emissions Inventory SIP Policy

EPA's SIP policy for base year emissions inventories for the 1997 annual $PM_{2.5}$ standard is specified in three policy statements. EPA's main SIP requirements for a base year $PM_{2.5}$-related emissions inventory are specified in section II.K of EPA's April 25, 2007 implementation rule for the 1997 annual $PM_{2.5}$ standard (72 FR 20586, 20647). This rule requires the base year emissions inventory to be approved by the EPA as a SIP element (72 FR 20647), and requires the emissions inventory to cover the emissions of NO_X, SO_2, VOC, ammonia, and primary $PM_{2.5}$ (72 FR 20648). The coverage of $PM_{2.5}$ precursor emissions and emissions of primary $PM_{2.5}$ (primary $PM_{2.5}$ is also a precursor for secondary $PM_{2.5}$ formation through atmospheric reactions) is required under 40 CFR part 51 subpart A and 40 CFR 51.1008 (72 FR 20648). Detailed emissions inventory guidance for $PM_{2.5}$ (and other pollutants) is contained in EPA's ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'' (August 2005, EPA–454/R–05–001). Finally, a November 18, 2002 policy memorandum titled ''2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, $PM_{2.5}$ and Regional Haze Programs'' recommends that the $PM_{2.5}$-based emissions inventory be developed for a base year of 2002. It is noted that IEPA has generally followed all of these guidelines in the development of the base year emissions inventory for the $PM_{2.5}$ SIP.

2. 2002 Base Year $PM_{2.5}$-Related Emission Inventories for the Chicago Area

Illinois documented the 2002 primary $PM_{2.5}$, NO_X, SO_2, VOC, ammonia, and CO emissions in a June 2006 document titled ''Illinois Base Year Particulate Matter and Haze Inventory for 2002.'' This document covers emissions for the entire state of Illinois, and summarizes the emissions by source type and major source category for the $PM_{2.5}$ nonattainment areas of Chicago and Metro-East St. Louis.

Emissions data for point, area, on-road mobile, off-road mobile, and biogenic emission sources were developed for the 2002 emissions inventories by the IEPA. The primary sources of data for point sources were AERs submitted by individual source facilities and source permit files. The June 2006 emissions document covers in detail the derivation of emissions for each source type identified as a point source. Table 3–1 (page 34) of Illinois' June 2006 document includes the point source emission totals by county for each of the $PM_{2.5}$ nonattainment areas. The Chicago area point source emission totals are summarized in table 13 below.

Area source emissions were generally derived by multiplying source category-specific emission factors by certain indicator levels of source activity (source surrogates), such as county populations, employment estimates, and commodity sales estimates. The emission estimation techniques for each source category are thoroughly documented in the June 2006 document. The June 2006 document estimates the county-specific emissions by pollutant and by source type.

As discussed above, IEPA used EPA's NONROAD model to estimate 2002 off-road mobile source emissions for all non-road mobile source types except: (1) Railroad locomotives; (2) aircraft operations (including aircraft auxiliary power units, landings, takeoffs, and other aircraft operating modes); and, (3) commercial marine vessels. For the three source types not covered by NONROAD modeling, Illinois obtained source activity data and emissions from the Lake Michigan Air Directors Consortium, who contracted with several consultants to derive emissions specific to the Chicago, Metro-East St. Louis and remaining areas in the state of Illinois.

IEPA used emission factors generated from EPA's MOBILE6 computer model and VMT and vehicle speeds by roadway facility type (or functional class), freeway, arterial, etc., supplied by the local planning agency (Chicago Area Transportation Study and IDOT for the Chicago area) to estimate 2002 on-road mobile source emissions. IEPA also used vehicle age and type distribution data supplied by IDOT. The vehicle activity information was derived for each county to allow the determination of emissions by county. IEPA summed up VMT and vehicle emissions for each month of 2002 to determine annual on-road mobile source emissions by county. All MOBILE6 inputs and VMT levels were thoroughly documented. In addition to on-road emissions, IEPA also calculated stage II refueling (refueling of vehicles) emissions for the Chicago area.

Table 13 (taken from Table B–1 in Appendix B of IEPA's June 2006 document shows the 2002 primary $PM_{2.5}$ and $PM_{2.5}$ precursor emissions totals by major source category for the Chicago area.

TABLE 13—2002 FINE PARTICULATE AND PRECURSOR EMISSIONS FOR THE CHICAGO AREA (TPY) DOCUMENTED IN ILLINOIS' JUNE 2006 $PM_{2.5}$ EMISSIONS DOCUMENTATION

Soure type	Ammonia	NO_X	Primary $PM_{2.5}$	SO_2	VOC
Point Sources	143.70	54,049.62	2,766.61	121,597.92	21,190.70
Area Sources	3,708.77	32,302.14	22,356.04	3,290.25	89,090.21
On-Road Mobile Sources	5,986.95	167,619.73	3,070.58	3,850.04	59,599.97
Off-Road Mobile Sources	46.29	87,426.24	4,834.30	3,742.62	53,272.30
Totals	9,885.71	341,397.73	33,027.53	132,480.83	223,153.18

After IEPA compiled the June 2006 document, IEPA revised the 2002 on-road mobile source emissions using EPA's MOVES mobile source emissions model. The derivation of the 2008 on-road mobile source emissions using MOVES is documented in the August 17, 2011, draft of IEPA's maintenance plan for the Chicago area. In this same document, IEPA indicates that the 2002 base year on-road mobile source emissions were recalculated using the same techniques. The 2002 emissions (including the MOVES-based on-road mobile source emissions) for the Chicago area are summarized in tables 3, 4, and 5 above.

We find that the state has thoroughly documented the 2002 emissions for primary $PM_{2.5}$ and $PM_{2.5}$ precursors in the Chicago area. We also find that Illinois has used acceptable techniques and supporting information to derive these emissions. Therefore, we are proposing to approve Illinois' 2002 base year emissions inventory for the Chicago area for purposes of meeting the emission inventory requirements of section 172(c)(3) of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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, these actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these proposed actions:

- Are not ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because a determination of attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 22, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–18948 Filed 8–6–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 42

[FAR Case 2012–028; Docket 2012–0028; Sequence 1]

RIN 9000–AM40

Federal Acquisition Regulation; Contractor Comment Period, Past Performance Evaluations

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement provisions of law limiting the periods allowed for contractor comments on past performance evaluations and making past performance evaluations available to source selection officials sooner.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before October 7, 2013 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2012–028 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2012–028''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2012–028''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2012–028'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite FAR Case 2012–028, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement

Analyst, at 202–501–1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2012–028.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 853 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013) and section 806 of the NDAA for FY 2012 (Pub. L. 112–81, enacted December 31, 2011, 10 U.S.C. 2302 Note). Section 853, entitled ''Inclusion of Data on Contractor Performance in Past Performance Databases for Executive Agency Source Selection Decisions'', and section 806, entitled ''Inclusion of Data on Contractor Performance in Past Performance Databases for Source Selection Decisions'', require revisions to the acquisition regulations on past performance evaluations so that contractors are provided ''up to 14 calendar days . . . from the date of delivery'' of past performance evaluations ''to submit comments, rebuttals, or additional information pertaining to past performance'' for inclusion in the database. In addition, paragraph (c) of both sections 853 and 806 requires that agency evaluations of contractor performance, including any information submitted by contractors, be ''included in the relevant past performance database not later than the date that is 14 days after the date of delivery of the information'' (section 853(c)) to the contractor.

II. Discussion and Analysis

The FAR addresses Governmentwide rules for past performance evaluations at FAR subpart 42.15, Contractor Performance Information. The Contractor Performance Assessment Reporting System (CPARS) processes the assessment and provides it to the Past Performance Information Retrieval System (PPIRS), so agency source selection officials can review the reports. CPARS provides an automatic notification to the contractor when a past performance evaluation has been submitted to the system and is available for contractor comment. This is the equivalent of ''providing'' the past performance evaluation to the contractor, and it starts the suspense period for contractor comment or rebuttal.

It is important for past performance information to be shared with source selection officials immediately, so that award decisions can be better informed and made in a more timely manner. Currently, however, FAR 42.1503(b) provides ''a minimum of 30 days'' for contractor comments, rebutting statements, or additional information in response to the Government's past performance evaluation, and the past performance evaluation is not made available until after the contractor's comments have been made. This rule proposes a change in contractors' response procedures. The statutes are clear: Contractors will have a maximum of 14 days to provide comments before posting to PPIRS. In addition, the law now requires that past performance evaluations be available to source selection officials not later than 14 days after the evaluation was provided to the contractor, whether or not contractor comments have been received. This is likely to serve as an impetus to contractors to meet the 14 calendar day's deadline for comments. Having a past performance evaluation, with the contractor's comments and explanations included, available to source selection officials within 14 days will be to the advantage of most contractors. These timely evaluations will allow contractors who are meeting their contractual obligations to be more competitive for future awards.

When a contractor is unable to provide comments within 14 days, however, the proposed changes to CPARS and PPIRS will enable the contractor's comments to be added to the past performance evaluation after the evaluation has been moved into PPIRS. In addition, the planned system changes will allow the Government to revise a past performance evaluation in PPIRS if the Government determines, after the 14-day period has expired, that corrections should be made to the past performance evaluation. This rule proposes to amend FAR 42.1503(d) and (f).

OFPP has issued guidance and is working with agencies to improve their past performance reporting compliance to ensure this valuable performance information is shared with source selection officials. Timely reporting of this information will be crucial to the successful implementation of this regulation. Expediting the time allotted to contractors to respond to performance evaluations should improve communication between the contractor and the Government, enable current information to be shared quickly throughout the Government, and ultimately ensure the Government does business with high performing contractors. In keeping with the FAR retrospective plan, which promotes public consultation and outreach, the Councils would like to hear your substantive comments on: how the expedient posting of these reports in the system may impact your business; and ways to limit any extra burden, if any, this requirement is having on your business.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because contractor comments on their past performance evaluations are already allowed by FAR subpart 42.15. However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The analysis is summarized as follows:

Section 806 of the National Defense Authorization Act (NDAA) for Fiscal Year 2012 (Pub. L. 112–81, enacted December 31, 2011), is entitled ''Inclusion of Data on Contractor Performance in Past Performance Databases for Source Selection Decisions''. Paragraph (c) of section 806 mandates DFARS revisions so that contractors are provided ''up to 14 calendar days from the date of delivery'' to them of past performance evaluations ''to submit comments, rebuttals, or additional information pertaining to past performance'' for inclusion in the database. In addition, section 806(c) requires that DoD agency evaluations of contractor performance, including any information submitted by contractors, be ''included in the relevant past performance database not later than 14 days after the date of delivery of the information'' to the contractor.

Section 853 of the NDAA for FY 2013 (Pub. L. 112–239, enacted January 2, 2013) is entitled ''Inclusion of Data on Contractor Performance in Past Performance Databases

for Executive Agency Source Selection Decisions'', and it extends the requirements of section 806 to all Executive agencies.

The FAR addresses Governmentwide rules for past performance evaluations at FAR subpart 42.15, Contractor Performance Information. The databases selected by the Office of Management and Budget (OMB) for these evaluations are the Contractor Performance Assessment Reporting System (CPARS) and the Past Performance Information Retrieval System (PPIRS). CPARS provides an automatic notification to the contractor when a past performance evaluation has been submitted to the system and is available for contractor comment. This is the equivalent of ''providing'' the past performance evaluation to the contractor, and it starts the 14 day suspense period for contractor comment or rebuttal. CPARS processes the assessment and provides it to PPIRS.

The rule proposes a change in contractors' response procedures. Instead of allowing ''at least 30 days'' for a contractor's response to the past performance evaluation, contractors will have a maximum of 14 days to do so. In addition, the statute now requires that past performance evaluations be available to source selection officials not later than 14 days after the evaluation was provided to the contractor, whether or not contractor comments have been received. However, the proposed changes to the systems will enable a contractor's comments to be added to the past performance evaluation after the evaluation has been moved into PPIRS; these changes will also allow the Government to revise a past performance evaluation in PPIRS if the Government determines, after the 14 day period has expired, that it was in error.

The proposed rule would apply to all small businesses for which past performance evaluations are completed. OMB Control Number 9000–0142, renewed in 2012, is the source for the data used in this IRFA. It indicates that an estimated 150,000 respondents submit an average of four responses annually, for a total of 600,000 responses. Data from the Federal Procurement Data System (FPDS) for Fiscal Year 2011 show that approximately 32 percent of the relevant actions of the responses are from small businesses, so this rule would apply to approximately 48,000 small entities.

The requirement to conduct past performance evaluations is not new. The differences between the current FAR past performance evaluation requirements (see FAR subpart 42.15) and this proposed rule are that the law reduces the time allowed for a contractor to submit comments, rebuttals, or additional information pertaining to past performance for inclusion in the past performance database from ''a minimum of 30 days'' (FAR 42.1503(b)) to ''up to 14 calendar days'', and the law now requires that past performance evaluations be available to source selection officials not later than 14 days after the evaluation was provided to the contractor, whether or not contractor comments have been received.

There are no new reporting, recordkeeping, or other compliance requirements created by the proposed rule. The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA did not identify any alternatives that would comply with the applicable statutes. The laws do not provide for any exemptions for small entities.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR case 2012–028) in correspondence.

V. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provision at FAR subpart 42.15, currently approved under the OMB Control Number 9000–0142, titled, Past Performance Information; in the amount of 1,200,000 hours, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). This rule would shorten the contractors' response time, but it would not expand the reporting requirement. The impact, however, is negligible because contractors are already allowed to submit comments, rebutting statements, or additional information regarding agency evaluations of their performance. The number of contractors providing comments will be unaffected by this rule. Further, the type of information provided is not impacted by this proposed rule.

List of Subject in 48 CFR Part 42

Government procurement.

Dated: July 31, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 42 as set forth below:

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR part 42 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 42.1503 by revising the third sentence in paragraph (d); and revising paragraph (f) to read as follows:

42.1503 Procedures.

* * * * *

(d) * * * Contractors shall be afforded up to 14 calendar days from the date of notification of availability of the past performance evaluation to submit comments, rebutting statements, or additional information. * * *

* * * * *

(f) Agencies shall prepare and submit all past performance evaluations electronically in the CPARS at *http://www.cpars.gov.* These evaluations, including any contractor-submitted information (with indication whether agency review is pending), are automatically transmitted to PPIRS at *http://www.ppirs.gov* not later than 14 days after the date on which the contractor is notified of the evaluation's availability for comment. The Government shall update PPIRS with any contractor comments provided after 14 days, as well as any subsequent agency review of comments received. Past performance evaluations for classified contracts and special access programs shall not be reported in CPARS, but will be reported as stated in this subpart and in accordance with agency procedures. Agencies shall ensure that appropriate management and technical controls are in place to ensure that only authorized personnel have access to the data and the information safeguarded in accordance with 42.1503(d).

* * * * *

[FR Doc. 2013–18955 Filed 8–6–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 392 and 396

[Docket No. FMCSA–2012–0336]

RIN 2126–AB46

Inspection, Repair, and Maintenance; Driver-Vehicle Inspection Report

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FMCSA proposes to rescind the requirement that commercial motor vehicle (CMV) drivers operating in interstate commerce, except drivers of passenger-carrying CMVs, submit, and

motor carriers retain, driver-vehicle inspection reports when the driver has neither found nor been made aware of any vehicle defects or deficiencies. This proposed rule would remove a significant information collection burden without adversely impacting safety. This proposed rule responds in part to the President's January 2011 Regulatory Review and Reform initiative. Finally, this proposed rule harmonizes the pre- and post-trip inspection lists.

DATES: You must submit comments on or before October 7, 2013.

ADDRESSES: You may submit comments identified by docket number FMCSA–2012–0336 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' heading under 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 Mrs. Deborah Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, telephone: 202–366–5541; *deborah.freund@dot.gov.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2012–0336), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the ''Submit a Comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu, select ''Rules,'' insert ''FMCSA–2012–0336'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Submit a Comment'' in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and click on the ''Read Comments'' box in the upper right hand side of the screen. Then, in the ''Keyword'' box, insert ''FMCSA–2012–0336'' and click ''Search.'' Next, click ''Open Docket Folder'' in the ''Actions'' column. Finally, in the ''Title'' column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act

All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Executive Summary

Purpose and Summary of the Major Provisions

FMCSA proposes to rescind the requirement that commercial motor vehicle (CMV) drivers operating in interstate commerce, except drivers of passenger-carrying CMVs, submit, and motor carriers retain, driver-vehicle inspection reports (DVIR) when the driver has neither found nor been made aware of any vehicle defects or deficiencies (no-defect DVIR). This proposed rule would remove a significant information collection burden without adversely impacting safety. This proposed rule responds, in part, to the President's January 2012 Regulatory Review and Reform initiative. Finally, this proposed rule harmonizes the pre- and post-trip inspection lists.

Benefits and Costs

This rule would affect all motor carriers currently subject to 49 CFR 396.11, both private and for-hire, with the exception of operators of passenger-carrying CMVs. Current safety regulations require drivers employed by motor carriers to report any vehicle defects in need of repair noted during the course of a driving day on the DVIR. This report must be submitted to the employing motor carrier so that repairs can be made. Regulations now require drivers to file the no-defect DVIR at the end of each tour of duty, even if there are no vehicle defects to report. The proposed rule would eliminate the need to file a no-defect DVIR, except for operations involving passenger-carrying CMVs.

The no-defect DVIR imposes a substantial time and paperwork burden on the industry, with no discernible social benefit. The Agency estimates that non-passenger-carrying CMV drivers spend approximately 47.2 million hours each year completing no-defect DVIRs, time which could be dedicated to other purposes. FMCSA estimates that the monetized value of this time is currently $1.7 billion per year, which is the estimated social benefit that would result from the adoption of the proposed rule.

TABLE 1—SUMMARY OF THE MONETIZED SOCIAL BENEFITS, COSTS AND NET BENEFITS OF THE PROPOSED RULE

	Annual	10 Years, 7 percent discount rate	10 Years, 3 percent discount rate
Monetized Benefits	$1.7 Billion	$12.8 Billion	$14.9 Billion
Social Costs	$0	$0	$0
Net Benefits	$1.7 Billion	$12.8 Billion	$14.9 Billion

Background

Presidential Executive Order (E.O.) 13563, ''Improving Regulation and Regulatory Review'' (issued January 18, 2011, and published January 21 at 76 FR 3821), prompted DOT to publish a notice in the **Federal Register** (76 FR 8940, February 16, 2011). This notice requested comments on a plan for reviewing existing rules, as well as identification of existing rules that DOT should review because they may be outmoded, ineffective, insufficient, or excessively burdensome. DOT placed all retrospective regulatory review comments, including a transcript of a March 14, 2011, public meeting, in docket DOT–OST–2011–0025. DOT received comments from 102 members of the public, with many providing multiple suggestions. FMCSA received one comment from the American Trucking Associations, Inc. concerning what it considered duplicative driver vehicle inspection requirements in 49 CFR Parts 392 and 396. Although FMCSA agrees that there is some duplication, the Agency does not believe that it results in unnecessary actions or an information collection burden. However, FMCSA did discover a related information collection burden that it considers unnecessary and proposes to remove in this NPRM.

It has always been the responsibility of a commercial motor vehicle (CMV) driver to report vehicle defects. In 1939, the Interstate Commerce Commission (ICC) issued regulations requiring every driver to submit a written report on the condition of the vehicle at the end of his day's work or tour of duty. At a minimum, the report had to include information about any vehicle defect or deficiency the driver discovered that would likely affect the safety of operation of that vehicle (4 FR 2294 at 2305, June 7, 1939). The ICC recommended, but did not require, that motor carriers use a 'Driver's Trip Report,' and it provided an example report format in its 1939 notice. The example report included the driver's name, vehicle number, date, a list of 20 items for inspection, and a space for the driver and mechanic to note defects. This report is now called a DVIR, but the current rule does not include an example of the report form. The requirement to prepare a no-defect DVIR has been in the safety regulations since 1952 (17 FR 4422, 4452, May 15, 1952). In a separate report (54 M.C.C. 337, at 356, April 14, 1952) the ICC explained that it was revising its rule to improve motor carriers' inspection and maintenance procedures and recordkeeping. The ICC noted that the most substantial recordkeeping change proposed and adopted was for the driver to complete the vehicle condition report or trip ticket at the end of the day's work or tour of duty whether or not any defect or deficiency in the equipment is discovered, ''. . . in order to provide a continuous record of vehicle condition and to insure that the reports, particularly those involving defects, will be made out currently and maintained on a current basis.''

On December 17, 2008, FMCSA published a final rule to implement section 4118 of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1144, 1729, Aug. 10, 2005], dealing with the safety of chassis used to transport intermodal containers (73 FR 76794). Among other things, section 4118 called for the Secretary to mandate ''a process by which a driver or motor carrier transporting intermodal equipment [IME] is required to report to the intermodal equipment provider [IEP] or the providers' designated agent any actual damage or defect in the intermodal equipment of which the driver or motor carrier is aware at the time the intermodal equipment is returned to the intermodal equipment provider or the provider's designated agent'' (49 U.S.C. 31151(a)(3)(L)). FMCSA's 2008 rule included a new code section—49 CFR 390.42—which prescribed the responsibilities of drivers and motor carriers when operating IME. Section 390.42(b) required the driver or motor carrier to report any damage to or deficiencies in certain IME parts and accessories at the time the equipment is returned to the IEP.

Importantly, FMCSA did not propose any changes to § 396.11(b), ''Report content,'' which requires—both for IME and non-IME—that ''If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate.''

On March 31, 2010, the Ocean Carrier Equipment Management Association (OCEMA) and Institute of International Container Lessors (IICL) jointly filed a petition for rulemaking to rescind the part of § 390.42(b) that required drivers to file no-defect DVIRs on IME they return to IEPs. OCEMA and IICL requested that FMCSA delete the sentence ''if no damage, defects, or deficiencies are discovered by the driver, the report shall so indicate.''

The petitioners presented four arguments supporting their request:

1. Section 4118 of SAFETEA–LU requires DVIRs only for known damage or defects. Congress could have added a requirement to file no-defect DVIRs but did not do so.

2. There is significant risk that a large volume of no-defect DVIRs could overwhelm the small proportion (4 percent) of DVIRs that contain damage or defects.

3. Data transmission, processing, and storage requirements for no-defect DVIRs could add significant unnecessary costs to intermodal operations without providing offsetting benefits.

4. Submission of no-defect DVIRs contributes to driver productivity losses in the form of congestion and delay at intermodal facilities.

On June 12, 2012 (77 FR 34846), the Agency published a final rule eliminating the requirement for drivers operating IME to submit—and IEPs to retain—DVIRs when the driver has neither found nor been made aware of any defects in the IME.

The Agency now proposes to extend this relief from the paperwork requirement to all interstate motor carriers subject to Part 396 of the FMCSRs, except operators of passenger-carrying CMVs.

Legal Basis for the Rulemaking

This proposed rule is based on the authority of the Motor Carrier Act of 1935 (1935 Act) [49 U.S.C. 31502(b)] and the Motor Carrier Safety Act of 1984 (1984 Act) [49 U.S.C. 31136(a)], both of which are broadly discretionary.

The 1935 Act provides that the Secretary of Transportation (Secretary) may prescribe requirements for

• qualifications and maximum hours of service of employees of, and safety of

operation and equipment of, a motor carrier (§ 31502(b)(1)), and

- qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation (§ 31502(b)(2)).

This rulemaking is based on the Secretary's authority under both § 31502(b)(1) and (2).

The 1984 Act authorizes the Secretary to regulate drivers, motor carriers, and vehicle equipment. Section 31136(a) requires the Secretary to publish regulations on commercial motor vehicle (CMV) safety. Specifically, the Act sets forth minimum safety standards to ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely (49 U.S.C. 31136(a)(1)); (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely (49 U.S.C. 31136(a)(2)); (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely (49 U.S.C. 31136(a)(3)); and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)(4)). Section 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) [Pub. L. 112–141, 126 Stat. 405, 818, July 6, 2012] recently enacted a fifth requirement, i.e., to ensure that ''(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title'' (49 U.S.C. 31136(a)(5)). The 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)(8) and (10)).

This rule implements, in part, the Administrator's authority under § 31136(a)(1) to ensure that CMVs are maintained, equipped, loaded, and operated safely. The NPRM is also based on the broad recordkeeping and implementation authority of § 31133(a)(8) and (10). This proposed rule addresses only CMV equipment and reporting requirements. The provisions of the 1984 Act dealing with the physical condition of drivers therefore do not apply (§ 31136(a)(3)–(4)). Finally, as to ensuring that operators of CMVs are not coerced by motor carriers, shippers, receivers, or transportation intermediaries to 'operate a CMV in violation of a regulation, the rule would eliminate only the requirement for drivers (except drivers of passenger-carrying CMVs) to prepare reports when there are no defects or deficiencies; it would keep in place the rule requiring reports when there are defects or deficiencies, as well as the requirement for motor carriers to take appropriate action on receipt of the report when problems with the vehicle are noted. Therefore, the removal of the requirement to prepare and retain no-defect DVIRs would not compromise drivers' ability to report vehicle problems to the carrier, or relieve carriers of the responsibility to take action. Furthermore, elimination of the no-defect DVIRs would not compromise drivers' protection under existing whistleblower statutes concerning employers taking adverse action against drivers for refusing to violate the FMCSRs. The rule thus provides protection against coercion of drivers by motor carriers. Finally, because the rule would remove a regulatory burden criticized by both drivers and motor carriers (and irrelevant to shippers, receivers, and transportation intermediaries), there is virtually no possibility that a CMV operator would be coerced to violate the rule itself. It is true, of course, that a motor carrier could insist that a driver continue filing no-defect DVIRs even in the absence of a regulatory requirement, but that would be a condition of employment, not coercion to violate a safety regulation.

Agency Proposal

The Agency is proposing to rescind, except for operators of certain passenger-carrying CMVs, the requirement in 49 CFR 396.11(b) requiring CMV drivers to submit, and motor carriers to retain, DVIRs when the driver has neither found nor been made aware of any vehicle defects or deficiencies.

Drivers and motor carriers have long been required to share the safety responsibility for operating CMVs and for assessing the condition of CMVs and documenting deficiencies and repairs. Section 392.7(a) states that ''No commercial motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order . . .'' Section 393.1(b)(1) provides that ''[e]very motor carrier and its employee must be knowledgeable of and comply with the requirements and specifications of this part,'' and § 393.1(c) states that ''No motor carrier may operate a commercial motor vehicle, or cause or permit such vehicle to be operated, unless it is equipped in accordance with the requirements and specifications of this part.'' Section 396.3(a)(1) requires that ''[p]arts and accessories shall be in safe and proper operating condition at all times.'' Section 396.11(a) states that every motor carrier must ''require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated,'' and that report shall cover a specific list of parts and accessories. Section 396.11(c) states that ''Prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would be likely to affect the safety of operation of a vehicle.''

FMCSA emphasizes that the Agency is not foregoing the fundamental requirements of Part 393, Parts and Accessories Necessary for Safe Operation. Nor is it proposing to change any other element of the inspection, repair, and maintenance requirements of Part 396. Drivers will still be required to perform pre-trip evaluations of equipment condition, and complete DVIRs if any defects or deficiencies are discovered or reported during the day's operations. Motor carriers will still be required to have systematic inspection, repair, and maintenance programs (including preventative maintenance) and maintain records to prove measures are being taken to reduce to the extent practicable, the risk of mechanical problems happening while the vehicle is in operation. In addition, motor carriers will still be required to review driver vehicle inspections that list defects or deficiencies and take appropriate action before the vehicle is dispatched again. The Agency will retain the requirement for carriers to complete periodic or annual inspections, and maintain documentation for the individuals who perform periodic inspections and individuals responsible for performing brake-related inspection, repair, and maintenance tasks. Furthermore, these CMVs will continue to be subject to roadside inspections. In short, the existing regulations place shared responsibility on drivers and motor carriers to ensure that CMVs used in interstate commerce are in safe and proper operating condition. This proposed rule does not change a driver's obligation to report on the condition of the CMVs and to report to the motor carrier any defects or deficiencies that could affect the safety of its operation.

The Agency's preferred alternative would continue to require drivers of passenger-carrying CMVs to prepare no-

defect DVIRs.[1] There are several reasons for this.

First, one of the fundamental differences between passenger and freight operations is that motorcoach drivers often need to interact with their passengers, particularly at the beginning and end of their work day, but often during the trip as well. These interactions are a critical part of a motorcoach driver's responsibilities and may result in the driver overlooking or failing to recall certain mechanical conditions unless the report is required every work day. The daily preparation of the DVIR would reinforce the importance of reporting vehicle maintenance issues irrespective of the routine interactions with passengers at the beginning and end of the work day. Also, because motorcoach drivers must be alert to the varying needs of their passengers, they may not be able to focus as closely as truck drivers on changes in their vehicle's operating condition encountered during a trip. These concerns underscore the importance of continuing to include the process of documenting vehicle condition as a consistent part of the passenger-carrying driver's daily routine.

Second, motorcoach crashes are low-probability high-consequence events with fatal and injury crashes occurring relatively infrequently compared to truck crashes, yet the potential for significant numbers of injuries and fatalities being greater than that of truck crashes Based upon analysis of MCMIS data for the period 2007–2011, the average number of fatalities per fatal truck-related crash was 1.13—but for cross-country/intercity buses the average number of fatalities was 1.57, nearly 40 percent higher. While FMCSA does not have data concerning motorcoach crashes attributable to the mechanical condition of the vehicle, the Agency believes it is appropriate to consider this factor in the decision-making process and request public comment on this issue.

Third, because they are carrying the most valuable cargo, motor carriers of passengers must exercise heightened diligence over their operations, including CMV maintenance. As noted in the Motorcoach Safety Action Plan,[2] the National Transportation Safety Board has found that defects or deficiencies in vehicle condition were a root cause of several of the motorcoach crashes it investigated which accounted for 20 percent of the fatalities.

At this time, and for these reasons stated above, FMCSA does not propose extending relief from the requirement for drivers of passenger-carrying vehicles to complete and submit ''no defect'' DVIRs. The Agency requests public comments on this issue, with an emphasis on information and data concerning the mechanical condition of motorcoaches and other passenger-carrying vehicles subject to FMCSA's jurisdiction. Specifically, what percentage of DVIRs currently prepared by drivers of passenger-carrying vehicles include reports of vehicle defects and deficiencies? Is the volume of DVIRs that include reports of mechanical problems by drivers of passenger-carrying vehicles so small that the processing of no-defect DVIRs could potentially result in the passenger carriers overlooking the reports which require action?

For operators of passenger-carrying vehicles, what percentage of the time do drivers find that interactions with passengers at the end of the work day make it difficult to accurately recall defects or deficiencies that were observed or reported during the day, and document those mechanical problems on a DVIR? If FMCSA were to eliminate the requirement for preparing a DVIR every day, would interaction with the passengers at the end of the work day, combined with the as-needed preparation of DVIRs, increase the likelihood of drivers overlooking or forgetting to prepare a DVIR on those occasions when something was wrong with the vehicle?

In summary, FMCSA is proposing to eliminate the requirement for drivers of property-carrying vehicles to submit, and motor carriers to retain, no-defect DVIRs. The Agency believes that removing the requirement for drivers of property-carrying CMVs to complete a no-defect DVIR will not diminish CMV safety, and as discussed in greater detail in the Regulatory Analysis section of this NPRM, the proposed amendment will significantly reduce the paperwork burden to drivers and motor carriers. As noted in the Legal Basis section, this proposed rule would not preclude motor carriers from continuing to require their drivers to prepare no-defect DVIRs as a condition of employment.

FMCSA attempted to determine, through an analysis of historical inspection and other safety data, whether eliminating the no-defect DVIR would affect the condition and proper maintenance of vehicle components. However, due to data reporting limitations, it is impossible to distinguish between form-and-manner violations and serious safety violations, e.g., between failing to sign a no-defect DVIR and failing to report a known defect. However, given the responsibility for vehicle inspection, repair, and maintenance currently shared by drivers and motor carriers (which will continue despite the adoption of the proposed elimination of no-defect DVIRs), the Agency is confident that there will be no reduction in the overall level of equipment safety as a result of this proposed change.

Additionally, to increase safety and harmonize regulatory text, FMCSA has added two items to the pre-trip inspection list in § 392.7. These items are required to be included on a DVIR and should be checked during the pre-trip inspection.

FMCSA seeks comments from all interested parties on certain aspects of the DVIR process.

1. DVIR Handling

1.1. Please explain in detail your procedures for filing and maintaining DVIRs from the time they are completed through the end of their retention periods. Are defect DVIRs kept separate from no-defect DVIRs, sent to maintenance staff, and then acted on? Do you have special procedures in place for the no-defect DVIRs? If so, please describe them.

1.2. Do you have examples of specific incidents in which handling a large volume of no-defect DVIRs has interfered with the handling of defect DVIRs? If so, please describe how these additional documents affected the repairing of defects.

1.3. Some DVIRs are completed electronically. Are the electronic DVIRs automatically or manually separated into defect and no-defect categories? Do you have an estimate of the percentage of forms filled out on paper and electronically? If so, please provide detailed information on the data and methodology used for that estimate.

2. Please provide information on the percentage of no-defect DVIRs. Also, please provide a discussion of the methodology for developing this information.

3. Should the FMCSA preserve an inspection list in § 392.7 to assist drivers in conducting pre-trip inspections? Or would drivers be sufficiently knowledgeable and experienced at conducting pre-trip inspections that they would not have to

[1] Pursuant to 49 CFR 390.3(f)(6), this proposed rule would not apply to '[t]he operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle.

[2] The U.S. Department of Transportation's Motorcoach Safety Action Plan of 2012 is available at *http://www.fmcsa.dot.gov/documents/safety-security/Motorcoach-Safety-Action-Plan-2012.pdf.*

rely on a regulation to prescribe the essential vehicle components and systems that should be checked before each trip? To what extent do carriers and drivers rely on the list in § 392.7?

4. To what extent do carries and drivers rely upon the list in § 396.11?

Section Analysis

In § 392.7, FMCSA proposes adding ''wheels and rims'' and ''emergency equipment'' to the pre-trip list in paragraph (a) in order to harmonize it with the post-trip list in § 396.11(a)(1). Additionally, FMCSA proposes to amend 49 CFR Part 396 by deleting the sentence in § 396.11(b)(2) that reads ''If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate.'' In its place, FMCSA would insert ''The driver of a passenger-carrying CMV must prepare a report even if no defect or deficiency is discovered by or reported to the driver; the drivers of all other commercial motor vehicles are not required to prepare a report if no defect or deficiency is discovered by or reported to the driver.'' FMCSA would also make minor editorial and formatting changes to the remainder of the text of § 396.11(b)(2).

Rulemaking Analyses

Executive Order 12866 (Regulatory Planning and Review) as Supplemented by E.O. 13563 and DOT Regulatory Policies and Procedures

Under E.O. 12866, ''Regulatory Planning and Review'' (issued September 30, 1993, published October 4 at 58 FR 51735), as supplemented by E.O. 13563 (discussed above in the ''Background'' section), and DOT policies and procedures, FMCSA must determine whether a regulatory action is ''significant'' and therefore subject to OMB review. E.O. 12866 defines ''significant regulatory action'' as one likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal government or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

FMCSA has determined that this proposed rule would have an annual effect of $100 million or more. The value of the time saved by eliminating the paperwork burden associated with the filing of no-defect DVIRs is approximately $1.7 billion per year. The explanation of how these savings were derived is presented below. The proposed rule is not expected to have any negative safety impacts. If anything, the rule may actually improve safety by ensuring that the relatively few DVIRs that report defects are not lost among the vast majority of those that do not, thereby making it easier for motor carriers to identify vehicles in need of repair. In addition, a no-defect report could be taken as evidence by a new driver of a vehicle that a pre-trip inspection is unnecessary because the previous driver did not note any defects. Hence, no defect reports could provide a false sense of security, tempting drivers to skip the mandatory pre-trip inspection.

The Agency conducted an analysis per the requirements of the Paperwork Reduction Act (PRA) to estimate the reduction in hourly burden that the elimination of DVIRs for non-passenger-carrying operators of CMVs. FMCSA determined that 46.7 million hours of paperwork burden would be eliminated by this proposed rule. The full details of the PRA analysis are included in the ''Paperwork Reduction Act'' section below. Using a labor cost of $36 per hour, (using a base wage of $18.24,[3] fringe benefits of 55 percent [4], and overhead of 27 percent [5]) the Agency valued this time savings at $1.7 billion per year (46.7 million hours saved × $36 per hour). If passenger-carrying CMV drivers were allowed to stop producing no defect DVIRs, an additional 980,000 burden hours would be saved, which can be valued at $35 million per year (980,000 hours saved × $36 per hour). (These annualized figures are the same for both 7 and 3 percent discount rates.)

The Agency's proposed addition of ''wheels and rims'' and ''emergency equipment'' to the items required to be inspected under § 392.7 would make the lists in this section and § 396.11 consistent. The addition of these two items to § 392.7 is expected to impose a de minimis additional burden on drivers performing pre-trip evaluations of equipment, as drivers will be able to readily observe whether these newly added items are in good working order during their review of the items currently in the § 392.7 list (service brakes, including trailer brake connections, parking (hand) brake, steering mechanism, lighting devices and reflectors, tires, horn, windshield wiper or wipers, rear-vision mirror or mirrors, and coupling devices). For example, a driver making a visual examination of tires can hardly avoid examining the wheels and rims at the same time, and, defects on these components are usually fairly obvious. Similarly, while getting into the cab to check the steering mechanism and horn, he or she can easily glance at the dial gauge on the fire extinguisher to determine that it is still fully charged. Other emergency equipment, including warning triangles, flares, or fuses are usually stored in an easy-to-reach location (often under or behind the driver's seat) and are readily checked. These items were added to the inspection list for consistency, and we expect the cost and benefits of these additions to be de minimis.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of a regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with a population of less than 50,000.[6]

Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies try to minimize any adverse effects on these entities. Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory

[3] The median hourly wage for heavy truck drivers. See *http://www.bls.gov/oes/current/oes533032.htm.* Accessed March 7, 2013.

[4] The ratio of total fringe benefits to wages and salaries for transportation and warehousing workers. See *http://www.bls.gov/news.release/archives/ecec_06072012.pdf.* Table 10, Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by industry group, March 2012. Transportation and Warehousing. *http://www.bls.gov/news.release/pdf/ecec.pdf.* Accessed March 7, 2013.

[5] Industry data gathered for the Truck Costing Model developed by the Upper Great Plains Transportation Institute Berwick showed an average cost of $0.107 per mile of CMV operation for management and overhead, and $0.39 per mile for labor, indicating an overhead rate of 27 percent ($0.107 ÷ $0.39). See Farooq. ''Truck Costing Model for Transportation Managers''. Upper Great Plains Transportation Institute, North Dakota State University (2003) accessed on June 18, 2012 at *http://ntl.bts.gov/lib/24000/24200/24223/24223.pdf.* See Appendix A, pp. 42–47.

[6] Regulatory Flexibility Act (5 U.S.C. 601 et seq.), see National Archives at *http://www.archives.gov/federal-register/laws/regulaotry-flexibility/601.html.*

Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), the proposed rule is expected to have a significant economic impact on a substantial number of small entities in the form of cost savings through the elimination 46 million paperwork burden hours. These firms would receive regulatory relief of approximately $3,000 per entity, which is a positive benefit and does not impose a cost on the regulated entities. See 5 U.S.C. 605(b).

FMCSA invites comment from members of the public who believe there will be a significant impact either on small businesses or on governmental jurisdictions with a population of less than 50,000. An Initial Regulatory Flexibility Analysis (IRFA) must include six elements.

Initial Regulatory Flexibility Analysis (IRFA)

(1) A Description of the Reason Why Action by the Agency Is Being Considered

FMCSA proposes to rescind the requirement that commercial motor vehicle (CMV) drivers operating in interstate commerce, except drivers of passenger-carrying CMVs, submit, and motor carriers retain, driver-vehicle inspection reports (DVIR) when the driver has neither found nor been made aware of any vehicle defects or deficiencies (no-defect DVIR). This proposed rule would remove a significant information collection burden without adversely impacting safety. This proposed rule responds, in part, to the President's January 2011 Regulatory Review and Reform initiative. Finally, this proposed rule would harmonize the pre- and post-trip inspection lists.

(2) A Succinct Statement of the Objectives of, and Legal Basis Why Action by the Agency Is Being Considered

The objective of the NPRM is to grant regulatory relief to motor carriers and drivers of all sizes of vehicles currently subject to 49 CFR 396.11, both private and for-hire, with the exception of operators of passenger-carrying CMVs. This proposed rule is based on the authority of the Motor Carrier Act of 1935 (1935 Act) [49 U.S.C. 31502(b)] and the Motor Carrier Safety Act of 1984 (1984 Act) [49 U.S.C. 31136(a)], both of which are broadly discretionary. The rule implements, to some extent, the Administrator's authority under § 31136(a)(1) to ensure that CMVs are maintained, equipped, loaded, and operated safely. The NPRM is also based on the broad recordkeeping and implementation authority of § 31133(a)(8) and (10). As a result, the removal of the obligation to prepare and retain no-defect DVIRs would not compromise drivers' ability to report vehicle problems to the carrier, or relieve carriers of the responsibility to take action.

(3) A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

Generally, motor carriers are currently not required to report their annual revenue to the Agency, but all carriers are required to provide the Agency with the number of power units (PUs) they operate when they apply for operating authority and to update this figure biennially. Because FMCSA does not have direct revenues figures, PUs serve as a proxy to determine the carrier size that would qualify as a small business given the Small Business Administration (SBA) prescribed revenue threshold. In order to produce this estimate, it is necessary to determine the average annual revenue generated by a single PU.

With regards to truck power units (PUs), the Agency determined in the 2003 Hours of Service Rulemaking RIA [7] that a PU produces about $172,000 in revenue annually (adjusted for inflation).[8] This equates to 148 PUs ($25,000,000/$172,000). Thus FMCSA considers motor carriers with 148 PUs or fewer to be a small business for SBA purposes. The results show that 99.1 percent of all carriers with recent activity have 148 PUs or fewer.[9] This amounts to 516,294 [10] interstate freight and passenger carriers that are considered small, with annual receipts of less than $25.5 million. The SBA defines a ''small entity'' in the truck transportation subsector (North American Industry Classification System (NAICS) 484) as an entity with annual revenue of less than $25.5 million (13 CFR 121.201).[11]

(4) A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Would be Subject to Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

This rule would reduce costs on small entities by eliminating a substantial paperwork filing burden. The reduction in this burden is estimated to save the industry 46.7 million hours of driver time with associated monetized savings of $1.7 billion, as explained in the Paperwork Reduction Act section. These benefits would accrue primarily to small carriers that make up the majority of firms and employ the majority of drivers in the industry. The skills for drivers to complete DVIRs are basic reading and writing proficiency skills.

(5) Identification, to the Extent Practicable, of all Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

This proposed rule does not duplicate, overlap, or conflict with any Federal rules. This rule responds in part to the President's January 2012 Regulatory Review and Reform initiative.

(6) A Description of any Significant Alternatives to the Proposed Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize any Significant Economic Impact of the Proposed Rule on Small Entities

The Agency has concluded that there are no significant alternatives to the proposed rule that would achieve either the value of $1.7 billion in time savings or objectives of this proposal, from the eliminating the paperwork burden. Because small businesses are such a considerable part of the demographic the Agency regulates, providing alternatives to small businesses for non-compliance options is neither feasible nor consistent with public safety.

Assistance for Small Entities

Pursuant to section 213 of SBREFA, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance,

[7] Regulatory Analysis for: Hours of Service of Drivers; Driver Rest and Sleep Operations, Final Rule—Federal Motor Carrier Safety Administration. 68 FR 2245—Published April 23, 2003.

[8] See the 2000 TTS blue Book of Trucking Companies; number adjusted to 2008 dollars for inflation.

[9] Motor Carrier Management Information system (MCMIS) as of September 2012.

[10] CMV Fact sheet March 2013. Available at *http://www.fmcsa.dot.gov/documents/facts-research/CMV-Facts.pdf.*

[11] U.S. Small Business Administration Table of small Business Size Standards matched to North American Industry Classification System (NAICS) codes, effective January 1, 2012. See NAICS subsector 484, Truck Transportation available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

please consult the FMCSA point of contact, Mike Huntley, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247).

Unfunded Mandates Reform Act of 1995

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 $143.1 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year. Although this proposed rule would not result in such expenditure, FMCSA discusses the effects of this rule elsewhere in this preamble.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and determined under its environmental procedures Order 5610.1, published February 24, 2004 (69 FR 9680), that this proposed action does not have any effect on the quality of the environment. Therefore, this NPRM is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(aa) of Appendix 2. The Categorical Exclusion under paragraph 6(aa) relates to regulations requiring motor carriers, drivers, and others to ''inspect, repair, and provide maintenance for every CMV used on a public road'', which is the focus of this rulemaking. A Categorical Exclusion determination is available for inspection or copying in the regulations.gov Web site listed under **ADDRESSES**.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401 *et seq.*) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. No additional contributions to air emissions are expected from this rule and FMCSA expects the rule to not be subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

FMCSA seeks comment on these determinations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires FMCSA to consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rule would result in a reduction of burden hours for the ''Inspection, Repair, and Maintenance'' information collection request (ICR), OMB control number 2126–0003. This ICR comprises six individual information collections, each corresponding to a different area of the inspection, repair, and maintenance requirements. This proposed rule affects only the DVIR section of this ICR.

Based on data from its Motor Carrier Management Information System (MCMIS) and Licensing and Insurance System (L&I), FMSCA estimates that there are approximately 4,117,000 CMVs being operated that are subject to these requirements, which includes 1,845,000 tractors and 101,000 passenger-carrying CMVs, but excludes the 152,000 CMVs of single-vehicle owner operators. Consistent with past analyses of this ICR, the Agency assumes that these CMVs are used on average 65 percent of the days of a year, and that 25 percent of tractor-trailer drivers operate two vehicle combinations per day, which effectively increases the number of CMVs or CMV combinations requiring a DVIR by 461,250 (25 percent × 1,845,000 tractors) to a total of 4,578,250 (4,117,000 CMVs + 461,250 additional tractor-trailer combinations). Applying the 65 percent utilization rate yields an annual estimate of 1,086,189,813 DVIRs (4,578,250 CMVs or CMV combinations × 65 percent × 365 days per year).

FMCSA has parsed the DVIR process into two steps. The first step, filling out a DVIR is estimated to take 2 minutes, 30 seconds. The second step, reviewing and signing a DVIR is estimated to take 20 seconds when defects are reported and 5 seconds when no defects are reported. When there are no defects to note, there is nothing to review on the DVIR, and the form requires only a signature. The Agency estimates that 5 percent of DVIRs note defects, and that 95 percent of DVIRs note no defects.

If this proposed rule were to go into effect, 93 percent of the burden associated with DVIRs would be eliminated. The remaining burden would be associated with DVIRs that note defects, and no-defect DVIRs for passenger-carrying CMVs. The annual burden remaining from these two activities would be 2,564,615 hours and 980,123 hours respectively. The table below illustrates how these results were calculated.

TABLE 2—DETAIL OF DVIR PRA CALCULATIONS

Activity	Number of CMVs or CMV combinations	Utilization rate (of 365 calendar days)	Percent of CMVs affected	Total DVIRs (CMVs × utilization rate × percent of CMVs affected × 365)	Burden per DVIR	Total annual hourly burden
Defect DVIRs, All	4,578,250	65	5	54,309,491	170 seconds	2,564,615
No Defect DVIRS, passenger-carrying CMVs.	101,000	65	95	22,764,138	155 seconds	980,123
Total						3,544,738

After this proposed rule becomes effective, defect DVIRs will create 2,564,615 hours of annual burden (4,578,250 CMVs × 65% utilization × 365 days × 5% of CMVs × 170 seconds ÷ 3,600 seconds per hour). The annual hourly burden of no defect DVIRs for non-passenger carrying CMVs is estimated to be 980,123 hours (101,000

CMVs × 65% utilization × 365 days × 95% of CMVs × 155 seconds ÷ 3,600 seconds per hour). The total remaining hourly burden of DVIRs will be 3,544,738 hours. This new total represents a reduction of 46,669,294 hours compared to the 50,214,032 hours of annual burden estimated in the currently approved ICR. The monetary value of this annual burden reduction, calculated using an hourly labor cost of $36, is $1.7 billion ((46,669,294 hours × $36 per hour) ÷ 1 billion).

Executive Order 12630 (Taking of Private Property)

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (April 23, 1997, 62 FR 19885), requires that agencies issuing economically significant rules, which also concern an environmental health or safety risk that an Agency has reason to believe may disproportionately affect children, must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an Agency to submit for a covered regulatory action an evaluation of its environmental health or safety effects on children. The FMCSA has preliminarily determined that this proposed rule is not a covered regulatory action as defined under Executive Order 13045. This determination is based on the fact that this proposal would not constitute an environmental health risk or safety risk that would disproportionately affect children.

Executive Order 13132 (Federalism)

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on States or localities. FMCSA has analyzed this proposed rule under that Order and has determined that it does not have implications for federalism.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13211 (Energy Supply, Distribution, or Use)

The FMCSA has analyzed this proposed rule under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' This proposal is not a significant energy action within the meaning of section 4(b) of the Executive Order. This proposal is a procedural action, is not economically significant, and would not have a significant adverse effect on the supply, distribution, or use of energy.

Privacy Impact Analysis

FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the rule on the privacy of information in an identifiable form and related matters. FMCSA has determined this rule would have no privacy impacts.

List of Subjects

49 CFR Part 392

Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FMCSA proposes to amend title 49 CFR, Code of Federal Regulations, chapter III, to read as follows:

PART 392—DRIVING OF COMMERCIAL MOTOR VEHCILES

■ 1. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 504, 13902, 31136, 31151, 31502; and 49 CFR 1.87.

■ 2. Revise § 392.7(a) to read as follows:

§ 392.7 Equipment, inspection and use.

(a) No commercial motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order, nor shall any driver fail to use or make use of such parts and accessories when and as needed:

Service brakes, including trailer brake connections.

Parking (hand) brake.

Steering mechanism.

Lighting devices and reflectors.

Tires.

Horn.

Windshield wiper or wipers.

Rear-vision mirror or mirrors.

Coupling devices.

Wheels and rims.

Emergency equipment.

* * * * *

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

■ 3. The authority citation for part 396 is revised to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31151, and 31502; and 49 CFR 1.87.

■ 4. Revise § 396.11(b)(2) to read as follows:

§ 396.11 Driver vehicle inspection report(s).

* * * * *

(b) * * *

(2) *Report content.* (i) The report must identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If a driver operates more than one vehicle during the day, a report must be prepared for each vehicle operated. The driver of a passenger-carrying CMV subject to this regulation must prepare a report even if no defect or deficiency is discovered by or reported to the driver; the drivers of all other commercial motor vehicles are not required to prepare a report if no defect or deficiency is discovered by or reported to the driver.

(ii) The driver must sign the report. On two-driver operations, only one driver needs to sign the driver vehicle inspection report, provided both drivers agree as to the defects or deficiencies identified.

* * * * *

Dated: August 1, 2013.

Anthony R. Foxx,

Secretary.

[FR Doc. 2013–18981 Filed 8–6–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

RIN 0648–XZ50

Endangered and Threatened Wildlife and Plants; 12-Month Finding and Proposed Endangered Listing of Five Species of Sawfish Under the Endangered Species Act

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

ACTION: Proposed rule, Extension of public comment period.

SUMMARY: We, NMFS, published a proposed rule to list five sawfish species: the narrow sawfish (*A. cuspidata*); dwarf sawfish (*P. clavata*); largetooth sawfish (collectively *P. pristis;* formerly *P. pristis, P. microdon,* and *P. perotteti*); green sawfish (*P. zijsron*); and the non-listed population(s) of smalltooth sawfish *P. pectinata* as endangered under the ESA on 4 June 2013 (78 FR 33300). As part of the proposal we provided a 60-day public comment period, scheduled to end August 5, 2013. We received a request to extend the public comment period by 45 days. In response to this request, we are extending the public comment period for the proposed action until September 19, 2013. The proposed rule also includes a proposed change in the scientific name for largetooth sawfish to codify the taxonomic reclassification of *P. perotteti* to *P. pristis.*

DATES: Written comments and information regarding the proposed rule must be received by September 19, 2013.

ADDRESSES: You may submit comments, identified by the following document number, NOAA–NMFS–2011–0073, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2011-0073,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Fax:* (727)–824–5309; Attn: Assistant Regional Administrator for Protected Resources.

Instructions: You must submit comments by one of the above methods to ensure that we receive, document, and consider them. 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 *http://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. We 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 can obtain the petition, the proposed rule, and the list of references electronically on our NMFS Web site at *http://sero.nmfs.noaa.gov/pr/pr.htm.*

FOR FURTHER INFORMATION CONTACT: Shelley Norton, NMFS, Southeast Regional Office, (727) 824–5312; or Dr. Dwayne Meadows, NMFS, Office of Protected Resources, (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2013, we published a proposed rule in the **Federal Register** (78 FR 33300) in response to a petition submitted by WildEarth Guardians requesting we list six sawfish species: knifetooth, narrow, or pointed sawfish (*A. cuspidata*); dwarf or Queensland sawfish (*P. clavata;* largetooth sawfish (*P. pristis* and *P. microdon*); green sawfish (*P. zijsron*); and the non-listed population(s) of smalltooth sawfish (*P. pectinata*) as endangered or threatened under the ESA; or alternatively to list any distinct population segments (DPS) that exist under the ESA. We proposed that the narrow sawfish (*A. cuspidata);* dwarf or Queensland sawfish (*P. clavata);* largetooth sawfish (*P. pristis*); green sawfish (*P. zijsron*); and the non-listed population(s) of smalltooth sawfish (*P. pectinata*) warrant listing as endangered under the ESA, and we also proposed a change in the scientific name for largetooth sawfish to codify the taxonomic reclassification of *P. perotteti* to *P. pristis.*

We subsequently received a request to extend the public comment period for an additional 45 days. We have determined that an extension of 45 days, until September 19, 2013, will allow adequate time for the public to thoroughly review and comment on the proposed rule while still providing the agency with sufficient time to meet our statutory deadlines.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 1, 2013.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–19091 Filed 8–6–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 152

Wednesday, August 7, 2013

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

Farm Service Agency

Information Collection; Guaranteed Farm Loan Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension and revision of a currently approved information collection associated with the Guaranteed Farm Loan Program. This information collection is used to make and service loans guaranteed by FSA to eligible farmers and ranchers.

DATES: We will consider comments that we receive by October 7, 2013.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to: *www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Trent Rogers, Senior Loan Specialist, USDA, FSA, Stop 0522, 1400 Independence Avenue SW., Washington, DC 20250.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Trent Rogers at the above addresses.

FOR FURTHER INFORMATION CONTACT: Trent Rogers, Senior Loan Specialist, (202) 720–3889.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Guaranteed Farm Loans.

OMB Number: 0560–0155.

Expiration Date of Approval: 01/31/2014.

Type of Request: Extension with revision.

Abstract: This information collected under OMB Number 0560–0155 is needed to effectively administer the FSA guaranteed farm loan programs. The information is collected by the FSA loan official in consultation with participating commercial lenders. The basic objective of the guaranteed loan program is to provide credit to applicants who are unable to obtain credit from lending institutions without a guarantee. The reporting requirements imposed on the public by the regulations at 7 CFR part 762 are necessary to administer the guaranteed loan program in accordance with statutory requirements of the Consolidated Farm and Rural Development Act and are consistent with commonly performed lending practices. Collection of information after loans are made is necessary to protect the Government's financial interest. The revision to the information reflects that the burden hours have decreased due to less usage of interest assistance agreement form because FSA does not have funding for the interest assistance program.

Estimate of Average Time to respond: 62.2 minutes per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

Type of Respondents: Farmers and ranchers.

Estimated Number of Respondents: 16,100.

Estimated Number of Report Filed per Respondent: 15.1.

Estimated Total Annual Number of Responses: 243,834.

Estimated Total Annual Burden Hours: 252,939.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden 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.

All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed on July 26, 2013.

Juan M. Garcia,

Administrator, Farm Service Agency.

[FR Doc. 2013–19015 Filed 8–6–13; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection;

Comment Request—Enhancing Completion Rates for Supplemental Nutrition Assistance Program (SNAP) Quality Control Reviews; Correction

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice; correction.

SUMMARY: The Food and Nutrition Service is correcting this notice, which invites the general public and other public agencies to comment on this proposed information collection. This notice was published in the **Federal Register** on July 26, 2013. This notice corrects where and to whom the comments are to be sent.

DATES: Written comments must be received on or before September 24, 2013.

ADDRESSES: Comments should be sent to Richard Lucas, 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 Richard Lucas at 703–305–2576 or via email to *Richard.Lucas@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 written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, VA 22302.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Richard Lucas at 703–305–2017.

SUPPLEMENTARY INFORMATION: This notice corrects the contact person published in this proposed information collection in the **Federal Register** (Volume 78, FR 45173, July 26, 2013).

Dated: August 2, 2013.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2013–19064 Filed 8–6–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Fee

AGENCY: Prescott National Forest, Southwestern Region, USDA Forest Service.

ACTION: Notice of New Recreation Fee.

SUMMARY: The Prescott National Forest is proposing to charge a fee at the new Eagle Ridge Group Campground near Prescott, Arizona, constructed in 2011. Eagle Ridge Group Campground has two sites with the following proposed fees: (1) Osprey recreation fee is proposed at $75/night for up to 50 persons or $125/night for up to 75 persons; (2) Peregrine recreation fee is proposed at $50/night for 1–25 persons. Rental of other facilities on the Prescott National Forest and other Arizona National Forests has shown that publics appreciate and enjoy the availability of group rental facilities. Funds from the fee revenue will be used for the continued operation and maintenance of Eagle Ridge Group Campground.

DATES: Send any comments about these fee proposals by October 18, 2013 so comments can be compiled, analyzed and shared with the Bureau of Land Management Arizona Recreation Resource Advisory Council (R–RAC). New fees are proposed to begin in April 2014.

ADDRESSES: Forest Supervisor, Prescott National Forest, 344 S. Cortez St, Prescott, Arizona, 86303.

FOR FURTHER INFORMATION CONTACT: Susan Johnson, West Zone Recreation Program Manager, Prescott National Forest, 928–443–8075.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

This new fee will be reviewed by the Bureau of Land Management Arizona Recreation Resource Advisory Council (RRAC) prior to final decision and implementation by the Regional Forester, Southwestern Region, USDA Forest Service.

The Prescott National Forest currently has three other group campground facilities. These group campgrounds are reserved regularly throughout the recreation season. The public has indicated a desire for additional developed group camping opportunities on the Prescott National Forest.

A market comparison indicates that the $50–$125 overnight fee is both reasonable and acceptable for this type of recreation opportunity.

Forest visitors can reserve Osprey or Peregrine Sites at Eagle Ridge Group Campground by contacting the National Recreation Reservation Service, at *www.recreation.gov* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for internet reservations and $10 fee for phone reservations.

Dated: July 31, 2013.

Tom Torres,

Acting Prescott National Forest Supervisor.

[FR Doc. 2013–19047 Filed 8–6–13; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the South Dakota Advisory Committee to the Commission will convene at 1:00 p.m. (CDT) and adjourn at 3:00 p.m., on Wednesday, September 11, 2013, at the Minnehaha County Courthouse, 425 North Dakota Avenue, 5th Floor, Multipurpose Room, Sioux Falls, SD 57104. The purpose of the meeting is for orientation and ethics training and project planning.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Friday, October 11, 2013. Comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 999 18th Street, Suite 1380 South, Denver, CO 80202, faxed to (303) 866–1050, or emailed to *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at 303–866–1040.

Persons needing accessibility services should contact the Rocky Mountain Regional Office at least 10 working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Chicago, IL, on August 2, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–19045 Filed 8–6–13; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Business Meeting.

DATE AND TIME: Friday, August 16, 2013; 9:30 a.m. EST.

PLACE: 1331 Pennsylvania Ave NW., Suite 1150, Washington, DC 20425.

Meeting Agenda

I. Approval of Agenda

II. Program Planning

- Vote to Approve and Adopt the Final Draft of the ''Civil Rights Implications of Eminent Domain Abuse'' report
- Vote to Approve and Adopt the Final Draft of the ''Assessing the Impact of Criminal Background Checks and the Equal Employment Opportunity Commission's Conviction Records Policy'' report.
- Discussion & Vote on 2014 USCCR Business Meeting Calendar

- Discussion & Action on 2014 Statutory Enforcement Report topic
- Discussion on Submission of Statements & Rebuttals for Commission Reports

III. Management and Operations
- Staff Director's report

IV. Approval of State Advisory Committee Appointment Slates
- Maine
- Mississippi
- Rhode Island
- Tennessee
- Washington
- West Virginia

V. Adjourn Meeting

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: August 5, 2013.

David Mussatt,

Acting RPCU Chief.

[FR Doc. 2013–19235 Filed 8–5–13; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

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: Survey of Charter Boat and Head Boat Angler Interactions with Sea Turtles.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 4,000.

Average Hours Per Response: Request to participate in survey, 30 seconds; survey, 10 minutes.

Burden Hours: 365.

Needs and Uses: This request is for a new information collection.

The collection of recreational fishing bycatch data is necessary to fulfill statutory requirements of Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852 *et. seq.*), Section 401 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, and to comply with Executive Order 12962 on Recreational Fisheries. Additionally, the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) imposed prohibitions against the taking of endangered species. This collection will seek to better understand the nature and overall level of sea turtle interactions with recreational anglers on charter boats and headboats. The information collected will be used to develop more reliable bycatch estimates.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

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.*

Dated: August 1, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–18977 Filed 8–6–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[7/19/2013 through 8/01/2013]

Firm name	Firm address	Date accepted for investigation	Product(s)
Paragon Decors, Inc	195 Paragon Drive, Albertville, AL 35950.	7/19/2013	The firm manufactures framed wall decor including mirrors, prints, paintings, metal wall decor, and lamps.
Questech Corporation	92 Park Street, Rutland, VT 5701.	7/24/2013	The firm manufactures decorative tile and trim products from metal and stone that include electrical switch plates, kitchen and bathroom accessories.
ICON Health & Fitness, Inc	1500 S 1000 W, Logan, UT 84321.	7/31/2013	The firm is a manufacturer of fitness and exercise equipment.
E.T. Precision Optics, Inc	33 Curlew Street, Rochester, NY 14606.	7/31/2013	The firm manufacturers rotational and prismatic components used in optics, medical, defense, electrical, microwave and aerospace industries.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room

71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: August 1, 2013.

Michael DeVillo,

Eligibility Examiner.

[FR Doc. 2013–19033 Filed 8–6–13; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Report of Requests for Restrictive Trade Practice or Boycott

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 7, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *Lawrence.Hall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information is used to monitor requests for participation in foreign boycotts against countries friendly to the U.S. The information is analyzed to note changing trends and to decide upon appropriate action to be taken to carry out the United States' policy of discouraging its citizens from participating in foreign restrictive trade practices and boycotts directed against friendly countries.

II. Method of Collection

Submitted on paper or electronically

III. Data

OMB Control Number: 0694–0012.

Form Number(s): BIS–621P, BIS–6051P, BIS–6051 P–a.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 892.

Estimated Time per Response: 1 hour to 1 hour and 30 minutes.

Estimated Total Annual Burden Hours: 1171.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 2, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–19007 Filed 8–6–13; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Notice

In the matter of:

Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran;

Zarand Aviation, a/k/a GIE Zarand Aviation, 42 Avenue Montaigne, 75008 Paris, France; and 112 Avenue Kleber, 75116 Paris, France;

Gatewick LLC, a/k/a Gatewick Freight & Cargo Services, a/k/a/Gatewick Aviation Services, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates; and P.O. Box 52404, Dubai, United Arab Emirates; and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates;

Pejman Mahmood Kosarayanifard, a/k/a Kosarian Fard, P.O. Box 52404, Dubai, United Arab Emirates;

Mahmoud Amini, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates; and P.O. Box 52404, Dubai, United Arab Emirates; and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates;

Kerman Aviation, a/k/a GIE Kerman Aviation, 42 Avenue Montaigne 75008, Paris, France;

Sirjanco Trading LLC, P.O. Box 8709, Dubai, United Arab Emirates;

Ali Eslamian, 4th Floor, 33 Cavendish Square, London, W1G0PW, United Kingdom; and 2 Bentinck Close, Prince Albert Road, St. Johns Wood, London NW87RY, United Kingdom;

Mahan Air General Trading LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates;

Skyco (UK) Ltd., 4th Floor, 33 Cavendish Square, London, W1G 0PV, United Kingdom;

Equipco (UK) Ltd., 2 Bentinck Close, Prince Albert Road, London, NW8 7RY, United Kingdom;

Mehdi Bahrami, Mahan Airways–Istanbul Office, Cumhuriye Cad. Sibil Apt No: 101 D:6, 34374 Emadad, Sisli Istanbul, Turkey.

Order Renewing Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2013 (''EAR'' or the ''Regulations''), I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the February 4, 2013 Order Temporarily Denying the Export Privileges of Mahan Airways, Zarand Aviation, Gatewick LLC, Pejman Mahmood Kosarayanifard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Ali Eslamian, Mahan Air General Trading LLC, Skyco (UK) Ltd., Equipco (UK Ltd., and Mehdi Bahrami. I find that renewal of the Temporary Denial Order (''TDO'' is necessary in the public interest to prevent an imminent violation of the EAR.

I. Procedural History

On March 17, 2008, Darryl W. Jackson, the then-Assistant Secretary of Commerce for Export Enforcement (''Assistant Secretary''), signed a TDO denying Mahan Airways' export privileges for a period of 180 days on

the grounds that its issuance was necessary in the public interest to prevent an imminent violation of the Regulations. The TDO also named as denied persons Blue Airways, of Yerevan, Armenia (''Blue Airways of Armenia''), as well as the ''Balli Group Respondents,'' namely, Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd., all of the United Kingdom. The TDO was issued *ex parte* pursuant to Section 766.24(a), and went into effect on March 21, 2008, the date it was published in the **Federal Register**.

The TDO subsequently has been renewed in accordance with Section 766.24(d), including most recently on February 4, 2013.[1] As of March 9, 2010, the Balli Group Respondents and Blue Airways were no longer subject to the TDO. As part of the February 25, 2011 TDO renewal, Gatwick LLC, Mahmoud Amini, and Pejman Mahmood Kosarayanifard (''Kosarian Fard'') were added as related persons in accordance with Section 766.23 of the Regulations. On July 1, 2011, the TDO was modified by adding Zarand Aviation as a respondent in order to prevent an imminent violation. Specifically, Zarand Aviation owned an Airbus A310 subject to the Regulations that was being operated for the benefit of Mahan Airways in violation of both the TDO and the Regulations. As part of the August 24, 2011 renewal, Kerman Aviation, Sirjanco Trading LLC, and Ali Eslamian were added to the TDO as related persons. Mahan Air General Trading LLC, Skyco (UK) Ltd., and Equipco (UK) Ltd. were added as related persons on April 9, 2012. Mehdi Bahrami was added to the TDO as a related person as part of the February 4, 2013 renewal order.

On July 9, 2013, BIS, through its Office of Export Enforcement (''OEE''), submitted a written request for renewal of the TDO. The current TDO dated February 4, 2013, will expire on August 3, 2013, unless renewed on or before that date. Notice of the renewal request was provided to Mahan Airways and Zarand Aviation by delivery of a copy of the request in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to any aspect of the renewal of the TDO has been received from either Mahan Airways or Zarand Aviation. Furthermore, no appeal of the related person determinations I made as part of the September 3, 2010, February 25, 2011, August 24, 2011, April 9, 2012, and February 4, 2013 renewal or modification orders has been made by Gatewick LLC, Kosarian Fard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Ali Eslamian, Mahan Air General Trading LLC, Skyco (UK) Ltd., Equipco (UK) Ltd., or Mehdi Bahrami.[2]

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue or renew an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1) and 776.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent [.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. The TDO and BIS's Request for Renewal

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO and the TDO renewals in this matter and the evidence developed over the course of this investigation indicating a blatant disregard of U.S. export controls and the TDO. The initial TDO was issued as a result of evidence that showed that Mahan Airways and other parties engaged in conduct prohibited by the EAR by knowingly re-exporting to Iran three U.S.-origin aircraft, specifically Boeing 747s (''Aircraft 1–3''), items subject to the EAR and classified under Export Control Classification Number (''ECCN'') 9A991.b, without the required U.S. Government authorization. Further evidence submitted by BIS indicated that Mahan Airways was involved in the attempted re-export of three additional U.S.-origin Boeing 747s (''Aircraft 4–6'') to Iran.

As discussed in the September 17, 2008 renewal order, evidence presented by BIS indicated that Aircraft 1–3 continued to be flown on Mahan Airways' routes after issuance of the TDO, in violation of the Regulations and the TDO itself.[3] It also showed that Aircraft 1–3 had been flown in further violation of the Regulations and the TDO on the routes of Iran Air, an Iranian Government airline. Moreover, as discussed in the March 16, 2009, September 11, 2009 and March 9, 2010 Renewal Orders, Mahan Airways registered Aircraft 1–3 in Iran, obtained Iranian tail numbers for them (including EP–MNA and EP–MNB), and continued to operate at least two of them in violation of the Regulations and the TDO,[4] while also committing an additional knowing and willful violation of the Regulations and the TDO when it negotiated for and acquired an additional U.S.-origin aircraft. The additional acquired aircraft was an MD–82 aircraft, which subsequently was painted in Mahan Airways' livery and flown on multiple Mahan Airways' routes under tail number TC–TUA.

The March 9, 2010 Renewal Order also noted that a court in the United Kingdom (''U.K.'') had found Mahan Airways in contempt of court on February 1, 2010, for failing to comply with that court's December 21, 2009 and January 12, 2010 orders compelling Mahan Airways to remove the Boeing 747s from Iran and ground them in the Netherlands. Mahan Airways and the Balli Group Respondents had been litigating before the U.K. court concerning ownership and control of Aircraft 1–3. In a letter to the U.K. court dated January 12, 2010, Mahan Airways' Chairman indicated, *inter alia,* that Mahan Airways opposes U.S. Government actions against Iran, that it continued to operate the aircraft on its routes in and out of Tehran (and had 158,000 ''forward bookings'' for these aircraft), and that it wished to continue

[1] The February 4, 2013 Order was published in the **Federal Register** on February 8, 2013. 78 FR 9359 (Feb. 8, 2013). The TDO previously had been renewed on September 17, 2008, March 16, 2009, September 11, 2009, March 9, 2010, September 3, 2010, February 25, 2011, August 24, 2011, February 15, 2012, and August 9, 2012. The August 24, 2011 renewal followed the modification of the TDO on July 1, 2011, which added Zarand Aviation as a respondent. Each renewal or modification order was published in the **Federal Register.**

[2] A party named or added as a related person may not oppose the issuance or renewal of the underlying temporary denial order, but may file an appeal of the related person determination in accordance with Section 766.23(c).

[3] Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

[4] The third Boeing 747 appeared to have undergone significant service maintenance and may not have been operational at the time of the March 9, 2010 renewal order.

to do so and would pay damages if required by that court, rather than ground the aircraft.

The September 3, 2010 renewal order discussed the fact that Mahan Airways' violations of the TDO extended beyond operating U.S.-origin aircraft in violation of the TDO and attempting to acquire additional U.S.-origin aircraft. In February 2009, while subject to the TDO, Mahan Airways participated in the export of computer motherboards, items subject to the Regulations and designated as EAR99, from the United States to Iran, via the United Arab Emirates (''UAE''), in violation of both the TDO and the Regulations, by transporting and/or forwarding the computer motherboards from the UAE to Iran. Mahan Airways' violations were facilitated by Gatewick LLC, which not only participated in the transaction, but also has stated to BIS that it acts as Mahan Airways' sole booking agent for cargo and freight forwarding services in the UAE.

Moreover, in a January 24, 2011 filing in the U.K. court, Mahan Airways asserted that Aircraft 1–3 were not being used, but stated in pertinent part that the aircraft were being maintained in Iran especially ''in an airworthy condition'' and that, depending on the outcome of its U.K. court appeal, the aircraft ''could immediately go back into service . . . on international routes into and out of Iran.'' Mahan Airways' January 24, 2011 submission to U.K. Court of Appeal, at p. 25, ¶¶ 108, 110. This clearly stated intent, both on its own and in conjunction with Mahan Airways' prior misconduct and statements, demonstrated the need to renew the TDO in order to prevent imminent future violations. Two of these three 747s subsequently were removed from Iran and are no longer in Mahan Airway's possession. The third of these 747s, with Manufacturer's Serial Number (''MSN'') 23480 and Iranian tail number EP–MNE, remains in Iran under Mahan's control. Pursuant to Executive Order 13324, it was designated a Specially Designated Global Terrorist (''SDGT'') by the U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') on September 19, 2012.[5] Furthermore, as discussed in the February 4, 2013 Order, open source information indicated that this 747, which is painted in the livery and logo of Mahan Airways, has been flown between Iran and Syria, and is suspected of ferrying weapons and/or other equipment to the Syrian Government from Iran's Islamic Revolutionary Guard Corps. Open source information shows this aircraft remains in active operation in Mahan Airways' fleet and has been flown from Iran to Syria as recently as June 30, 2013.

In addition, as first detailed in the July 1, 2011 and August 24, 2011 orders, and discussed in the subsequent renewal orders in this matter, Mahan Airways also has continued to evade U.S. export control laws by operating two Airbus A310 aircraft, bearing Mahan Airways' livery, colors and logo, on flights into and out of Iran.[6] The aircraft are owned, respectively, by Zarand Aviation and Kerman Aviation, both of whose corporate registrations list Mahan Air General Trading as a member of their Groupement D'interet Economique (''Economic Interest Group'').[7]

At the time of the July 1, 2011 and August 24, 2011 Orders, these Airbus A310s were registered in France, with tail numbers F–OJHH and F–OJHI, respectively. OEE subsequently presented evidence that after the August 24, 2011 renewal, Mahan Airways and Zarand Aviation worked in concert, along with Kerman Aviation, to de-register the two Airbus A310 aircraft in France and to register both aircraft in Iran (with, respectively, Iranian tail numbers EP–MHH and EP–MHI). It was determined subsequent to the February 15, 2012 renewal order that the registration switch for these A310s was cancelled; however, both aircraft continued to actively fly for Mahan Airways under the original French tail numbers.

In addition to Mahan Airways' continued unlawful operation of these two A310s, as well as the remaining 747 (MSN 23480 and Iranian tail number EP–MNE) discussed above, the August 2012 renewal order found that Mahan Airways had acquired another Airbus A310 aircraft subject to the Regulations,[8] with MSN 499 and Iranian tail number EP–VIP, in violation of the TDO and the Regulations. On September 19, 2012, all three Airbus A310 aircraft (tail numbers F–OJHH, F–OJHI, and EP–VIP) were designated as SDGTs.[9]

The February 4, 2013 Order laid out further evidence of continued and additional efforts by Mahan Airways and other persons acting in concert with Mahan, including two Turkish companies, to procure U.S.-origin engines (MSNs 517621 and 517738) and other aircraft parts in violation of the TDO and the Regulations.[10] The February 4, 2013 renewal order also added Mehdi Bahrami as a related person in accordance with Section 766.23 of the Regulations. Bahrami, a Mahan Vice-President and the head of Mahan's Istanbul Office, also was involved in Mahan's acquisition of the original three Boeing 747s (Aircraft 1–3) that resulted in the original TDO, and has had a business relationship with Mahan dating back to 1997.

OEE's current renewal request includes evidence obtained after the February 4, 2013 renewal order showing further attempts by Mahan to evade the TDO. Specifically, evidence obtained by OEE, reveals that in or about June 2012, Mahan Airways was involved in efforts to obtain a U.S.-origin GE CF6–50C2 aircraft engine (MSN 528350) from the United States via Turkey. Multiple Mahan Airways' employees, including Mehdi Bahrami, were involved in or aware of matters related to the engine's arrival in Turkey from the United States, plans to visually inspect the engine, and prepare it for shipment from Turkey. A Turkish national who is currently a director/operator of a Turkish aircraft parts supplier and previously has conducted Mahan related business with Mehdi Bahrami and Ali Eslamian was also involved.

OEE also has obtained a sworn affidavit regarding the ownership of this Turkish aircraft parts supplier. The affidavit by the Managing Director of Mahan Airways' General Sales Agent in Thailand stated that the shares of this

[5] See *http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20120919.aspx.*

[6] The Airbus A310s are powered with U.S.-origin engines. The engines are subject to the EAR and classified under Export Control Classification (''ECCN'') 9A991.d. The Airbus A310s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR. They are classified under ECCN 9A991.b. The reexport of these aircraft to Iran requires U.S. Government authorization pursuant to Section 746.7 of the Regulations.

[7] Kerman Aviation's corporate registration also lists Mahan Aviation Services Company as an additional member of its Economic Interest Group.

[8] See note 6, *supra.*

[9] See *http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20120919.aspx.* Mahan Airways was previously designated by OFAC as a SDGT on October 18, 2011. 77 FR 64,427 (October 18, 2011).

[10] As previously discussed in the February 4, 2013 Order, Turkish Company No. 1 purchased a CF6–50C2 aircraft engine (MSN517621) from the United States in July 2012, on behalf of Mahan Airways. OEE was able to prevent this engine from reaching Mahan by issuing a redelivery order to the freight forwarder in accordance with Section 758.8 of the Regulations. OEE also issued Turkish Company No. 1 a redelivery order for the second CF6–50C2 engine (MSN 517738) on July 30, 2012. The owner of the second engine subsequently cancelled the item's sale to Turkish Company No. 1. In September 2012, OEE was alerted by a U.S. exporter that another Turkish company (''Turkish Company No. 2'') was attempting to purchase aircraft spare parts intended for re-export by Turkish Company No. 2 to Mahan Airways.

Turkish aircraft parts supplier for which he is the listed owner are ''actually the property of and owned by Mahan.'' He further stated that he held ''legal title to the shares until otherwise required by Mahan'' but would ''exercise the rights granted to [him] exactly and only as instructed by Mahan and [his] vote and/or decisions [would] only and exclusively reflect the wills and demands of Mahan[.]''

C. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Mahan Airways has continually violated the EAR and the TDO, that such knowing violations have been significant, deliberate and covert, and that there is a likelihood of future violations. The record includes further evidence uncovered by OEE since the February 4, 2013 Order about the continued use of jet aircraft and on-going measures Mahan Airways has taken in concert with its far-reaching network of affiliates and agents to procure EAR items in violation of the TDO and the Regulations. Therefore, renewal of the TDO is necessary to prevent imminent violation of the EAR and to give notice to companies and individuals in the United States and abroad that they should continue to cease dealing with Mahan Airways, Zarand Aviation, and the other denied persons under the TDO in export transactions involving items subject to the EAR.

IV. ORDER

It is therefore ordered:

First, that MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran; ZARAND AVIATION A/K/A GIE ZARAND AVIATION, 42 Avenue Montaigne, 75008 Paris, France, and 112 Avenue Kleber, 75116 Paris, France; GATEWICK LLC, A/K/A GATEWICK FREIGHT & CARGO SERVICES, A/K/A GATEWICK AVIATION SERVICE, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; PEJMAN MAHMOOD KOSARAYANIFARD A/K/A KOSARIAN FARD, P.O. Box 52404, Dubai, United Arab Emirates; MAHMOUD AMINI, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; KERMAN AVIATION A/K/A GIE KERMAN AVIATION, 42 Avenue Montaigne 75008, Paris, France; SIRJANCO TRADING LLC, P.O. Box 8709, Dubai, United Arab Emirates; ALI ESLAMIAN, 4th Floor, 33 Cavendish Square, London W1G0PW, United Kingdom, and 2 Bentinck Close, Prince Albert Road St. Johns Wood, London NW87RY, United Kingdom; MAHAN AIR GENERAL TRADING LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates; SKYCO (UK) LTD., 4th Floor, 33 Cavendish Square, London, W1G 0PV, United Kingdom; EQUIPCO (UK) LTD., 2 Bentinck Close, Prince Albert Road, London, NW8 7RY, United Kingdom; and MEHDI BAHRAMI, Mahan Airways- Istanbul Office, Cumhuriye Cad. Sibil Apt No: 101 D:6, 34374 Emadad, Sisli Istanbul, Turkey; and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Sections 766.24(e) of the EAR, Mahan Airways and/or Zarand Aviation may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022. In accordance with the provisions of Sections 766.23(c)(2) and 766.24(e)(3) of the EAR, Gatewick LLC, Mahmoud Amini, Pejman Mahmood Kosarayanifard, Kerman Aviation, Sirjanco Trading LLC, Ali Eslamian, Mahan Air General Trading LLC, Skyco (UK) Ltd., Equipco (UK) Ltd., and/or Mehdi Bahrami may, at any time, appeal their inclusion as a related person by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may

seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Mahan Airways and/or Zarand Aviation as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Mahan Airways, Zarand Aviation and each related person, and shall be published in the **Federal Register**. This Order is effective immediately and shall remain in effect for 180 days.

Dated: July 31, 2013.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2013–19043 Filed 8–6–13; 8:45 a.m.]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Procedures for Considering Requests and Comments From the Public Under the Textile Safeguard Provision of the United States–Peru Free Trade Agreement

AGENCY: International Trade Administration (ITA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 7, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Laurie Mease, Office of Textiles and Apparel, U.S. Department of Commerce, Telephone: 202–482–3400, Fax: 202–482–0858, Email: *Laurie.Mease@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Title III, Subtitle B, Section 321 through Section 328 of the United States-Peru Free Trade Agreement Implementation Act (the ''Act'') implements the textile and apparel safeguard provisions, provided for in Article 3.1 of the United States-Peru Free Trade Agreement (the ''Agreement''). This safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, a Peruvian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 3.1 permits the United States to increase duties on the imported article from Peru to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (NTR)/most-favored-nation (MFN) duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day before the Agreement entered into force.

The Statement of Administrative Action accompanying the Act provides that the Committee for the Implementation of Textile Agreements (CITA) will issue procedures for requesting such safeguard measures, for making its determinations under Section 322(a) of the Act, and for providing relief under section 322(b) of the Act.

In Proclamation No. 8341 (74 FR 4105, January 22, 2009), the President delegated to CITA his authority under Subtitle B of Title III of the Act with respect to textile and apparel safeguard measures.

CITA must collect information in order to determine whether a domestic textile or apparel industry is being adversely impacted by imports of these products from Peru, thereby allowing CITA to take corrective action to protect the viability of the domestic textile industry, subject to section 322(b) of the Act.

Pursuant to Section 321(a) of the Act and Section 9 of Presidential Proclamation 8341, an interested party in the U.S. domestic textile and apparel industry may file a request for a textile and apparel safeguard action with CITA. Consistent with longstanding CITA practice in considering textile safeguard actions, CITA will consider an interested party to be an entity (which may be a trade association, firm, certified or recognized union, or group of workers) that is representative of either: (A) a domestic producer or producers of an article that is like or directly competitive with the subject Peruvian textile or apparel article; or (B) a domestic producer or producers of a component used in the production of an article that is like or directly competitive with the subject Peruvian textile or apparel article.

In order for a request to be considered, the requestor must provide the following information in support of a claim that a textile or apparel article from Peru is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof, to a U.S. industry producing an article that is like, or directly competitive with, the imported article: (1) name and description of the imported article concerned; (2) import data demonstrating that imports of a Peruvian origin textile or apparel article that are like or directly competitive with the articles produced by the domestic industry concerned are increasing in absolute terms or relative to the domestic market for that article; (3) U.S. domestic production of the like or directly competitive articles of U.S. origin indicating the nature and extent of the serious damage or actual threat thereof, along with an affirmation that to the best of the requestor's knowledge, the data represent substantially all of the domestic production of the like or directly competitive article(s) of U.S. origin; (4) imports from Peru as a percentage of the domestic market of the like or directly competitive article(s); and (5) all data available to the requestor showing changes in productivity, utilization of capacity, inventories, exports, wages, employment, domestic prices, profits, and investment, and any other information, relating to the existence of serious damage or actual threat thereof caused by imports from Peru to the industry producing the like or directly competitive article that is the subject of the request. To the extent that such information is not available, the requestor should provide best estimates and the basis therefore.

If CITA determines that the request provides the information necessary for it to be considered, CITA will publish a notice in the **Federal Register** seeking public comments regarding the request. The comment period shall be 30 calendar days. The notice will include a summary of the request. Any interested party may submit information to rebut, clarify, or correct public

comments submitted by any interested party.

CITA will make a determination on any request it considers within 60 calendar days of the close of the comment period. If CITA is unable to make a determination within 60 calendar days, it will publish a notice in the **Federal Register**, including the date it will make a determination.

If a determination under Section 322(a) of the Act is affirmative, CITA may provide tariff relief to a U.S. industry to the extent necessary to remedy or prevent serious damage or actual threat thereof and to facilitate adjustment by the domestic industry to import competition. The import tariff relief is effective beginning on the date that CITA's affirmative determination is published in the **Federal Register**. Entities submitting requests, responses or rebuttals to CITA may submit both a public and confidential version of their submissions. If the request is accepted, the public version will be posted on the dedicated U.S.-Peru Free Trade Agreement textile safeguards section of the Office of Textiles and Apparel (OTEXA) Web site. The confidential version of the request, responses or rebuttals will not be shared with the public as they may contain business confidential information. Entities submitting responses or rebuttals may use the public version of the request as a basis for responses.

II. Method of Collection

When an interested party files a request for a textile and apparel safeguard action with CITA, ten copies of any such request must be provided in a paper format. If business confidential information is provided, two copies of a non-confidential version must also be provided. If CITA determines that the request provides the necessary information to be considered, it publishes a **Federal Register** notice seeking public comments on the request.

To the extent business confidential information is provided, a non-confidential version must also be provided. Any interested party may submit information to rebut, clarify, or correct public comments submitted by any interested party.

III. Data

OMB Control Number: 0625–0267.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 6 (1 for Request; 5 for Comments).

Estimated Time Per Response: 4 hours for a Request; and 4 hours for each Comment.

Estimated Total Annual Burden Hours: 24.

Estimated Total Annual Cost to Public: $960.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 1, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–18963 Filed 8–6–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from India. The period of review (POR) is July 1, 2011, through June 30, 2012. This review covers three respondents, Jindal Poly Films Limited (Jindal), SRF Limited (SRF), and Polyplex Corporation Ltd. (Polyplex). Jindal and SRF were selected as the mandatory respondents while Polyplex is the non-selected respondent. The Department preliminarily determines that SRF did, and that Jindal did not, make sales of subject merchandise at prices below normal value (NV) during the POR. The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' Interested parties are invited to comment on these preliminary results.

DATES: Effective Date: August 7, 2013.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Toni Page, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–1398, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the antidumping duty order are all gauges of raw, pretreated, or primed PET Film, 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 currently 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 antidumping duty order is dispositive.

Methodology

The Department has conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice.[1] The Preliminary Decision Memorandum is a public document and is on file electronically via Import

[1] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India,'' dated concurrently with this notice (Preliminary Decision Memorandum).

Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Non-Selected Respondent

With regard to determining an appropriate rate to be applied to the non-selected respondent Polyplex, the statute and the Department's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection of respondents has been to look for guidance in section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. The Department generally weight-averages the rates calculated for the mandatory respondents, excluding zero and *de minimis* rates and rates based entirely on facts available, and applies that resulting weighted-average margin to non-selected respondents.[2]

In this review, we have preliminarily calculated a zero or *de minimis* weighted-average dumping margin for mandatory respondent Jindal and an above *de minimis* rate for the other mandatory respondent, SRF. Based on this, we have based the dumping margin for Polyplex on the above *de minimis* rate calculated for SRF.

Preliminary Results of Review

We preliminarily determine the following weighted-average dumping margins exist for the period July 1, 2011, through June 30, 2012.

Manufacturer/exporter	Weighted-average margin (percent)
Jindal Poly Films Limited	0.00
SRF Limited	0.71
Polyplex Corporation Ltd	0.71

Disclosure and Public Comment

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[3] Interested parties may submit case briefs not later than 30 days after the date of publication of this notice.[4] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[5] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[6] Case and rebuttal briefs should be filed using IA ACCESS.[7]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically via IA ACCESS.[8] An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[9] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act, unless that time is extended.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We will instruct CBP to liquidate entries of merchandise produced and/or exported by Jindal, SRF, and Polyplex. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For assessment purposes, where the respondent reported the entered value for its sales, we calculated importer-specific (or customer-specific) *ad valorem* assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales.[10] However, where the respondent did not report the entered value for its sales, we will calculate importer-specific (or customer-specific) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any per-unit duty assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* at or above 0.50 percent). For any individually examined respondents whose weighted-average dumping margin is above *de minimis* in the final results, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the importer's examined sales to the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). Pursuant to 19 CFR 351.106(c)(2), we intend to instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is zero or *de minimis* (*i.e.,* less than 0.50 percent).[11]

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of PET Film from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period

[2] *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273 (February 13, 2008), unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 49162 (August 20, 2008).

[3] *See* 19 CFR 351.224(b).

[4] *See* 19 CFR 351.309(c).

[5] *See* 19 CFR 351.309(d).

[6] *See* 19 CFR 351.309(c)(2) and (d)(2).

[7] *See* 19 CFR 351.303.

[8] *See* 19 CFR 351.310(c).

[9] *Id.*

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

[11] *See* 19 CFR 351.106(c)(1).

for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the all others rate for this proceeding, 5.71 percent. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary 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 this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: *July 31, 2013 .*

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Scope of the Order
2. Date of Sale
3. Discussion of Methodology
4. Product Comparisons
5. Export Price and Constructed Export Price
6. Normal Value
7. Cost of Production Analysis
8. Currency Conversion

[FR Doc. 2013–19096 Filed 8–6–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–818]

Lemon Juice From Argentina: Continuation of Suspended Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determination by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that termination of the suspended investigation on lemon juice from Argentina would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, the Department is publishing notice of the continuation of this suspended antidumping duty investigation.

DATES: *Effective Date:* August 7, 2013.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Judith Wey Rudman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4830 or (202) 482–0192, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2012, the Department initiated, and the ITC instituted, a sunset review of the suspended antidumping duty investigation on lemon juice from Argentina (''suspended investigation''), pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Review and Correction,* 77 FR 45589 (August 1, 2012) and [*Investigation Nos. 731–TA–1105–1106 (Review)] Lemon Juice from Argentina and Mexico,* 77 FR 45653 (August 1, 2012). As a result of its review, the Department determined that termination of the suspended investigation on lemon juice from Argentina would likely lead to a continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail, should the suspended investigation be terminated. See *Lemon Juice from Argentina; Final Results of the Expedited First Sunset Review of the Suspended Antidumping Duty Investigation,* 77 FR 73021 (December 7, 2012).

On July 10, 2013, pursuant to section 751(c) of the Act, the ITC determined that termination of the suspended investigation on lemon juice from Argentina would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See *Lemon Juice from Argentina,* 78 FR 46610 (August 1, 2013).

Therefore, pursuant to section 351.218(f)(4) of the Department's regulations, the Department is publishing this notice of the continuation of the suspended investigation on lemon juice from Argentina.

Scope

The merchandise covered by the suspended investigation includes certain lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (e.g., organic or not), processed form (e.g., frozen or not-from-concentrate), FDA standard of identity, the size of the container in which packed, or the method of packing.

Excluded from the scope are: (1) Lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers, typically at a level of concentration of 48 GPL; and (2) beverage products such as lemonade that typically contain 20% or less lemon juice as an ingredient.

Lemon juice is classifiable under subheadings 2009.39.6020, 2009.31.6020, 2009.31.4000, 2009.31.6040, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the suspended investigation is dispositive.

Continuation of the Suspended Investigation

As a result of the respective determinations by the Department and the ITC that termination of the suspended investigation on lemon juice from Argentina would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby gives notice of the continuation of the suspended investigation on lemon juice from Argentina. The effective date of continuation will be the date of publication in the **Federal Register** of this Continuation Notice. Because the Department is continuing the suspended investigation, the suspension agreement will also continue to remain in effect. *See Suspension of Antidumping Duty Investigation: Lemon Juice From Argentina,* 72 FR 53991 (September 21, 2007). Pursuant to sections 751(c)(2) of the Act, the Department intends to initiate the next five-year sunset review of the suspended investigation on lemon juice from Argentina not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: August 1, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–19067 Filed 8–6–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain pasta (pasta) from Italy,[1] covering the period July 1, 2011, through June 30, 2012. The review covers two mandatory respondents, Pastificio Gallo Natale & F.lli S.r.L. (Gallo) and Rummo S.p.A. Molino e Pastificio and its affiliates Rummo S.p.A., Lenta Lavorazione, and Pasta Castiglioni (collectively, Rummo), and six non-selected companies.[2] We preliminarily determine that Gallo and Rummo made sales of subject merchandise at less than normal value during the period of review (POR). Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* August 7, 2013.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore (Gallo) or George McMahon (Rummo), AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–1167, respectively.

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta. The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.[3]

SUPPLEMENTARY INFORMATION:

Methodology

The Department has conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price or Export Price is calculated in accordance with section 772 of the Act. Normal Value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary results, *see* Preliminary Decision Memorandum dated concurrently with this notice and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins[4] for the period July 1, 2011, through June 30, 2012:

Producer and/or exporter	Weighted-average dumping margin (percent)
Pastificio Gallo Natale & F.lli S.r.L	2.48
Rummo S.p.A. Molino e Pastificio, Rummo S.p.A., Lenta Lavorazione, and Pasta Castiglioni	18.82
Alberto Poiatti S.p.A	16.95
Delverde Industrie Alimentari S.p.A	16.95
Fiamma Vesuviana S.r.L	16.95
Pastificio Zaffiri S.r.L	16.95
Tandoi Filippo e Adalberto Fratelli S.p.A	16.95
Valdigrano di Flavio Pagani S.r.L	16.95

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[5] The Department will announce the briefing schedule to interested parties at a later date. Interested parties may submit written comments (case briefs) on the deadline that the Department will announce and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[6] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit comments are requested to submit: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All briefs must be filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, using Import Administration's IA ACCESS system.[7] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street

[1] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy,* 61 FR 38547 (July 24, 1996) (*AD Order*).

[2] The non-selected companies are: Alberto Poiatti S.p.A (Poiatti); Delverde Industrie Alimentari S.p.A (Delverde); Fiamma Vesuviana S.r.L (Fiamma); Pastificio Zaffiri S.r.L (Zaffiri); Tandoi Filippo e Adalberto Fratelli S.p.A (Tandoi); and Valdigrano di Flavio Pagani S.r.L (Valdigrano). The Department is currently conducting a changed circumstances review of Delverde to determine whether Delverde is the successor-in-interest to a company that was excluded from the *AD Order.* The Department issued a partial rescission notice in which it rescinded this administrative review, in part, with respect to Industria Alimentare Colavita, S.p.A (Indalco) and Pasta Lensi S.r.L (Lensi). We also rescinded, in part, this administrative review with respect to Pastificio Attilio Mastromauro-Pasta Granoro S.r.L (Granoro) because this company has been revoked from the antidumping duty order effective prior to the beginning of this period of review. *See Certain Pasta From Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 78 FR 20091 (April 3, 2013).

[3] For a full description of the scope of the order, *see* the ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Pasta from Italy'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice (Preliminary Decision Memorandum).

[4] The rate applied to the non-selected companies is a weighted-average percentage margin calculated based on the publicly-ranged U.S. volumes of the two reviewed companies with an affirmative dumping margin, for the period July 1, 2011, through June 30, 2012. *See* Memorandum to the File, titled, ''Certain Pasta from Italy: Margin for Respondents Not Selected for Individual Examination,'' from George McMahon and Stephanie Moore, Case Analysts, through Eric B. Greynolds, Program Manager, dated concurrently with this notice.

[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(c)(1)(ii) and (d)(1).

[7] *See* 19 CFR 351.310(c).

and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[8] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, within 120 days after issuance of these preliminary results.

Assessment Rate

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. If the weighted-average dumping margin for Gallo or Rummo is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] *See* 19 CFR 351.310.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for 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 manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.45 percent, the all-others rate established in the antidumping investigation as modified by the section 129 determination.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary 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 increase the subsequent assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

[9] *See Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders,* 72 FR 25261 (May 4, 2007).

Dated: July 30, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
3. Discussion of Methodology

[FR Doc. 2013–19102 Filed 8–6–13; 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: Preliminary Results of Countervailing Duty Administrative Review; 2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review under the countervailing duty (CVD) order on polyethylene terephthalate film, sheet and strip (PET film) from India for the period of review (POR) January 1, 2011, through December 31, 2011. We preliminarily determine that SRF Limited (SRF) has received countervailable subsidies during the POR. *See* the ''Preliminary Results of Review'' section, below.

DATES: Effective Date: August 7, 2013.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Toni Page, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–1398, respectively.

Scope of the Order

For 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.

Methodology

The Department has 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 preliminarily determine 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.[1] For a full description of the methodology underlying our conclusions, *see* the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, titled Decision Memorandum for the Preliminary Results of Countervailing Duty (CVD) Administrative Review: Polyethylene Terephthalate Film, Sheet and Strip from India (Preliminary Decision Memorandum), dated concurrently with these results and hereby adopted by this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

As a result of this review, we preliminarily determine a net countervailable subsidy rate of 2.84 percent *ad valorem* for SRF, for the period January 1, 2011, through December 31, 2011.

Assessment and Cash Deposit Requirements

If these preliminary results are adopted in our final results of this review, 15 days after publication of the final results of this review the Department intends to instruct U.S. Customs and Border Protection (CBP) to liquidate shipments of subject merchandise produced and/or exported by SRF entered or withdrawn from warehouse, for consumption from January 1, 2011, through December 31, 2011, at 2.84 percent *ad valorem* of the entered value.

The Department intends also to instruct CBP to collect cash deposits of estimated CVDs at the rate of 2.84 percent *ad valorem* of the entered value on shipments of the subject merchandise produced and exported by SRF, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. We intend to instruct CBP to continue to collect cash deposits for non-reviewed companies at the applicable company-specific CVD rate for the most recent period or all-others rate established in the investigation. These deposit rates, when imposed, shall remain in effect until further notice.

Disclosure and Public Hearing

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[2] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[3] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All briefs must be filed electronically and received successfully through IA ACCESS.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, using Import Administration's IA ACCESS system.[4] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[5] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 31, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–19094 Filed 8–6–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *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.

[2] *See* 19 CFR 351.224(b).

[3] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[4] *See* 19 CFR 351.310(c).

[5] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–835]

Lemon Juice From Mexico: Termination of Suspended Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determination by the International Trade Commission (the ''ITC'') that termination of the suspended antidumping duty investigation on lemon juice from Mexico would not be likely to lead to the continuation or recurrence of material injury to an industry in the United States, the Department of Commerce (the ''Department'') is terminating the suspended antidumping duty investigation. As a result, the Department is also terminating the Agreement Suspending the Antidumping Investigation on Lemon Juice from Mexico (the ''Agreement'').

DATES: *Effective Date:* September 21, 2012.

FOR FURTHER INFORMATION CONTACT: Maureen Price or Sally C. Gannon, Bilateral Agreements Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4271 or (202) 482–0162, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2012, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department initiated the first sunset review of the suspended antidumping duty investigation on lemon juice from Mexico.[1] On August 1, 2012, pursuant to section 752 of the Act, the ITC instituted the first sunset review of the suspended antidumping duty investigation on lemon juice from Mexico.[2] As a result of its review, on June 28, 2013, the Department found that termination of the suspended antidumping duty investigation on lemon juice from Mexico would likely lead to continuation or recurrence of dumping.[3] The Department thus notified the ITC of the magnitude of the margins of dumping rates likely to prevail if the suspended investigation were terminated.

On August 1, 2013, the ITC published its determination, pursuant to section 751(c) of the Act, that termination of the antidumping duty suspended investigation on lemon juice from Mexico would not be likely to lead to the continuation or recurrence of material injury within a reasonably foreseeable time.[4]

Therefore, pursuant to section 351.222(i)(1)(iii) of the Department's regulations, the Department is publishing this notice of the termination of the suspended antidumping duty investigation on lemon juice from Mexico.

Scope of the Suspended Investigation

The merchandise covered by the suspended investigation includes certain lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (*e.g.,* organic or not), processed form (*e.g.,* frozen or not-from-concentrate), FDA standard of identity, the size of the container in which packed, or the method of packing.

Excluded from the scope are: (1) lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers, typically at a level of concentration of 48 GPL; and (2) beverage products such as lemonade that typically contain 20% or less lemon juice as an ingredient.

Lemon juice is classifiable under subheadings 2009.39.6020, 2009.31.6020, 2009.31.4000, 2009.31.6040, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this suspended investigation is dispositive.

Termination

As a result of the determination by the ITC that termination of the suspended antidumping duty investigation would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department is terminating the suspended antidumping duty investigation on lemon juice from Mexico. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of termination is September 21, 2012 (*i.e.,* the fifth anniversary of the effective date of publication in the **Federal Register** of the notice of suspension of investigation).[5] Because the Department is terminating the suspended antidumping duty investigation, the Agreement will also terminate, effective September 21, 2012.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions. These five-year (sunset) reviews and notice are in accordance with section 75l(d)(2) the Act and published pursuant to section 777(i)(l) of the Act.

Dated: August 1, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–19068 Filed 8–6–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] Initiation of Five-Year (''''Sunset''') Review and Correction, 77 FR 45589 (August 1, 2012).

[2] [Investigation Nos. 731–TA–1105–1106 (Review)] Lemon Juice from Argentina and Mexico, 77 FR 45653 (August 1, 2012).

[3] Lemon Juice From Mexico: Final Results of Full Sunset Review of the Suspended Antidumping Duty Investigation, 78 FR 38944 (June 28, 2013).

[4] [Investigation Nos. 731–TA–1105–1106 (Review)] Lemon Juice from Argentina and Mexico, 78 FR 46610 (August 1, 2013)

[5] Suspension of Antidumping Duty Investigation: Lemon Juice From Mexico, 72 FR 53995 (September 21, 2007).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Statement of Financial Interests, Regional Fishery Management Councils

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 7, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to William Chappell, (301) 427–8505 or *william.chappell@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for revision and extension of a current information collection).

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Stevens Act) authorizes the establishment of Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such fishery management plans under circumstances (a) which will enable the States, the fishing industry, consumers, environmental organizations, and other interested persons to participate in the development of such plans, and (b) which take into account the social and economic needs of fishermen and dependent communities.

Section 302(j) of the Magnuson-Stevens Act requires that Council members appointed by the Secretary, Scientific and Statistical Committee (SSC) members appointed by a Council under Section 302(g)(1), or individuals nominated by the Governor of a State for

possible appointment as a Council member, disclose their financial interest in any Council fishery. These interests include harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction, or with respect to an individual or organization with a financial interest in such activity. The authority to require this information and reporting and filing requirements has not changed.

The Secretary is required to submit an annual report to Congress on action taken by the Secretary and the Councils to implement the disclosure of financial interest and recusal requirements, including identification of any conflict of interest problems with respect to the Councils and SSCs and recommendations for addressing any such problems.

The Act further provides that a member shall not vote on a Council decision that would have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interest of other participants in the same gear type or sector of the fishery. However, an affected individual who is declared ineligible to vote on a Council action may participate in Council deliberations relating to the decision after notifying the Council of his/her recusal and identifying the financial interest that would be affected.

Revision: NMFS is in the process of revising the form by adding clearer instructions, providing examples of submissions, and updating the form to provide a more appropriate and intuitive format.

II. Method of Collection

Respondents submit paper forms. Seated Council members appointed by the Secretary, including the Tribal Government appointee and SSC members, must file a financial interest form within 45 days of taking office and must provide updates of their statements at any time any such financial interest is acquired, or substantially changed.

III. Data

OMB Control Number: 0648–0192.

Form Number: NOAA Form 88–195.

Type of Review: Regular submission (request for revision and extension of a current information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 330.

Estimated Time per Response: 35 minutes.

Estimated Total Annual Burden Hours: 193.

Estimated Total Annual Cost to Public: $128.70 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 2, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–19006 Filed 8–6–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0170]

Proposed Collection; Comment Request

AGENCY: White House Communications Agency (WHCA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the White House Communications Agency (WHCA) announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) 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 October 7, 2013

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:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

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 White House Communications Agency (WHCA/WACC/ISD), ATTN: Chris Cothran, 2743 Defense Boulevard, SW Washington, DC 20373–5815.

Title; Associated Form; and OMB Number: DefenseReady; OMB Control Number 0704–TBD.

Needs and Uses: The information collection requirement is necessary to obtain, track and record the personnel security data, training information and travel history within White House Military Office (WHMO) and White House Communications Agency (WHCA).

Affected Public: DoD Contractors, retired military members, and agency visitors.

Annual Burden Hours: 38.

Number of Respondents: 150.

Responses per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are DoD Contractors, retired military members who have

departed the agency, and agency visitors. The data collected is used for security background checks, training records and also to encompass the historical travel records of members of the agency. This data collection is essential in maintaining the integrity of the agency's personnel, training, and travel programs.

Dated: August 1, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–18991 Filed 8–6–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense (DoD).

ACTION: Meeting notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR § 102–3.150, a Defense Health Board (DHB) meeting is announced.

DATES:

August 19, 2013

8:00 a.m.–8:45 a.m. (Administrative Working Meeting)
9:00 a.m.–12:15 p.m. (Open Session)
12:15 p.m.–1:00 p.m. (Administrative Working Meeting)
1:00 p.m.–5:15 p.m. (Open Session)

August 20, 2013

8:00 a.m.–1:00 p.m. (Administrative Working Meeting)

ADDRESSES: Marriott Annapolis Waterfront, Chesapeake Ballroom North & Center, 80 Compromise Street, Annapolis, Maryland 21401.

FOR FURTHER INFORMATION CONTACT: The Director of the Defense Health Board is Ms. Christine Bader, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, (703) 681–6653, Fax: (703) 681–3317, *Christine.bader@tma.osd.mil.* For meeting information, please contact Ms. Kendal Brown, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *Kendal.Brown.ctr@tma.osd.mil,* (703) 681–6670, Fax: (703) 681–3317.

SUPPLEMENTARY INFORMATION: Additional information, including the agenda and electronic registration, is available at the DHB Web site, *http://www.health.mil/dhb/.*

Purpose of the Meeting

The purpose of the meeting is to address and deliberate pending and new issues before the Board.

Agenda

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the DHB meeting is open to the public from 9:00 a.m. to 12:15 p.m. and 1:00 p.m. to 5:15 p.m. on August 19, 2013. On August 19, 2013, the DHB will receive briefings from the Department to include an update on the Department's implementation of the recommendations from the Dover Port Mortuary Independent Review Subcommittee report, and briefings on the Integrated Mental Health Strategy and the Dual Loyalties of Military Medical Providers. The Board will vote on proposed recommendations regarding the implications of trends in overweight and obesity in America for the DoD and the report on the Deployment Health Clinical Center follow up review. Additionally, the Board will receive briefings on the progress being made by the subcommittees on the sustainment and advancement of amputee care, deployment pulmonary health and the dual loyalties of military medical providers.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis.

Special Accommodations

Individuals requiring special accommodations to access the public meeting should contact Ms. Kendal Brown at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements

Any member of the public wishing to provide comments to the DHB may do so in accordance with 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice.

Individuals desiring to provide comments to the DHB may do so by submitting a written statement to the DHB Designated Federal Officer (DFO) (see **FOR FURTHER INFORMATION CONTACT**). Written statements should address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting.

The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The DFO, in consultation with the DHB President, may allot time for members of the public to present their issues for review and discussion by the Defense Health Board.

Due to difficulties finalizing the meeting agenda for the scheduled meeting of August 19–20, 2013, of the Defense Health Board the requirements of 41 CFR 102–3.150(a) were not met. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: August 1, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–18978 Filed 8–6–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Extension of Public Comment Period for the Environmental Impact Statement on the Proposed Relocation of 18th Aggressor Squadron to Joint Base Elmendorf-Richardson, Alaska

ACTION: Notice.

SUMMARY: The U.S. Air Force is issuing this notice to advise the public of an extension to the public comment period on the environmental impact statement on the proposed relocation of the 18th Aggressor Squadron to Joint Base Elmendord-Richardson, Alaska. The initial Notice of Availability published in the **Federal Register** on May 31, 2013 (78 FR 32645), and established a public comment period from May 31 through August 2, 2013. The Air Force has extended the deadline for submitting public comments to August 30, 2013. All substantive comments received by

August 30, 2013 will be addressed in the Public Comment Section of the Final EIS.

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Mr. Allen Richmond, AFCEC/CZN, 2261 Hughes Ave, Ste 155, Lackland AFB, TX 78236–9853.

Henry Williams Jr,

DAF, Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2013–19048 Filed 8–6–13; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Notice Inviting Publishers To Submit Tests for a Determination of Suitability for Use in the National Reporting System for Adult Education

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice.

DATES: Deadline for transmittal of applications: October 1, 2013.

SUMMARY: The Secretary of Education (1) invites publishers to submit tests for review and approval for use in the National Reporting System for Adult Education (NRS); and (2) announces the date by which publishers must submit these tests.

FOR FURTHER INFORMATION CONTACT: Michelle Meier, U.S. Department of Education, 400 Maryland Avenue SW., Room 11161, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–7890 or by email: *Michelle.Meier@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department's regulations for Measuring Educational Gain in the National Reporting System for Adult Education, 34 CFR part 462 (NRS regulations), include the procedures for determining the suitability of tests for use in the NRS.

Criteria the Secretary uses: In order for the Secretary to consider a test suitable for use in the NRS, the test must meet the criteria and requirements established in § 462.13.

Submission Requirements:

(a) In preparing your application, you must comply with the requirements in § 462.11.

(b) In accordance with § 462.10, the deadline for transmittal of applications is October 1.

(c) Whether you submit your application by mail (through the U.S. Postal Service or a commercial carrier) or deliver your application by hand or by courier service, you must mail or deliver three copies of your application, on or before the deadline date, to the following address: NRS Assessment Review, c/o American Institute for Research, 1000 Thomas Jefferson Street NW., Washington, DC 20007.

(d) If you submit your application by mail or commercial carrier, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

(e) If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(f) If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(g) If you submit your application by hand delivery, you (or a courier service) must deliver three copies of the application by hand, on or before 4:30:00 p.m., Washington, DC time, on the application deadline date.

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 in this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the articlesearch feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 9212

Dated: August 1, 2013.

Johan Uvin,

Deputy Assistant Secretary for Policy and Strategic Initiatives, Delegated Authority to Perform the Functions and Duties of the Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2013–19070 Filed 8–6–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of open teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming open teleconference meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Advisory Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

Date and Time: Thursday, August 29, 2013, beginning at 4:00 p.m. and ending at approximately 4:30 p.m. (EDT).

ADDRESSES: Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street NW., Room 412, Washington DC 20202–7582.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Goggin, Executive Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street NW., Suite 413, Washington DC 20202–7582, (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent

analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Advisory Committee's mission in the Higher Education Opportunity Act of 2008 to include several important areas: access, Title IV modernization, early information and needs assessment and review and analysis of regulations. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The Advisory Committee has scheduled this teleconference for the sole purpose of electing an ACSFA member to serve as chair and a member to serve as vice-chair for one-year beginning October 1, 2013.

Space at the F Street meeting site and ''dial-in'' line for the teleconference meeting is limited and you are encouraged to register early if you plan to attend. You may register by sending an email to the following email address: *tracy.deanna.jones@ed.gov.* Please include your name, title, affiliation, complete address (including internet and email, if available), and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219–3032. You may also contact the Advisory Committee staff directly at (202) 219–2099. The registration deadline is Monday, August 26, 2013.

Individuals who will need accommodations for a disability in order to attend the teleconference meeting (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Wednesday, August 21, 2013 by contacting Ms. Tracy Jones at (202) 219–2099 or via email at *tracy.deanna.jones@ed.gov.* We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The teleconference site is accessible to individuals with disabilities. Individuals who use a telecommunications device for the deaf (TTY) may call the Federal Information Relay Service (FRS) toll free at 1–800–877–8339.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street NW., Suite 413, Washington, DC from the hours of 9:00 a.m. to 5:30 p.m. Eastern Standard Time, Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's Web site, *www.ed.gov/ACSFA.*

Dated: August 1, 2013.

William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 2013–19085 Filed 8–6–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–525–000]

Tallgrass Interstate Gas Transmission, LLC; Notice of Application

Take notice that on July 22, 2013, Tallgrass Interstate Gas Transmission, LLC (Tallgrass) 370 Van Gordon Street, Lakewood, Colorado, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to operate an existing delivery point connecting Tallgrass to Garden Fresh Vegetables (GFV), an end-user located in Holt County, Nebraska. GFV presently receives its existing gas service from SourceGas Distribution LLC, a local distribution company, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Tallgrass requests authorization to place into operation the previously constructed delivery point, which cannot be operated until they get approval under the above referenced docket number. The total cost to construct the subject delivery point was $111,983.

Any questions concerning this application may be directed to Skip George, Manager of Regulatory, Tallgrass Interstate Gas Transmission, LLC, 370 Van Gordon Street, Lakewood, Colorado 80228, at (303) 763–3251.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the

Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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 Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: August 22, 2013.

Dated: August 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–19031 Filed 8–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–523–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application

Take notice that on July 18, 2013, Transcontinental Gas Pipe Line Company, LLC (Transco), filed in Docket No. CP13–523–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to construct and operate its Mobile South III Expansion Project (project), an expansion of the capacity on Transco's existing Mobile Bay Lateral, under which Transco will provide 225,000 dekatherms of incremental southbound firm transportation service. The project will include the addition of 20,500 horsepower of compression, station piping, and facilities appurtenant thereto at Transco's Compressor Station 85 located at the interconnection of the Mobile Bay Lateral and Transco's main line in Choctaw County, Alabama, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Scott Turkington, Director, Rates & Regulatory, Transcontinental Gas Pipeline Company, LLC, Post Office Box 1396, Houston, Texas, 77251–1396, or by calling (713) 215–3391 or *scott.c.turkington@williams.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: August 22, 2013.

Dated: August 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–19030 Filed 8–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14345–001]

Rock River Beach, Inc.; Notice of Application Accepted for Filing With the Commission; Intent To Waive Scoping; Soliciting Motions To Intervene and Protests; Ready for Environmental Analysis; and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14345–001.

c. *Date filed:* November 23, 2012.

d. *Applicant:* Rock River Beach, Inc.

e. *Name of Project:* Rock River Beach Hydroelectric Project

f. *Location:* On the Rock River, in the Town of Onota, Alger County, Michigan. The project would not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mary C. Edgar, 2617 Rockwood, East Lansing, MI 48823; or by telephone at (906) 892–8112.

i. *FERC Contact:* Aaron Liberty at (202) 502–6862 or by email at *Aaron.Liberty@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, requests for cooperating agency status, comments, terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *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* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The Rock River Beach Project consists of the following existing facilities: (1) A 33.6-foot-long by 5.5-foot-high, L-shaped gravity dam with a crest elevation of 606.95 feet North American Vertical Datum of 1988 (NAVD 88) that impounds a 5-acre reservoir with a total storage capacity of 25 acre-feet; (2) an 8-foot-wide spillway containing two steel sluice gates, a 24-inch-high bottom gate that remains fixed in place and a 36-inch-high slide gate that is raised and lowered manually; (3) a 30-foot-wide by 50-foot-long power canal; (4) an 18-foot by 24-foot wood-framed powerhouse housing a 3-kilowatt (kW) generating unit run by a water wheel and a 5-kW generating unit run by a 24-inch vertical-shaft propeller turbine for a total installed capacity of 8 kW; and (5) two, 220-volt, 0.5-mile-long transmission lines. The powerhouse also contains a 6-kW antique Edison generator that operates via the water wheel and is operated once a year.

The applicant operates the project in a run-of-river mode (i.e., at any point in time, the combined outflow from the project's dam and powerhouse approximates all inflows to the project's reservoir). The project operates from June 20 through September 15, and October 15 through November 15. At all other times, the reservoir is drawn down approximately 4 feet with the fixed sluice gate maintaining an 18 to 24-inch head to prevent the upstream migration of sea lamprey from Lake Superior. Diversion of river flow through the 50-foot-long power canal and to the powerhouse creates a 100-foot-long bypassed reach in the Rock River. Average annual generation at the project varies between 9,000 and 18,000 kilowatt-hours.

All of the existing project facilities are owned by the applicant. The applicant proposes no new facilities or changes to existing project operations.

m. Due to the projects works already existing and the applicant's close coordination with federal and state agencies during the preparation of the application, we intend to waive scoping. Based on a review of the application and resource agency consultation letters, Commission staff intends to prepare a single environmental assessment (EA). Commission staff has determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period, which included a public meeting and site visit, and no new issues are likely to be identified through additional scoping. The EA will consider assessing the potential effects of project operation on geology and soils, aquatic, terrestrial, threatened and endangered species, recreation and land use, aesthetic, and cultural and historic resources.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A

notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. Procedural schedule: The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Comments, recommendations, and terms and conditions due.	September 2013.
Reply comments due	November 2013.
Notice of the availability of the EA.	February 2014.

Dated: July 31, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–18994 Filed 8–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at North American Electric Reliability Corporation Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation Member Representatives Committee and Board of Trustees Meetings Board of Trustees Corporate Governance and Human Resources Committee, Compliance Committee, Finance and Audit Committee, and Standards Oversight and Technology Committee Meetings

Fairmont The Queen Elizabeth, 900 René-Lévesque Blvd. West, Montreal, QC H3B 4A5, Canada.

August 14 (7:30 a.m.—5:30 p.m.) and August 15 (8:00 a.m.—1:00 p.m.), 2013

Further information regarding these meetings may be found at: *http://www.nerc.com/Pages/Calendar.aspx.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RC11–5, North American Electric Reliability Corporation

Docket No. RC13–4, North American Electric Reliability Corporation

Docket No. RR13–3, North American Electric Reliability Corporation

Docket No. RR13–6, North American Electric Reliability Corporation

Docket No. RR13–7, North American Electric Reliability Corporation

Docket No. RD13–9, North American Electric Reliability Corporation

Docket No. RD13–10, North American Electric Reliability Corporation

For further information, please contact Jonathan First, 202–502–8529, or *jonathan.first@ferc.gov.*

Dated: July 31, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–18995 Filed 8–6–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL– 9843–5; Docket ID No. EPA–HQ–ORD–2011–0805]

Update to An Inventory of Sources and Environmental Releases of Dioxin-Like Compounds in the United States for the Years 1987, 1995, and 2000

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and letter peer-review.

SUMMARY: EPA is announcing a 30-day public comment period for the draft document entitled, *Update to An Inventory of Sources and Environmental Releases of Dioxin-Like Compounds in the United States for the Years 1987, 1995, and 2000,* (EPA/600/R–11/005A). EPA also is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will select a group of experts to conduct a letter peer-review of the draft document. The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

In November 2006, EPA released the report: *An Inventory of Sources and Environmental Releases of Dioxin-Like Compounds in the United States for the Years 1987, 1995, and 2000,* (EPA/600/P–03/002F). That report presented an evaluation of sources and emissions of dioxins, dibenzofurans, and coplanar polychlorinated biphenyls to the air, land, and water of the United States. The inventory suggested that there was a significant reduction in environmental releases of dioxin-like compounds from regulated industrial sources between the years 1987 and 2000, and that the open burning of residential refuse in backyard burn barrels was the largest source in 2000 that could be reliably quantified. This revised draft is an update to the 2006 report and reflects the additional consideration of pre-2006 peer review. This update does not expand the scope of the document beyond the three reference years covered in the 2006 document or earlier drafts: 1987, 1995, and 2000. Changes in the updated report reflect the addition of previously unquantified sources and adjustments to emission factors, for example those used for municipal and medical waste incinerators. The largest source added to the inventory was emissions to air from forest fires, a source previously classified as preliminary and not included in the quantitative inventory. The updated inventory lists the top three air sources in the year 2000 as

forest fires, backyard barrel burning of refuse, and medical waste incinerators.

EPA intends to forward the public comments that are submitted in accordance with this notice to Versar to distribute to the external peer-reviewers for their consideration during the letter peer-review. When finalizing the draft document, EPA intends to consider any public comments received in accordance with this notice. EPA is releasing this draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views.

The draft document is available via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at *www.epa.gov/ncea.*

DATES: The 30-day public comment period begins August 7, 2013, and ends September 6, 2013. Technical comments should be in writing and must be received by EPA by September 6, 2013.

ADDRESSES: The draft document, *Update to An Inventory of Sources and Environmental Releases of Dioxin-Like Compounds in the United States for the Years 1987, 1995, and 2000,* is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

Comments may be submitted electronically via *www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *ORD.Docket@epa.gov.*

For technical information, contact Matthew Lorber, NCEA; telephone: 703–347–8535; facsimile: 703–347–8694; or email: *lorber.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

The purpose of this document is to present a comprehensive inventory and an overview of sources and environmental releases of dioxin-like compounds in the United States. The major identified sources of environmental releases of dioxin-like compounds are grouped into six broad categories: combustion sources, metals smelting, refining and processing sources, chemical manufacturing sources, natural sources, and environmental reservoirs. Estimates of annual releases to land, air, and water are presented for each source category and summarized for reference years 1987, 1995, and 2000. The quantitative results are expressed in terms of the toxicity equivalent (TEQ) of the mixture of polychlorinated dibenzo-p-dioxin (CDD) and polychlorinated dibenzofuran (CDF) compounds present in environmental releases using a procedure sanctioned by the World Health Organization (WHO) in 1998. This TEQ procedure translates the complex mixture of CDDs and CDFs characteristic of environmental releases into an equivalent toxicity concentration of 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD), the most toxic member of this class of compounds. The total releases under the national inventory for 1987 in g WHO98 TEQDF (grams of dioxin toxic equivalents (TEQs), to include only dioxin and furan congeners (not dioxin-like PCB congeners), and determined using the 1998 World Health Organization's Toxic Equivalency Factors (TEFs)) were 15,000 to air, 2,400 to land, 360 to water, and 36 to products. For 1995, the releases in g WHO98 TEQDF were 3,400 to air, 2,500 to land, 30 to water, and 47 to products. For 2000, the releases in g WHO98 TEQDF were 2,300 to air, 2,300 to land, 28 to water, and 7 to products. This document also provides limited estimates for releases of dioxin-like polychlorinated biphenyls (PCBs).

In comparison to the version of this document released in 2006, estimates of CDD/CDF releases to air increased for all years. The changes reflect the addition of new sources and adjustments to emission factors used for municipal and medical waste incinerators. The largest new source added was forest fires, which was previously classified as preliminary and not included in the quantitative inventory. Based on a number of new studies, it was decided that sufficient data were now available to move this source into the quantitative inventory. The forest fire releases in 2000 were about four times higher than in 1987 and in 1995 (due to more fires) causing a particularly large percent increase in that year. The top three air sources in 2000 were forest fires (730 g WHO98 TEQDF), backyard barrel burning of refuse (600 g WHO98 TEQDF), and medical waste incinerators (400 g WHO98 TEQDF). Other new sources added to the present document were secondary zinc smelters, glass manufacturers, lime kilns, agricultural burning, outdoor wood combustors, aluminum foundries, copper foundries, and septic systems.

II. How to Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2011–0805, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments;
- *Email: ORD.Docket@epa.gov;*
- *Fax:* 202–566–9744;
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The telephone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies; or
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC. The EPA Docket Center's 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. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0805. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to

make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: May 2, 2013.

Debra B. Walsh,

Acting Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2013–18954 Filed 8–6–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9843–9]

Intent To Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant an exclusive license.

SUMMARY: EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in the U.S. patent entitled PROCESS FOR THE BIODEGRADATION OF HYDROCARBONS AND ETHERS IN SUBSURFACE SOIL BY INTRODUCTION OF A SOLID OXYGEN SOURCE BY HYDRAULIC FRACTURING, filed as U.S. serial number 10/395,893 on March 25, 2003 and issued as U.S. Patent 7,252,986 on August 7, 2007 to Foremost Environmental Solutions, L.L.C. of Denver, Colorado.

DATES: Comments on this notice must be received by EPA at the address listed below by August 22, 2013.

FOR FURTHER INFORMATION CONTACT: Laura Scalise, Patent Attorney, Office of General Counsel (Mail Code 2377A), Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–8303.

SUPPLEMENTARY INFORMATION: Pursuant to 35 U.S.C. 207 (Patents) and 37 CFR part 404 (U.S. Government patent licensing regulations), EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in the U.S. patent entitled PROCESS FOR THE BIODEGRADATION OF HYDROCARBONS AND ETHERS IN SUBSURFACE SOIL BY INTRODUCTION OF A SOLID OXYGEN SOURCE BY HYDRAULIC FRACTURING, filed as U.S. serial number 10/395,893 on March 25, 2003 and issued as U.S. Patent 7,252,986 on August 7, 2007 to Foremost Environmental Solutions, L.L.C. of Denver, Colorado.

The proposed exclusive license will contain appropriate terms, limitations, and conditions to be negotiated in accordance with 35 U.S.C. 209 and 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 15 days from the date of this notice EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent should include an application for an exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Attorney and other EPA officials will review all written responses and then make recommendations on a final decision to the Director or Deputy Director of the National Risk Management Research Laboratory who have been delegated the authority to issue patent licenses under EPA Delegation 1–55.

Dated: July 31, 2013.

Kevin Miller,

Acting Associate General Counsel, General Law Office.

[FR Doc. 2013–19075 Filed 8–6–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9843–4]

Meeting of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The U.S. Environmental Protection Agency is announcing a meeting of the National Drinking Water Advisory Council (Council), established under the Safe Drinking Water Act (SDWA). This meeting is scheduled for October 9 and 10, 2013, in Arlington, VA. The Council typically considers various issues associated with drinking water protection and public water systems. During this meeting, the Council will focus discussions on the proposed regulatory revisions to the Lead and Copper Rule under the SDWA as well as other program issues.

DATES: The meeting on October 9, 2013 will be held from 8:30 a.m. to 5:00 p.m., Eastern Time, and on October 10, 2013 from 8:30 a.m. to 2:30 p.m., Eastern Time.

ADDRESSES: The meeting will be held at the EPA Potomac Yard Conference Center at 2777 Crystal Drive, Arlington, Virginia, 22202, in room North 4830 (4th floor) and will be open to the public. All attendees must go through a metal detector, sign in with the security desk, and show government issued photo identification to enter government buildings.

FOR FURTHER INFORMATION CONTACT: Members of the public who would like

to register and receive pertinent information, present an oral statement or submit a written statement for the October 9 and 10 meeting should contact Roy Simon, by September 6; by email at *Simon.Roy@epa.gov;* by phone at 202–564–3868; or by regular mail at U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4601M), 1200 Pennsylvania Avenue NW., Washington, DC, 20460. Further details about participating in the meeting can be found in the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION:

Details about Participating in the Meeting: If you wish to attend the meeting, you should provide your email address when you register. The EPA will provide updated information on the October meeting to registered individuals and organizations in September 2013. The Council will allocate one hour for the public's input (1:00 p.m.–2:00 p.m., Eastern Time) at the meeting on Thursday, October 10, 2013. Oral statements will be limited to five minutes at the meeting. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Roy Simon no later than September 13, 2013. Any person who wishes to file a written statement can do so before or after the Council meeting. Written statements intended for the meeting must be received by September 27, 2013, to be distributed to all members of the Council before any final discussion or vote is completed. Any statements received on or after the date specified will become part of the permanent file for the meeting and will be forwarded to the Council members for their information.

National Drinking Water Advisory Council: The Council was created by Congress on December 16, 1974, as part of the SDWA of 1974, Public Law 93–523, 42 U.S.C. 300j–5, and is operated in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The Council was established under the SDWA to provide practical and independent advice, consultation and recommendations to the EPA Administrator on the activities, functions, policies, and regulations required by the SDWA.

Special Accommodations: For information on access or services for individuals with disabilities, please contact Roy Simon at 202–564–3868 or by email at *Simon.Roy@epa.gov.* To request accommodation of a disability, please contact Roy Simon at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: July 30, 2013.

Eric M. Bissonette,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 2013–19080 Filed 8–6–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2010–0824; FRL—9678–5]

RIN 2040–ZA18

Preliminary 2012 Effluent Guidelines Program Plan and 2011 Annual Effluent Guidelines Review Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Preliminary 2012 Effluent Guidelines Program Plan (''Preliminary 2012 Plan'') and EPA's 2011 Annual Effluent Guidelines Review Report, and solicits public comment on both. Clean Water Act (CWA) section 304(m), 33 U.S.C. 1314(m), requires EPA to biennially publish a plan for new and revised effluent guidelines, after public notice and comment, which identifies any new or existing industrial categories selected for effluent guidelines rulemaking and provides a schedule for such rulemaking. EPA works to publish a preliminary plan in the odd numbered years and a final plan in the even numbered years. The findings from the 2011 Annual Reviews were used in developing the Preliminary 2012 Plan and will be used in developing the Final 2012 Plan.

DATES: Submit comments on or before October 7, 2013.

ADDRESSES: Submit your comments on the 2011 Annual Reviews and Preliminary 2012 Plan identified by Docket ID No. EPA–HQ–OW–2010–0824, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: ow-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OW–2010–0824.
- *Fax:* (202) 566–9744
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 2822T, Attention Docket ID No. EPA–HQ–OW–2010–0824, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2010–0824. Such deliveries are accepted only during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments on the 2011 Annual Reviews and Preliminary 2012 Plan to Docket ID No. EPA–HQ–OW–2010–0824. EPA's policy is that all comments received will be included in the public docket without change and could be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment because of technical difficulties and cannot contact you for clarification, EPA might not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Submitting Confidential Business Information

Do not submit confidential business information (CBI) to EPA through *www.regulations.gov* or email. Any CBI you wish to submit should be sent via a trackable physical method, such as Federal Express or United Parcel Service, to Mr. M. Ahmar Siddiqui, Document Control Officer, Engineering

and Analysis Division (4303T), Room 6231S EPA West, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460. A CBI package should be double-wrapped, so that the CBI is in one package, which is itself inside another package. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete copy of the material that includes information claimed as CBI, a copy of the material that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

Docket: All documents in the docket are listed in the index at *www.regulations.gov.* Although listed in the index, some information is not publicly available, i.e., 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 electronically at *www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Mr. William F. Swietlik, Engineering and Analysis Division, Office of Water, 4303T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC., 20460; telephone number: (202) 566–1129; fax number: (202) 566–1053; email address: *swietlik.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Supporting Documents

Key documents providing additional information about EPA's 2011 Annual Reviews and the Preliminary 2012 Plan include the 2011 Annual Effluent Guidelines Review Report and the Preliminary 2012 Effluent Guidelines Program Plan.

B. How can I get copies of these documents and other related information?

1. Docket. EPA has established official public dockets for these actions under Docket ID No. EPA–HQ–OW–2010–0824. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301Constitution Ave. NW., Washington, DC 20460.

2. Electronic Access. You may access this **Federal Register** document electronically through the United States government online source for Federal regulations at *http://www.regulations.gov.*

3. Internet access. Copies of the supporting documents are available at *http://water.epa.gov/lawsregs/lawsguidance/cwa/304m/index.cfm.*

C. What should I consider as I prepare my comments for EPA?

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency might ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

II. How is this document organized?

The outline of this notice follows.

A. Legal Authority.
B. Summary Findings of the 2011 Annual Reviews.
C. Summary of the Preliminary 2012 Effluent Guidelines Program Plan.
D. Public Comments.
E. Summary of the Planned Process for 2012 Annual Reviews.
F. Requests for Comment and Information.

A. Legal Authority

This notice is published under the authority of the CWA, 33 U.S.C. 1251, et seq., and in particular sections 301(d), 304(b), 304(g), 304(m), 306, 307(b), 308, 33 U.S.C. 1311(d), 1314(b), 1314(g), 1314(m), 1316, 1317(b), and 1318.

B. Summary Findings of the 2011 Annual Reviews

After completing the 2011 Annual Reviews, EPA has determined that discharges from 17 of the top 20 industrial categories were not a hazard priority. However, EPA determined that additional information and analysis is necessary before concluding the review of the three remaining point source categories: Pulp, Paper and Paperboard (40 CFR Part 430), Petroleum Refining (40 CFR Part 419), and Meat and Poultry Products (40 CFR Part 432). Therefore, EPA continued to review these categories' discharges during the 2012 Annual Reviews and will report its finding in the Final 2012 Plan.

C. Summary of the Preliminary 2012 Effluent Guidelines Program Plan

EPA is not identifying any industry category for new or revised effluent guidelines in the Preliminary 2012 Plan. In addition, for previously initiated rulemakings, EPA is proposing to delist from the effluent guidelines plan the rulemaking for the Coalbed Methane Extraction subcategory based on new information regarding the declining prevalence and economic viability of this industry, due in large part to the increased extraction of natural gas from other sources, such as shale formations. See the supporting documents available at *http://water.epa.gov/lawsregs/lawsguidance/cwa/304m/index.cfm* for further explanation. EPA is also proposing to delist the Chlorine and Chlorinated Hydrocarbon (CCH) manufacturing industry from the Plan and discontinue its rulemaking.

Based on a preliminary study that has been completed, EPA has concluded that an effluent guideline revision is not necessary for Regenerated Cellulose Manufacturers (previously categorized as Plastics Molding and Forming (40 CFR Part 463)).

D. Public Comments

EPA also considered public comments and information submitted by stakeholders in response to a solicitation for comments on the Final 2010 Effluent Limitations Guidelines (ELG) Program Plan (Final 2010 Plan), published in the **Federal Register** on October 26, 2011 (76 FR 66286).

A total of 31 organizations provided comment on the Final 2010 Plan. Most

of the public comment and input submitted focused on expressing opposition or support for the announced ELGs for Shale Gas Extraction, Coalbed Methane Extraction and Dental Amalgam. A few comments provided a small amount of information and ideas on the 304(m) planning process in general; nanomaterial discharges; the disposal of unused pharmaceuticals; and on the ore mining and dressing study report.

E. Summary of the Process for 2012 Annual Reviews

EPA conducted four new targeted review methodologies to better identify new industries or industry processes at existing industries that may need new or revised effluent guidelines and standards for the 2012 reviews. These methodologies included:

- Identifying pass-through pollutants in sewage sludge using the 2009 Targeted National Sewage Sludge Survey (TNSSS).
- Identifying new pollutants and industry discharges using data and information from EPA's toxic substances control programs.
- Identifying new waste streams generated from new air pollution controls associated with Clean Air Act rulemakings.
- Identifying new industries through potential TRI expansion sectors.

These new targeted review methodologies are further described in the Preliminary 2012 Plan available for review at: *http://water.epa.gov/lawsregs/lawsguidance/cwa/304m/index.cfm.*

EPA has modified its annual review process to conduct a toxicity ranking analysis for industry only during the odd numbered years and additional targeted reviews of industry during the even numbered years.

F. Request for Comment and Information

EPA requests comments and information on the Preliminary 2012 Effluent Guidelines Program Plan and on the 2011 Annual Effluent Guidelines Review Report in the following areas.

1. Data Sources and Methodologies

EPA solicits comments on whether it used the correct evaluation factors, criteria, and data sources in conducting its 2011 annual review and developing this Plan. EPA also solicits comment on other data sources EPA can use in its annual reviews and biennial planning process.

2. Methodologies for the 2012 Annual Reviews

EPA solicits comments on its methods for the 2012 Annual Reviews and for subsequent even numbered year reviews. EPA used targeted industrial review methods during 2012, as described above. Specifically, EPA solicits comment on data and other sources of available information or approaches that EPA could consider for the annual reviews in subsequent even years, or comments regarding the targeted approaches described above and in the Preliminary 20122 Plan.

3. The Preliminary 2012 Effluent Guidelines Program Plan

EPA solicits comments on its Preliminary 2012 Plan, including the data and information used to support the findings and conclusions stated in the Preliminary 2012 Plan. EPA also solicits comments on the proposed decisions to not identify any industry categories for the development of new or revised effluent guidelines and to delist the Coalbed Methane Extraction subcategory and Chlorine and Chlorinated Hydrocarbon Manufacturing from the effluent guidelines plan.

4. Implementation Issues Related to Existing Effluent Guidelines and Pretreatment Standards

As a factor in its decision-making, EPA considers opportunities to eliminate inefficiencies or impediments to pollution prevention or technological innovation, or opportunities to promote innovative approaches such as water quality trading, including within-plant trading. Consequently, EPA solicits comments on implementation issues related to existing effluent guidelines and pretreatment standards.

5. Innovation and Technology in the Effluent Guidelines Program

EPA is requesting public comment and ideas on the subject of technology innovation. EPA seeks public input and comment on the following questions and related themes:

—Are there new, innovative pollution control or pollution prevention technologies that can be used by any of the existing 57 categories of industry with effluent limitations guidelines?
—Are there innovative manufacturing approaches that can be used by industries to reduce or prevent their wastewater discharges?
—How can EPA's effluent limitations guidelines program enhance technology transfer to catalyze and harness innovation to solve industrial wastewater problems, both now and in the future?
—How can EPA better foster consideration of innovative technologies through the effluent guidelines planning process?

Nancy K. Stoner,

Acting Assistant Administrator for Water.

[FR Doc. 2013–19074 Filed 8–6–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9844–5]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (CAA or the Act), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club (Plaintiff) in the United States District Court for the District of Columbia: *Sierra Club* v. *Jackson,* No.1:12–cv–01237–ESH (D.D.C.). On or about July 26, 2012, the plaintiff filed a complaint alleging that EPA had failed to take action on certain State Implementation Plan (SIP) submittals by the states of New Jersey and Michigan. Specifically, the complaint alleged that EPA had failed to make a finding that the state of New Jersey did not submit SIP revisions addressing the nonattainment New Source Review requirements for the 1997 fine particulate matter National Ambient Air Quality Standard (1997 $PM_{2.5}$ NAAQS) in the State of New Jersey portion of the Philadelphia-Wilmington nonattainment area. The complaint further alleged that EPA had failed to take final action on the attainment demonstration, contingency measures, emission inventory and Reasonably Available Control Measures or Reasonably Available Control Technology (RACM/RACT), requirements for the 1997 $PM_{2.5}$ NAAQS in both the State of Michigan's SIP submittal for the Detroit-Ann Arbor nonattainment area and the New Jersey SIP submittal for the State of New Jersey portion of the Philadelphia-Wilmington nonattainment area. The complaint also alleged that EPA failed to publish a notice of determination in the **Federal Register** regarding whether the Detroit-Ann Arbor area had attained the 1997 $PM_{2.5}$ NAAQS by the applicable

attainment date. The proposed consent decree establishes deadlines for EPA to take certain actions.

DATES: Written comments on the proposed consent decree must be received by September 6, 2013.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2013–0553, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Winifred N. Okoye, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–5446; fax number (202) 564–5603; email address: *okoye.winifred@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit seeking to compel action by the Administrator to take final action under section 110(k)(3) and (4), 42 U.S.C. 7410(k)(3) and (4), to approve or disapprove, in whole or in part certain States of New Jersey and Michigan SIP submittals.

The proposed consent decree requires EPA, on or before September 30, 2013, to sign and thereafter promptly forward to the Office of Federal Register for review and publication a notice of final action addressing whether the State of New Jersey has failed to submit SIP revisions addressing the nonattainment New Source Review requirements for the 1997 $PM_{2.5}$ NAAQS in the State of New Jersey portion of the Philadelphia-Wilmington nonattainment area. The proposed consent decree also requires EPA, on or before November 30, 2013, to sign and thereafter promptly forward to the Office of Federal Register for review and publication a notice taking final action on the attainment demonstration, contingency measures, emission inventory and Reasonably Available Control Measures or Reasonably Available Control Technology (RACM/RACT), requirements for the 1997 $PM_{2.5}$ NAAQS in the State of New Jersey SIP submittal for the State of New Jersey portion of the Philadelphia-Wilmington nonattainment area. EPA is not required, however, to act on any submission or portion thereof that is withdrawn prior to the applicable deadline. Because the state of Michigan withdrew its SIP submission for the attainment demonstration for the Detroit-Ann Arbor 1997 $PM_{2.5}$ nonattainment area, on May 20, 2013, the proposed consent decree does not require EPA to act on this submission or any portion thereof.

The proposed consent decree also states that the consent decree can be modified by either the parties, or the court following a motion by a party and a response thereto. In addition, the parties agree to informally resolve Sierra Club's claim for litigation costs pursuant to section 304(d), 42 U.S.C. 7604(d), but that the court would retain jurisdiction to resolve that claim.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

Direct your comments to the official public docket for this action under Docket ID No. EPA–HQ–OGC- 2013–0553, which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center 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 OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic

public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 31, 2013.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2013–19073 Filed 8–6–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 002206–006.

Title: California Association of Port Authorities—Northwest Marine Terminal Association Terminal Discussion Agreement.

Parties: California Association of Port Authorities and Northwest Marine Terminal Association.

Filing Party: Patti A. Fulghum, Executive Officer; Northwest Marine Terminal Association; P.O. Box 5684; Bellevue, WA 98006.

Synopsis: The amendment reflects the addition of the Port of St. Helens, Oregon as a member to the Northwest Marine Terminal Association.

Agreement No.: 009335–007.

Title: Northwest Marine Terminal Association, Inc. Agreement.

Parties: Port of Anacortes; Port of Astoria; Port of Bellingham; Port of Coos Bay; Port of Everett; Port of Grays Harbor; Port of Kalama; Port of Longview; Port of Olympia; Port of Port Angeles; Port of Portland; Port of Seattle; Port of St. Helens; Port of Tacoma; and Port of Vancouver, USA.

Filing Party: Patti A. Fulghum; Executive Officer; Northwest Marine Terminal Association, Inc.; P.O. Box 5684; Bellevue, WA 98006.

Synopsis: The amendment reflects the addition of the Port of St. Helens, Oregon as member to the agreement.

Agreement No.: 012184–001.

Title: Crowley/Maersk Line Panama—U.S. Space Charter Agreement.

Parties: Crowley Latin America Services, LLC and A.P. Moller-Maersk A/S.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement adjusts the amount of space and the number of reefer plugs to be provided.

Agreement No.: 201162–010.

Title: NYSA-ILA Assessment Agreement.

Parties: International Longshoremen's Association and New York Shipping Association.

Filing Parties: Donato Caruso, Esq.; The Lambos Firm; 303 South Broadway, Suite 410; Tarrytown, NY 10591 and Andre Mazzola, Esq.; Marrinan & Mazzola Mardon, P.C.; 26 Broadway, 17th Floor; New York, NY 10004.

Synopsis: The amendment extends the agreement and reduces the assessment for all house containers within 260 miles, except in the Bermuda trade effective August 1, 2013.

Dated: August 2, 2013.

By Order of the Federal Maritime Commission.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–19081 Filed 8–6–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Department of Health and Human Services Public Meeting and Request for Comments on Matters Related to the Protection of Human Subjects and Research Studying Standard of Care Interventions; Amended Notice of Meeting

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: On June 26, 2013, the Department of Health and Human Services (HHS) published in the **Federal Register** an announcement of a public meeting to be held on August 28, 2013, to discuss how certain provisions of the HHS protection of human subjects should be applied to research studying one or more interventions which are used as standard of care treatment in the non-research context (78 FR 38343).

In the June 26, 2013 meeting announcement, HHS stated that presenters will be scheduled to speak at the public meeting in the order in which they register. Notice is hereby provided that HHS may group presenters according to the topic of their presentation.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry Menikoff, Director, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200; Rockville, MD 20852, 240–453–6900; email *Jerry.Menikoff@hhs.gov.*

DATED: August 1, 2013.

Howard K. Koh,

Assistant Secretary for Health.

[FR Doc. 2013–19056 Filed 8–6–13; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS) announces the following meeting of the aforementioned committee:

TIMES AND DATES: 11:00 a.m.—5:30 p.m., September 19, 2013; 8:30 a.m.—1:00 p.m., September 20, 2013.

PLACE: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782

STATUS: This meeting is open to the public; however, visitors must be processed in accordance with established federal policies and procedures. For foreign nationals or non-US citizens, pre-approval is required (please contact Gwen Mustaf, 301–458–4500, *glm4@cdc.gov* or Virginia Cain, *vcain@cdc.gov* at least 10 days in advance for requirements). All visitors are required to present a valid form of picture identification issued by a state, federal or international

government. As required by the Federal Property Management Regulations, Title 41, Code of Federal Regulation, Subpart 101–20.301, all persons entering in or on Federal controlled property and their packages, briefcases, and other containers in their immediate possession are subject to being x-rayed and inspected. Federal law prohibits the knowing possession or the causing to be present of firearms, explosives and other dangerous weapons and illegal substances. The meeting room accommodates approximately 100 people.

PURPOSE: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

MATTERS TO BE DISCUSSED: The agenda will include welcome remarks by the Acting Director, NCHS; Demo of the NHIS Online Analytic Real-time System (OARS); initiation of Office of Analysis and Epidemiology review.

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by September 4, 2013.

The agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Virginia S. Cain, Ph.D., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7208, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–19099 Filed 8–6–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3284–N]

Medicare Program; Revised Process for Making National Coverage Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice updates the process we use for opening, deciding or reconsidering national coverage determinations (NCDs) under the Social Security Act (the Act). It addresses external requests and internal reviews for new NCDs or for reconsideration of existing NCDs. The notice further outlines an expedited administrative process to remove certain NCDs, thereby enabling local Medicare contractors to determine coverage under the Act. This notice does not alter or amend our regulations that establish rules related to the administrative review of NCDs.

DATES: This notice is effective on August 7, 2013.

FOR FURTHER INFORMATION CONTACT: Katherine Tillman, (410) 786–9252.

SUPPLEMENTARY INFORMATION:

I. Background

In a September 26, 2003, **Federal Register** notice (68 FR 55634), we announced our procedures for considering national coverage determination (NCD) requests and our procedure for issuing NCDs, including the role of external public requests to open an NCD and our procedures for internally-generated NCD reviews. As we strive to continually improve our processes and in recognition of the changes made by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003), we are superseding the 2003 **Federal Register** notice with this updated notice.

II. Provisions of the Notice

This notice establishes the procedures for requesting an NCD or reconsideration of an existing NCD. We also describe how the public may participate in the NCD process during the indicated comment period(s). The topics addressed in the notice include the following:

- Informal contacts and inquiries prior to requesting a national coverage determination.
- What constitutes a complete, formal request for an NCD or formal request for reconsideration of an existing NCD.
- External requests for NCDs, including the following:
  - ++ Request by an external party for a new NCD.
  - ++ Request by an external party for reconsideration of an existing NCD.
  - ++ Request by an aggrieved party (as defined below) to issue an NCD when no NCD exists.
- CMS internally-generated review of NCDs, including the following:
  - ++ CMS internal review for a new NCD.
  - ++ CMS internal review for reconsideration of an existing NCD.
- An expedited process to remove NCDs under certain circumstances.

Based on our experience since 2003 with the current NCD process, we are establishing a new procedure to be used in circumstances in which we have previously issued an NCD, but have now determined that the NCD is no longer needed. Since we would not be establishing a new NCD, we would use an expedited process to remove these NCDs. After the effective date of the removal of the NCD, local Medicare contractors would determine coverage under section 1862(a)(1) of the Act for those specific items or services previously addressed through the NCD. We describe this process and the opportunity for public participation in this process in section IV.C of this notice.

We are also restating our process for developing an NCD to provide clarity and transparency for the public pertaining to modifications made to the coverage process since the MMA. As in the 2003 **Federal Register** notice, we will inform the public by addressing the following in this notice:

- The internal and external processes for requesting an NCD or an NCD reconsideration.
- A tracking system that provides public notice of our acceptance of a complete, formal request and subsequent actions in a web-based format.
- The process we use to afford notice and opportunity for public comment before issuing a decision memorandum.
- How we use public comments to inform the NCD final decision.

We continue to pursue our efforts to work with various sectors of the scientific and medical community to develop and publish on our Web site documents that describe our approach when analyzing scientific and clinical evidence to develop an NCD. The CMS coverage Web site can be accessed at

http://www.cms.gov/Medicare/Coverage/CoverageGenInfo/index.html.

III. Medicare Coverage—General Principles

A. Statutory Authority

The Medicare program was established by Title XVIII of the Act. Part A is the hospital insurance program and Part B is the voluntary supplementary medical insurance program. The scope of benefits available to eligible beneficiaries under Part A and Part B is prescribed by law in sections 1812 and 1832 of the Act. Part C, known as the Medicare Advantage Program, includes at a minimum, all of the items and services available under Part A and Part B to individuals enrolled in the plan. On January 1, 2006, Medicare began to cover prescription drugs through a new voluntary and privately-administered Part D program, established by the MMA. To obtain prescription drug coverage, Medicare beneficiaries must take the affirmative step of enrolling in a private Medicare Part D plan that is either a stand-alone prescription drug plan (PDP) or a Medicare Advantage prescription drug plan (MA–PD).

In addition, with relatively few exceptions, the statute provides in section 1862(a)(1) of the Act that no payment may be made under Part A or Part B for any expenses incurred for items or services which ''are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.'' The Supreme Court has recognized that ''[t]he Secretary's decision as to whether a particular medical service is 'reasonable and necessary' and the means by which she implements her decision, whether by promulgating a generally applicable rule or by allowing individual adjudication, are clearly discretionary decisions.'' *Heckler* v. *Ringer,* 466 U.S. 602, 617 (1984).

This notice concerns our procedures for making NCDs for items and services under Part A or Part B. NCDs serve as generally applicable rules to ensure that similar claims for items or services are covered in the same manner. Often an NCD is written in terms of defined clinical characteristics that identify a population that may or may not receive Medicare coverage for a particular item or service. The term ''national coverage determination'' is defined by statute and means a determination by the Secretary of the Department of Health and Human Services (Secretary) with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Act. NCDs are controlling authorities for Medicare contractors and adjudicators as described more fully in 42 CFR 405.1060.

In the absence of an NCD, Medicare contractors may establish a local coverage determination (LCD) (defined in section 1869(f)(2)(B) of the Act) or adjudicate claims on a case-by-case basis. The case-by-case adjudicatory model permits consideration of a beneficiary's particular factual circumstances described in the medical record. The case-by-case model affords more flexibility to consider a particular individual's medical condition than is possible when the agency establishes a generally applicable rule.

B. Differences Between Food and Drug Administration (FDA) and CMS Review

Parties interested in the coverage of a drug or device may contact us with an inquiry on Medicare coverage while the particular drug or device is proceeding through the Food and Drug Administration (FDA) review process. Since the FDA is charged with regulating whether devices or pharmaceuticals are safe and effective for their intended use by consumers, generally we will not accept a coverage request for a device or pharmaceutical that has not been approved or cleared for marketing by the FDA for at least one indication; one exception is Category B Investigational Device Exemption (IDE) devices. A Category B IDE device is a non-experimental/investigational device for which the incremental risk is the primary risk in question (that is, underlying questions of safety and effectiveness of that device type have been resolved), or it is known that the device type can be safe and effective because, for example, other manufacturers have obtained FDA approval or clearance for that device type.

Both CMS and FDA review scientific evidence and will likely review some of the same evidence to meet each agency's mission. Among other things, FDA reviews evidence to determine that a product is safe and effective, that is, it conducts a premarket review of products under a statutory standard and delegated authority (67 FR 66755) different from that of CMS. We also review clinical evidence to determine, among other things, whether the item or service is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member for the affected Medicare beneficiary population. An FDA-regulated product must receive FDA approval or clearance (unless exempt from the FDA premarket review process) for at least one indication to be eligible for consideration of Medicare coverage (except in specific circumstances). However, FDA approval or clearance alone does not entitle that technology to Medicare coverage.

IV. CMS' Process for Making a National Coverage Determination

Section 1862(l) of the Act establishes, among other things, a timeframe for the NCD process and an opportunity for public comment on the agency's proposed decisions.

A. Informal Contacts and Inquiries Before Requesting an NCD

We encourage, but do not require, potential requesters to communicate, via conference call or meeting, with our staff in the Coverage and Analysis Group (CAG) within the Center for Clinical Standards and Quality (CCSQ) before submission of a formal request. We have found that an initial submission of a ''formal request'' without any conversation with us generally requires additional clarification and discussion before we can definitively act on the request. A summary of the item or service and supporting documentation can be presented by the requester, and our staff can identify additional information that might be needed or helpful. Preliminary discussions are also the appropriate time for the requester to identify clinical trial protocols whose results will be later submitted to support an NCD request, if relevant. A positive response, however, to a clinical trial protocol is not an indication of forthcoming Medicare coverage.

A significant proportion of potential requesters have either withdrawn or substantially amended their initial requests after informal discussion with us. These instances have generally included one or more of the following factors:

- Existing coverage of the item or service is already available at the national or local level.
- The substance of the request concerns the coding or payment amount for the item or service and is therefore outside the scope of an NCD.
- The item or service falls outside the scope of the Medicare Part A and Part B benefits.
- The requester learns that the item or service, even if covered, would not be separately paid under the Medicare program, for example, the item or service would be included in a bundled payment.

• The requester recognizes the request would not be supported by a persuasive body of evidence.

Informal communications between us and the requester allow both parties to clarify the NCD request and discuss potential issues that would affect our review and implementation of coverage of the item or service, such as the issues discussed above. These meetings and conversations expedite consideration and ensure that the requester understands that all relevant materials must be submitted in a timely manner and not delay the opening of the NCD review.

B. What Constitutes a Complete, Formal Request for an NCD or a Complete, Formal Request for Reconsideration

We can initiate an NCD request or one can be initiated by an individual, (including a beneficiary), or an entity (including a medical professional society or business interest). We require that any request for an NCD review be a written ''complete, formal request.'' Acceptance of a complete, formal request indicates that we have sufficient information to conduct the NCD review. A request is considered to be a complete, formal request once the following conditions are met:

• The requester has provided a final letter of request that is not marked as a draft, and is clearly identified as ''A Formal Request for a National Coverage Determination.'' The requester must identify and submit the scientific evidence that he or she believes supports the request for coverage. Our review, however, is not limited to the materials submitted by the requester.

• Supporting documentation must include a full and complete description of the item or service in the request and scientific evidence supporting the clinical indications for the item or service. This includes a specific detailed description of the proposed use of the item or service, including the target Medicare population and the medical indication(s) for which it can be used and whether the item or service is intended for use by health care providers or beneficiaries.

• If the requester has submitted an application to the FDA for premarket approval or 510(k) clearance of the product for which coverage is sought, a copy of the ''integrated summary of safety data'' and ''integrated summary of effectiveness data'', or the combined ''summary of safety and effectiveness data'' portions of the FDA application must be included. (Section 510(k) of the Food, Drug, and Cosmetic Act requires device manufacturers who must register, to notify FDA of their intent to market a medical device at least 90 days in advance.)

• In the case of items or services that are eligible for a 510(k) clearance by the FDA, the request must include identification of the predicate devices to which the item or service is claimed to be substantially equivalent.

• The request must include information regarding the use of an item or service (for example, drug or device) subject to FDA regulation as well as the status of current FDA regulatory review of the item or service involved. An FDA regulated item or service would include the labeling submitted to FDA or approved by the FDA for that article, together with an indication of whether the article for which review is being requested is covered under the labeled indication(s). We recognize that the labeling on FDA-approved products sometimes changes. For purposes of our review, we are interested in the labeled indications at the time a requester submits a formal request. If during our review, the labeled indication or status of pending FDA approval or clearance changes, the requester must notify us of those changes.

• The request must state the Medicare Part A or Part B benefit category or categories in which the requester believes the item or service falls. Medicare does not develop NCDs to establish coverage of items or services that fall outside the scope of the Part A or Part B benefits.

• Requests for NCDs may be submitted electronically via the Coverage Center Web site using the ''Contact Us'' link at *http://www.cms.gov/Medicare/Coverage/InfoExchange/contactus.html.*

Requests may also be submitted to the Centers for Medicare & Medicaid Services; Director, Coverage and Analysis Group; 7500 Security Blvd.; Baltimore, MD 21244.

We will consider a request to be a complete, formal request if the following conditions are met:

• The request is in writing.

• The request clearly identifies the statutorily-defined benefit category to which the requester believes the item or service applies and contains enough information for us to make a benefit category determination.

• The request is accompanied by sufficient, supporting evidentiary documentation.

• The information provided addresses relevance, usefulness, or the medical benefits of the item or service to the Medicare population.

• The information fully explains the design, purpose, and method of using the item or service for which the request is made.

C. External Requests for National Coverage Determinations

1. Request by an External Party for a New National Coverage Determination

Typically, a requester is a Medicare beneficiary, a manufacturer, a physician or a physician professional association. A request may be to establish, limit, or entirely remove coverage.

Upon acceptance of a complete, formal request, publication of a tracking sheet on the CMS Web site enables interested individuals to participate in and monitor the progress of our review. The tracking sheet contains a reference number, the name of the issue under consideration, requests for public comments, and summarizes the significant actions we have taken. The tracking sheet is a key element in making our NCD process efficient, open, and accessible to the public.

A formal evidence review is then undertaken to determine whether or not an unbiased interpretation of the available evidence base supports or refutes the requested coverage in whole or in part. A proposed decision is normally issued for public comment within six months of opening the NCD review. Consistent with section 1862(l)(3)(B) of the Act, we provide 30 days for public comment on the proposal. Not later than 60 days after the close of the 30-day public comment period, we issue a final NCD. The final NCD decision memorandum includes a summary of the public comments on the proposed decision as well as responses to those comments. The proposed and final memoranda also include the scientific basis for our coverage determination, for example, an analysis and summary of the evidence considered (including medical, technical, and scientific evidence). The statutory timeframes, however, vary depending on whether or not we commission a technology assessment from an outside entity, or whether we decide to convene the Medicare Evidence Development and Coverage Advisory Committee (MEDCAC) to discuss the quality of the evidence, or whether a clinical trial is requested.

2. Request by an External Party for Reconsideration of an Existing NCD

When an NCD currently exists, any individual or entity may request that we reconsider any provision of that NCD by filing a complete formal request for reconsideration. Similar to a request for a new NCD, the request for reconsideration must be submitted in

writing and be clearly identified. We consider accepting a request to revise an existing NCD at any time, but only if the requester presents documentation that meets one of the following criteria:

- Additional scientific evidence that was not considered during the most recent review along with a sound premise by the requester that new evidence may change the NCD decision.
- Plausible arguments that our conclusion materially misinterpreted the existing evidence at the time the NCD was decided.

Similar to a request for a new NCD, we consider a reconsideration request to be a ''complete, formal request'' if the following conditions are met:

- The requester provides a final letter of request (for example, not marked as a ''draft''), and clearly identifies the request as a ''Formal Request for NCD Reconsideration.''
- The requester identifies the scientific evidence that he or she believes supports the request for reconsideration (see above). Our review, however, is not limited to the materials submitted by the requester.
- The written request includes and supports any additional Medicare Part A or Part B benefit categories in which the requester believes the item or service falls.
- The request includes supporting documentation and is received electronically (unless there is good cause for only a hardcopy submission such as inability to scan necessary documents for electronic submission or lack of access to an electronic method of submission). Requests for NCDs may be submitted electronically via the Coverage Center Web site using the ''Contact Us'' link. Requests may also be submitted to the Centers for Medicare & Medicaid Services; Director, Coverage and Analysis Group; 7500 Security Blvd.; Baltimore, MD 21244.

We review materials presented in a complete, formal request by the requester. We also review other related clinical materials before accepting a request for reconsideration. In a change from the 2003 **Federal Register** notice and because of the time required for clinical research, reviews and analysis in a global health arena, we have determined that 60 days is usually a reasonable time period for us to make a decision to accept or reject decline an external NCD reconsideration request. If we accept the request, we post the letter requesting reconsideration together with a tracking sheet announcing that a reconsideration of the NCD has begun. If we decline the request, we will send a letter to the requester, rejecting the reconsideration request.

3. Request by an Aggrieved Party To Issue a Coverage or Noncoverage NCD

Section 1869(f)(4) of the Act permits certain aggrieved persons to make a request that the Secretary issue a national coverage or noncoverage determination with respect to a particular type or class of items or services, if the Secretary has not made a national coverage or noncoverage determination. These individuals are described in section 1869(f)(5) of the Act as ''individuals entitled to benefits under Part A, or enrolled under Part B, or both, who are in need of the item or service that is the subject of the coverage determination.'' Thus, this option can be invoked only for an initial request if we have not issued a coverage or noncoverage NCD. In these rare instances related to requests made by aggrieved parties, the statute establishes specific time deadlines for our consideration of such requests and we will notify the public through the posting of the NCD Tracking sheet when this occurs.

D. Internally-Generated NCD Review

1. Internally-Generated Review of an NCD

We may internally initiate the NCD process. The following are examples of circumstances that may prompt us, when supported by our initial investigation of available evidence for review, to generate an internal NCD review on new or longstanding items or services:

- Practitioners, patients, or other members of the public have raised significant questions about the health outcomes attributable to the use of the items or services for the Medicare beneficiary population.
- New evidence or reasonable re-interpretation of previously available evidence indicates that a national coverage review may be warranted.
- Local coverage policies on a particular item or service may vary in language or implementation. While this may be manifested by LCD variations among Medicare Administrative Contractors (MACs), we note that variability is not a *de facto* sign of inappropriate local policy and may be appropriate.
- The health technology represents a substantial clinical advance and is likely to result in a significant improvement in patient health outcomes or positive impact on the Medicare program.
- When rapid diffusion of an item or service is anticipated the evidence may inadequately address questions regarding impact on the Medicare population, target subgroup populations, practitioner or facility qualifications, etc., or on beneficiary health outcomes. Under these particularly complex circumstances, we may also require a comprehensive technology assessment, or convene a MEDCAC meeting to discern and evaluate those complexities and help inform our national decision.

2. Internally-Generated NCD Reconsideration Review

We may also internally open a reconsideration of any policy or of an entire NCD. Generally, we internally open an NCD reconsideration because we have become aware of new evidence that could support a material change in coverage and we seek public comment on relevant questions.

E. Expedited Process To Remove an NCD Using Certain Criteria

We recognize the need to periodically review our policies and processes to ensure that we remain effective and efficient as well as open and transparent. We are aware that clinical science and technology evolve and that items and services that were once considered state-of-the-art or cutting edge may be replaced by more beneficial technologies or clinical paradigms. Therefore, we are announcing an administrative procedure to periodically review the inventory of NCDs that are older than 10 years since their most recent review and evaluate the continued need for those policies to remain active on a national scale. We are administratively simplifying the Medicare program by removing NCDs in circumstances described below. This process of removal would not result in an NCD as that term is defined in sections 1869(f) and 1862(l) of the Act because there would be no uniform national decision about whether or not the particular item or service would be covered under Title XVIII of the Act. Rather, the initial coverage decision under section 1862(a)(1)(A) of the Act for the particular item or service would be made by local contractors. We believe that allowing local contractor discretion in these cases better serves the needs of the Medicare program and its beneficiaries since we believe the future utilization for items and services within these policies will be limited.

This expedited procedure allows us to regularly identify and remove NCDs that no longer contain clinically pertinent and current information or that involve items or services that are used infrequently by beneficiaries. As the scientific community continues to pursue research in certain areas, the

evidence base we previously reviewed may have evolved to support other policy conclusions. Alternatively, in some circumstances, removing an NCD has the effect of striking national noncoverage and may permit access to technologies that may be beneficial for some limited uses.

Under this process, we will periodically publish on our Web site, a list of NCDs proposed for removal along with our rationale for their proposed removal. We will solicit public comment for 30 calendar days. This will invite the public to comment on whether any or all of these NCDs should be removed or retained. In addition, we will ask the commenters to include a rationale to support their comments. We use the public comments to help inform our decision to do one of the following:

- Follow the proposal to remove the NCD.
- Retain the policy as an NCD.
- Formally reconsider the NCD and post a tracking sheet to that effect on the Coverage Web site.

We consider all the public comments when developing a final NCD list for removal. When the final NCD list for removal is posted to our Coverage Web site, we summarize the comments and briefly explain our rationale as to why a specific NCD remained active, was removed from active national status, or qualified for reconsideration. The final list will be effective upon posting it to the Web site.

Currently, an existing NCD must undergo a formal reconsideration process to be removed or amended and the process generally takes 9 to 12 months. We expect this new administrative procedure to reduce that time significantly. We believe that this streamlined process is more efficient and helpful to the public because it instills confidence that national policies are being monitored to ensure health benefits for Medicare beneficiaries remain current.

We may consider an older NCD for removal if, among other things, any of the following circumstances apply:

- We believe that allowing local contractor discretion better serves the needs of the Medicare program and its beneficiaries.
- The technology is generally acknowledged to be obsolete and is no longer marketed.
- In the case of a noncoverage NCD based on the experimental status of an item or service, the item or service in the NCD is no longer considered experimental.
- The NCD has been superseded by subsequent Medicare policy.
- The national policy does not meet the definition of an ''NCD'' as defined in sections 1862(l) or 1869(f) of the Act.
- The benefit category determination is no longer consistent with a category in the Act.

V. CMS' Evaluation of Requests for an NCD and Related Tasks

When we receive a request for an NCD, we review the submitted material to determine if it is a complete, formal written request. If it is not a complete, formal request it does not trigger the NCD statutory timeline because we do not have a clear basis upon which to act on the inquiry. In these instances, we notify the requester and explain our rationale, so the requester has the opportunity to provide missing information. As we explain elsewhere in this notice, many of the incomplete or informal inquiries we have received in the past did not ultimately result in a formal request.

Upon acceptance of a complete, formal, request, posting of the tracking sheet on our Web site facilitates the ability of interested individuals to participate in, and monitor, the progress of our review. This is a key element in making our NCD process more efficient, open, and accessible to the public.

We then undertake a formal evidence review to determine whether or not an unbiased interpretation of the available evidence base supports or refutes the requested coverage in whole or in part. We may also consider the need to obtain additional input through technology assessments from an outside entity and/or deliberation by the Medicare Evidence Development and Coverage Advisory Committee (MEDCAC). A formal review may result in an NCD, a noncoverage NCD, or an NCD with limitations. We also may determine that no NCD is required, permitting local Medicare contractors to make the initial determination under section 1862(a)(1) of the Act.

VI. Public Comment

We strive to conduct the NCD process in an open and transparent manner with thoughtful consideration of public comment. We have found that public commenters may cite published clinical evidence, contribute insight, and give us useful information. We are particularly interested in comments that include new evidence we have not reviewed for the proposed decision or in past considerations of the NCD. Comments should be timely and pertinent to the NCD. We respond in detail to the public comments on a proposed decision in the final decision memorandum.

While the statute affords an opportunity for public comment on the proposed decisions, we may also solicit public comment upon the initial opening of an NCD review announced via the tracking sheet. We use the initial public comments to inform our proposed decision and respond in detail to the public comments on a proposed decision when issuing the final decision memorandum.

Also, we may, at our discretion, open a proposed decision concurrently with the notice of opening an NCD. This occurs rarely when we determine it is efficient to reduce the time necessary to manage an unforeseen health related issue or program need that must be resolved quickly. We may also use our discretion, as we have publicly stated, in an attempt to expedite a final NCD for requests that are accepted in the FDA CMS parallel review project (see the notice published on October 11, 2011 (76 FR 62808 through 62810)).

Public comments providing information on unpublished evidence, such as the results obtained by individual practitioners or patients, are less rigorous and therefore less useful for making a coverage determination.

Public comments that contain personally identifiable health information are either redacted or not made available to the public. Comments containing extensive personal health information may leave no substantive comment after redaction.

We prefer to receive comments electronically; as these are more efficiently reviewed, catalogued, and redacted for personally identifiable health information. If a commenter chooses to submit comments through more than one channel, duplicate submissions are treated as a single comment.

In general, we avoid opening and closing public comment periods on federal holidays or weekends. We may have limited ability to accommodate this goal, however, under tight statutory deadlines.

VII. Prioritizing Requests

In the event that we have a large volume of NCD requests for simultaneous review, we prioritize these requests based on the magnitude of the potential impact on the Medicare program and its beneficiaries and staffing resources.

VIII. Time Frames

We strive to complete NCD-related activities in a timely and efficient manner, often before statutory deadlines. We prepare an annual Report to Congress that tracks our performance

with respect to certain key steps in the process which is also posted on our Web site. The following steps and time frames are used for new NCDs and for reconsiderations of existing NCDs:

- Upon acceptance of a complete formal request or upon the opening of a CMS initiated review, we publish on our Web site a tracking sheet that provides public notice of the opening of the NCD process. We generally allow a 30-day public comment period on the NCD review topic announced via the tracking sheet. We use the initial public comments to inform a proposed decision. As stated above, at our discretion, we may announce a proposed decision concurrent with the notice of opening.
- A proposed decision is posted no later than 6 months after the posting of the tracking sheet, unless a technology assessment (TA) from an outside entity is commissioned, a clinical trial is requested, or a meeting of the MEDCAC is convened.
- In the event that a TA is commissioned from an outside entity or a MEDCAC meeting is held and a clinical trial is not requested, the proposed decision is posted no later than 9 months following the posting of the tracking sheet.
- Upon the posting of the proposed decision, there is a 30-day public comment period during which time the public is invited to comment on the substance of the proposed decision.
- A final NCD is posted on our Web site no later than 60 days following the close of the public comment period on the proposed decision.
- With publication of the final decision memorandum, the NCD is effective for claims with dates of service beginning with the effective date of the NCD. The memorandum contains, among other materials, the analysis and conclusions and also the NCD that becomes a part of the Medicare National Coverage Determination Manual (Pub. 100–3) of the CMS Internet Only Manual. After enactment of section 1862(l) of the Act, the effective date for the NCD is the same date as the publication date of the final decision memorandum. Therefore, we have found it expedient and practical to include the NCD that is included in the Medicare National Coverage Determination manual in the final decision memoranda and to use that date as the effective date for Medicare coverage and payment purposes.

IX. Collection of Information Requirements

This document does not impose any new reporting, recordkeeping or third-party disclosure requirements. This document, however, does make reference to information associated with an existing information collection request. The information listed in section IV.B ''What Constitutes a Complete, Formal Request for a National Coverage Determination or a Complete, Formal Request for Reconsideration'' of this notice, was previously approved under OMB control number 0938–0776. We are currently seeking reinstatement of the OMB control number and the information collection requirements. We published the required 60-day notice on February 12, 2013 (78 FR 9927). The 60-day comment period ended April 15, 2013. We will announce the submission of the information collection request to OMB via the required 30-day notice.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 17, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: May 17, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013–19060 Filed 8–2–13; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; CMS Computer Match No. 2013–02; HHS Computer Match No. 1306; DoD–DMDC Match No. 12

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice establishes a CMP that CMS plans to conduct with the Department of Defense (DoD).

DATES: *Effective Dates:* Comments are invited on all portions of this notice. Public comments are due 30 days after publication. The matching program will become effective no sooner than 40 days after the report of the matching program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, whichever is later.

ADDRESSES: The public should send comments to: CMS Privacy Officer, Division of Privacy Policy, Privacy Policy and Compliance Group, Office of E-Health Standards & Services, Offices of Enterprise Management, CMS, Room S2–24–25, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9:00 a.m.–3:00 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Celeste Dade-Vinson, Division of Privacy Policy, Privacy Policy and Compliance Group, Office of E-Health Standards & Services, Offices of Enterprise Management, CMS, Mail stop S2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Office Phone: 410–786–0854, Facsimile: 410–786–1347, Email: *Celeste.Dade-Vinson@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits.

Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;

2. Obtain the Data Integrity Board approval of the match agreements;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and,

5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

This matching program meets the requirements of the Privacy Act of 1974, as amended.

Dated: July 31, 2013.

Michelle Snyder,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

CMS Computer Match No. 2013–02
HHS Computer Match No. 1306
DoD–DMDC Match No. 12

NAME:

''Disclosure of Enrollment and Eligibility Information for Military Health System Beneficiaries Who are Medicare Eligible''

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services (CMS); and Department of Defense (DoD), Defense Manpower Data Center (DMDC) and the Office of the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity (TMA)

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

Prior to 1991, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) entitlement terminated when any individual became eligible for Medicare Part A on a non-premium basis. The National Defense Authorization Act(s) (NDAA) for Fiscal Years (FYs) 1992 and 1993 (Pub. L. 102–190) Section 704, provide for reinstatement of CHAMPUS as second payer for beneficiaries entitled to Medicare on the basis of disability/End Stage Renal Disease (ESRD) only if they also enroll in Part B.

This CMP implements the information matching provisions of the NDAA, FY 2001 (Pub. L. 106–398) Sections 711 and 712; the NDAA, FY 1993 (Pub. L. 102–484) Section 705; and the NDAA, FYs 1992 and 1993 (Pub. L. 102–190) Sections 704 and 713.

Section 732 of the FY 1996 NDAA (Pub. L. 104–106), directed the administering Secretaries to develop a mechanism for notifying beneficiaries of their ineligibility for CHAMPUS when loss of eligibility is due to Medicare status (Part A only).

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of the Computer Matching Agreement is to establish the conditions, safeguards and procedures under which CMS will disclose Medicare enrollment information to the DoD, DMDC, and Health Affairs/TMA. The disclosure by CMS will provide TMA with the information necessary to determine if Military Health System (MHS) beneficiaries (other than dependents of active duty personnel), who are Medicare eligible, are eligible to receive continued military health care benefits. This disclosure will provide TMA with the information necessary to meet the Congressional mandate outlined in legislative provisions in the NDAA listed above.

Current law requires TMA to discontinue military health care benefits to MHS beneficiaries who are Medicare eligible when they become eligible for Medicare Part A unless they are enrolled in Medicare Part B. In order for TMA to meet the requirements of current law, CMS agrees to disclose certain Part A and Part B enrollment data on this dual eligible population, which will be used to determine a beneficiary's eligibility for care under CHAMPUS/TRICARE. DMDC will receive the results of the computer match and provide the information to TMA for use in its matching program.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

The matching program will be conducted with data maintained in the DoD System of Records (SOR) identified as DMDC 02 DoD, entitled ''Defense Enrollment Eligibility Reporting System,'' at 77 FR 69807 (November 21, 2012) and the SOR identified as DHA 07, entitled ''Military Health Information System (MHIS),'' at 71 FR 16127 (March 30, 2006). The release of the data for CMS is covered under the ''Enrollment Database,'' System No. 09–70–0502 published at 73 FR 10249 (February 26, 2008).

INCLUSIVE DATES OF THE MATCH:

The matching program will become effective no sooner than 40 days after the report of the matching program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be renewed for an additional 12 month period as long as the statutory language for the match exists and other conditions are met.

[FR Doc. 2013–19013 Filed 8–6–13; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; CMS Computer Match No. 2013–12; HHS Computer Match No. 1307; SSA Computer Match No. 1097–1899

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the establishment of a CMP that CMS plans to conduct with the Social Security Administration (SSA).

DATES: *Effective Dates:* Comments are invited on all portions of this notice. Public comments are due 30 days after publication. The matching program will become effective no sooner than 40 days after the report of the matching program is sent to the Office of Management and Budget (OMB) and Congress, or 30 days after publication in the **Federal Register,** whichever is later.

ADDRESSES: The public should send comments to: CMS Privacy Officer, Division of Privacy Policy, Privacy Policy and Compliance Group, Office of E-Health Standards & Services, Offices of Enterprise Management, CMS, Room S2–24–25, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9:00 a.m.–3:00 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Aaron Wesolowski, Director, Verifications Policy & Operations Branch, Division of Eligibility and Enrollment Policy and Operations, Center for Consumer Information and Insurance Oversight, CMS, 7501 Wisconsin Avenue, Bethesda, MD 20814, Office Phone: (301) 492–4416, Facsimile: (443) 380–5531, email: *Aaron.Wesolowski@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget

Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records (SOR) are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;
2. Obtain the Data Integrity Board approval of the match agreements;
3. Furnish detailed reports about matching programs to Congress and OMB;
4. Notify applicants and beneficiaries that the records are subject to matching; and,
5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

This matching program meets the requirements of the Privacy Act of 1974, as amended.

Dated: July 31, 2013.

Michelle Snyder,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

CMS Computer Match No. 2013–12
HHS Computer Match No. 1307
SSA Computer Match No. 1097–1899

NAME:

''Computer Matching Agreement between the Department of Health and Human Services, Centers for Medicare & Medicaid Services and the Social Security Administration for Determining Enrollment or Eligibility for Insurance Affordability Programs under the Patient Protection and Affordable Care Act''.

SECURITY CLASSIFICATION:

Unclassified.

PARTICIPATING AGENCIES:

Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), and the Social Security Administration (SSA).

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

Sections 1411 and 1413 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively, the ACA) require the Secretary of HHS to establish a program for determining eligibility for certain Insurance Affordability Programs, certifications of Exemption, and authorize use of secure, electronic interfaces and an on-line system for the verification of eligibility.

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of the Computer Matching Agreement (CMA) is to establish the terms, conditions, safeguards, and procedures under which SSA will disclose information to CMS in connection with the administration of Insurance Affordability Programs under the ACA and its implementing regulations. SSA will provide data to CMS and CMS will use SSA data needed to make initial Eligibility Determinations, eligibility Redeterminations and Renewal decisions, including appeal determinations, for Insurance Affordability Programs and certifications of Exemption. Insurance Affordability Programs include:

1. Qualified Health Plan through an Exchange established under the ACA,
2. Advance payments of the premium tax credit and cost sharing reductions,
3. Medicaid,
4. Children's Health Insurance Program, and
5. Basic Health Program.

As set forth in the CMA, SSA will provide CMS the following information when relevant: (1) Social Security number (SSN) verifications, (2) a death indicator, (3) an indicator of a finding of disability by SSA under title II of the Social Security Act, (4) prisoner data, (5) monthly and annual Social Security benefit information under title II of the Social Security Act, (6) quarters of coverage, and (7) confirmation that an allegation of citizenship is consistent with SSA records.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

The matching program will be conducted with data maintained by CMS in the Health Insurance Exchanges System (HIX), CMS System No. 09–70–0560, as amended, published at 78 FR 8538 (Feb. 6, 2013) and 78 FR 32256 (May 29, 2013).

The matching program will also be conducted with data maintained by SSA in the following SORs:

- Master Files of SSN Holders and SSN Applications, SSA/OEEAS, 60–0058, 75 FR 82121 (December 29, 2010), as amended 78 FR 40542 (July 5, 2013);
- Prisoner Update Processing System (PUPS), SSA/OPB, 60–0269, 64 FR 11076 (March 8, 1999), as amended 72 FR 69723 (December 10, 2007) and 78 FR 40542 (July 5 2013);
- Master Beneficiary Record, SSA/ORSIS, 60–0090, 71 FR 1826 (January 11, 2006), as amended 72 FR 69723 (December 10, 2007) and 78 FR 40542 (July 5, 2013);
- Earnings Recording and Self-Employment Income System, SSA/OEEAS, 60–0059, 71 FR 1819 (January 11, 2006), as amended 78 FR 40542 (July 5, 2013).

INCLUSIVE DATES OF THE MATCH:

The CMP will become effective no sooner than 40 days after the report of the matching program is sent to OMB and Congress, or 30 days after publication in the **Federal Register,** whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2013–19014 Filed 8–6–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Required Data Elements for Paternity Establishment Affidavits.

OMB No.: 0970–0171.

Description: Section 466(a)(5)(C)(iv) of the Social Security Act (the Act) requires States to develop and use an affidavit for the voluntary acknowledgement of paternity. The affidavit for the voluntary acknowledgement of paternity must include the minimum requirements specified by the Secretary under section 452(a)(7) of the Act. The affidavits will be used by hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program.

Respondents: State and Tribal IV–D agencies, hospitals, birth record agencies and other entities participating in the voluntary paternity establishment program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
None	1,113,719	1	0.17	189,332.23

Estimated Total Annual Burden Hours: 189,332.23.

In compliance with the requirements of Section 506(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. Comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

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.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–19058 Filed 8–6–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0937]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Clinical Laboratory Improvement Amendments Waiver Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Clinical Laboratory Improvement Amendments Waiver Applications'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On April 23, 2013, the Agency submitted a proposed collection of information entitled ''Clinical Laboratory Improvement Amendments Waiver Applications'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0598. The approval expires on July 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: August 1, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–19053 Filed 8–6–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1092]

Minimizing Risk for Children's Toy Laser Products; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Minimizing Risk for Children's Toy Laser Products.'' This draft guidance is to inform manufacturers of laser products, FDA headquarters and field personnel, and the public of the Center for Devices and Radiological Health's (CDRH) proposed approach on the safety of toy laser products. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 5, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Minimizing Risk for Children's Toy Laser Products'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Robert J. Doyle, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4672, Silver Spring, MD 20993–0002, 301–796–5863.

I. Background

This draft guidance is to inform manufacturers of laser products, FDA headquarters and field personnel, and the public of CDRH's proposed approach on the safety of children's toy laser products. Lasers with outputs above certain levels that are operated in

an unsafe and uncontrolled manner may cause injury to the user and/or others within range of the laser beam. This is a particular concern for lasers intended for entertainment purposes, especially when intended to be used as toys by children. Although Federal law requires all laser products sold in the United States to be in compliance with the Federal Performance Standards for Laser Products (21 CFR 1040.10 and 1040.11), at present FDA regulations do not specifically address children's toy laser products. FDA recently issued a proposed rule (78 FR 37723) that proposes to define children's toy laser products and require them to be within International Electrotechnical Commission (IEC) Class 1 emission limits. While this rulemaking process is ongoing, CDRH encourages manufacturers to keep children's toy laser products within IEC Class 1 emission limits in order to minimize the risk they pose to this vulnerable population.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the Agency's proposed approach on children's toys that are or that contain laser products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive ''Minimizing Risk for Children's Toy Laser Products,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1810 to identify the guidance you are requesting. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.*

IV. Paperwork Reduction Act of 1995

This draft guidance refers to a currently approved collection of information found in FDA regulations. This collection of information is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in 21 CFR part 1040 is approved under OMB control number 0910–0025.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: August 1, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–19018 Filed 8–6–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0597]

Guidance for Industry on Oversight of Clinical Investigations—A Risk-Based Approach to Monitoring; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Oversight of Clinical Investigations—A Risk-Based Approach to Monitoring.'' This guidance assists sponsors in developing risk-based monitoring strategies and plans for clinical investigations of human drugs, biologics, medical devices, and combinations thereof. The overarching goal of this guidance is to enhance human subject protection and the quality of clinical trial data by focusing sponsor oversight on the most important aspects of study conduct and reporting. The guidance makes clear that sponsors can use a variety of approaches to meet their responsibilities for monitoring investigational new drug or investigational device exemption studies.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002; the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448; or the Office of Communication and Education, Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ann Meeker-O'Connell, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5356, Silver Spring, MD 20993–0002, 301–796–7615; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210; or Linda Godfrey, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3446, Silver Spring, MD 20993–0002, 301–796–5490.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Oversight of Clinical Investigations—A Risk-Based Approach to Monitoring.'' FDA is publishing this guidance to assist sponsors of clinical investigations in developing risk-based monitoring strategies and plans for clinical investigations of human drug and biological products, medical devices, and combinations thereof. This guidance is intended to make clear that sponsors can use a variety of approaches to meet their responsibilities for monitoring clinical investigations under 21 CFR parts 312 and 812.

In the **Federal Register** of August 29, 2011 (76 FR 53683), FDA announced the availability of the draft guidance entitled ''Oversight of Clinical Investigations: A Risk-Based Approach to Monitoring,'' dated August 2011, and the public was provided with an opportunity to comment on it until November 28, 2011. FDA carefully considered all of the comments received in developing the final guidance. The final guidance includes clarifications and additional detail on some topics. For example, the final guidance includes additional detail on how to perform risk-based monitoring and examples of monitoring techniques.

The final guidance describes strategies for monitoring activities that reflect a modern, risk-based approach that focuses on critical study parameters and relies on a combination of monitoring activities to oversee a study effectively. The guidance also makes recommendations about how to develop monitoring plans and document monitoring activities and includes additional strategies to ensure study quality.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on oversight of clinical investigations—a risk-based approach to monitoring. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control numbers 0910–0078, 0910–0014, and 0910–0733.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceREgulatoryInformation/default.htm, http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*, or *http://www.regulations.gov.*

Dated: August 1, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–19004 Filed 8–6–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 17, 2013, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center (Rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Diane Goyette, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *AIDAC@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The purpose of the meeting on October 17, 2013, is to discuss susceptibility interpretive criteria for systemic antibacterial drugs and for dosing recommendations in product labeling. We will seek input on the role of pharmacokinetic data in setting susceptibility interpretive criteria. We will also discuss revising dosing recommendations in product labeling based on pharmacokinetic data and clinical safety and efficacy data.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 2, 2013. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 24, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably

accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 25, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Diane Goyette at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 1, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–19036 Filed 8–6–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0779]

Retrospective Review of Draft Guidance Documents Issued Before 2010; Withdrawal of Guidances

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an initiative in the Center for Drug Evaluation and Research (CDER) involving the review of draft guidance documents issued before 2010 to determine their status, and to decide whether those guidances should be withdrawn, revised, or finalized with only minor changes. Guidances that are no longer up to date, and for which more current information is available, will be withdrawn. Guidances that reflect CDER's current thinking, CDER will decide whether to revise or finalize. This notice describes CDER's initiative, announces the first group of guidances to be withdrawn, describes in general terms draft guidances under consideration for revision or finalization, and explains how CDER is making this process as transparent as possible.

DATES: General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit electronic comments on Agency guidance documents to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to Agency guidance documents.

FOR FURTHER INFORMATION CONTACT: Kimberly K. Thomas, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6220, Silver Spring, MD 20993–0002, 301–796–2357, *kimberly.k.thomas@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In September 2000, FDA issued the final rule ''Administrative Practices and Procedures; Good Guidance Practices'' (GGP) (65 FR 56468; September 19, 2000). The GGP regulation describes FDA policies and procedures for the development, issuance, and use of guidance documents and makes these Agency policies and procedures clear to the public. The GGP regulation provides for developing and issuing guidances that set forth initial interpretations of statutory or regulatory requirements, explain changes in interpretation of policies that are of other than minor in nature, or discuss complex scientific issues or highly controversial issues. The GGP regulation also requires that such guidances be issued in draft for public comment before they are finalized (Level 1 guidances). In addition, the GGP regulation explains that FDA will periodically review existing guidance documents to determine whether they need to be changed or withdrawn.

A key component of the GGP regulation is ensuring transparency during guidance development and issuance. Since finalization of the GGP regulation in September 2000, CDER has issued an average of approximately 20 draft guidances each year, seeking public input and carefully considering that input before issuing final versions of the guidances. In many cases, guidances were not finalized most often because of higher staff priorities. However, over the years, because of new information, scientific developments, and emerging technologies, draft guidances were also revised, and reissued or withdrawn.[1]

Recently, CDER launched an initiative to review draft guidance documents published before 2010 to decide which guidances to withdraw, revise, or finalize with only minor changes. CDER is withdrawing draft guidances that are no longer up to date. CDER is also actively reviewing the draft guidances to determine which ones to either revise or finalize. This notice lists the first group of guidances CDER has identified for withdrawal, describes generally what guidances are being reviewed, and describes how CDER will keep the public informed of the guidances that are available with the goal of making the initiative transparent and consistent with the GGP regulation (21 CFR 10.115).

II. Withdrawal of Guidances

CDER has reviewed many draft guidances published before 2010. As a result of this review, CDER identified 23 draft guidances for withdrawal. The guidances are being withdrawn because they are out of date, thus of little use to the pharmaceutical industry. In most cases, FDA has developed other guidances and resources to assist industry with clinical evaluation and requirements for drug approval. The guidances identified for withdrawal relate to these topics:

- Current good manufacturing practice (cGMP) compliance specific to manufacturing, processing, and dose unit sampling and assessment;
- Development of antimicrobial drugs for the treatment of acute bronchitis, bacterial meningitis, bacterial prostatitis, bacterial vaginosis, catheter-related bloodstream infections, febrile neutropenia, gonorrhea, Lyme disease, streptococcal pharyngitis and tonsillitis, uncomplicated urinary tract infections, and vuvlovaginal candidiasis;
- Clinical trials for developing antimicrobial drugs and packaging of

[1] When Level 1 guidances are revised, they are usually issued as draft, version 2s, for public input before being issued in final form. When a guidance needs to be withdrawn, a notice is sometimes published in the **Federal Register** announcing that the guidance has been withdrawn. If no withdrawal announcement is made, CDER maintains a current list of new/revised/withdrawn guidances on the CDER guidance Web page at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

inhalation products in semipermeable container systems;

- Approval of abbreviated new drug applications (ANDAs) and 505(b)(2) applications under the Drug Price Competition and Patent Term Restoration Act of 1984 (i.e., the Hatch-Waxman Act);
- Procedures relating to submission of patent information, submission of marketing applications, and forms for registration and disclosure of information;
- Labeling in ANDAs; and
- Qualifying for pediatric exclusivity under the Best Pharmaceuticals for Children Act.

CDER is withdrawing the following guidances:

1. ''Manufacturing, Processing, or Holding Active Pharmaceutical Ingredients''—issued April 1998.
2. ''Powder Blends and Finished Dosage Units—Stratified In-Process Dosage Unit Sampling and Assessment''—issued November 2003.
3. ''Forms for Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution''—issued May 2001.
4. ''Disclosing Information Provided to Advisory Committees in Connection With Open Advisory Committee Meetings Related to the Testing or Approval of New Drugs and Convened by CDER, Beginning on January 1, 2000''—issued December 1999.

For information on the four preceding guidances, contact the Office of Compliance in CDER.

5. ''Evaluating Clinical Studies of Antimicrobials in the Division of Anti-Infective Drug Products''—issued February 1997.
6. ''Empiric Therapy of Febrile Neutropenia—Developing Antimicrobial Drugs for Treatment''—issued July 1998.
7. ''Lyme Disease—Developing Antimicrobial Drugs for Treatment''—issued July 1998.
8. ''Secondary Bacterial Infections of Acute Bronchitis—Developing Antimicrobial Drugs for Treatment''—issued July 1998.
9. ''Streptococcal Pharyngitis and Tonsillitis—Developing Antimicrobial Drugs for Treatment''—issued July 1998.
10. ''Uncomplicated Gonorrhea—Developing Antimicrobial Drugs for Treatment''—issued July 1998.
11. ''Uncomplicated Urinary Tract Infections—Developing Antimicrobial Drugs for Treatment''—issued July 1998.
12. ''Vulvovaginal Candidiasis—Developing Antimicrobial Drugs for Treatment''—issued July 1998.
13. ''Bacterial Vaginosis—Developing Antimicrobial Drugs for Treatment''—issued July 1998.
14. ''Acute Bacterial Meningitis—Developing Antimicrobial Drugs for Treatment''—issued July 1998.
15. ''Acute or Chronic Bacterial Prostatitis—Developing Antimicrobial Drugs for Treatment''—issued July 1998.
16. ''Developing Antimicrobial Drugs—General Considerations for Clinical Trials''—issued July 1998.
17. ''Catheter-Related Bloodstream Infections—Developing Antimicrobial Drugs for Treatment''—issued October 1999.

For information on the preceding 13 guidances (number 5 through 17), contact the Office of Antimicrobial Products in the Office of New Drugs in CDER.

18. ''Labeling Over-the-Counter (OTC) Human Drug Products—Updating Labeling in ANDAs''—issued February 2001.

For information on the preceding guidance (number 18), contact the Office of Drug Evaluation IV in the Office of New Drugs in CDER.

19. ''Inhalation Drug Products Packaged in Semipermeable Container Closure Systems''—issued July 2002.
20. ''Listed Drugs, 30-Month Stays, and ANDAs and 505(b)(2) Applications Under Hatch-Waxman, as Amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—Questions and Answers''—issued November 2004.
21. ''Referencing Discontinued Labeling for Listed Drugs in Abbreviated New Drug Applications''—issued October 2000.
22. ''Submission of Patent Information for Certain Old Antibiotics''—issued December 2008.

For information on the preceding four guidances (number 19 through 22), contact the Office of Pharmaceutical Science in CDER.

23. ''Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act''—issued September 1999.

For information on the preceding guidance (number 23), contact the Pediatric and Maternal Health Staff in the Office of New Drugs in CDER.

III. Revision or Finalization of Guidances

In addition to identifying the first set of guidances for withdrawal, CDER also identified guidances for revision or finalization. CDER is in the process of developing a plan for their completion. Guidances for revision or finalization are specific to the following topics:

- Biopharmaceutics;
- Chemistry, manufacturing, and controls;
- Clinical pharmacology;
- Combination products;
- cGMP compliance;
- Development of antimicrobial drugs;
- Drug advertisements;
- Drug safety;
- Electronic submissions;
- Labeling;
- OTC products;
- Pharmacology and toxicology;
- Procedural guidances; and
- Radiopharmaceuticals.

IV. Maintaining Transparency

CDER would like to make this process as transparent as possible, consistent with the GGP regulation. As a result, CDER is issuing this notice announcing the initiative for draft guidance review, and listing the first group of guidances for withdrawal. CDER also maintains and regularly updates on its guidance Web site a list of new, revised, and withdrawn guidances (at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*). Each year CDER also publishes on its guidance Web site a Guidance Agenda, which lists new draft and revised draft guidances planned for issuance in the given calendar year.

V. Comments

Interested persons may submit either electronic comments regarding Agency guidance documents to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

VI. Electronic Access

Persons with access to the Internet may obtain CDER guidance documents at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: August 2, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–19051 Filed 8–6–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0883]

Purdue Pharma L.P.; Withdrawal of Approval of a New Drug Application for Oxycontin

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) for OXYCONTIN (oxycodone hydrochloride) Extended-Release Tablets, held by Purdue Pharma L.P. (Purdue), One Stamford Forum, Stamford, CT 06901–3431. Purdue has voluntarily requested that approval of this application (NDA 20–553) be withdrawn and has waived its opportunity for a hearing.

DATES: Effective August 7, 2013.

FOR FURTHER INFORMATION CONTACT: Patrick Raulerson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6368, Silver Spring, MD 20993–0002, 301–796–3522.

SUPPLEMENTARY INFORMATION: FDA approved NDA 20–553 for OXYCONTIN (oxycodone hydrochloride) Extended-Release Tablets, 10 milligrams (mg), 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, 80 mg, and 160 mg, (original OxyContin), on December 12, 1995. A reformulated version of these products, OXYCONTIN (oxycodone hydrochloride) Extended-Release Tablets, 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, and 80 mg (reformulated OxyContin), is the subject of NDA 22–272, also held by Purdue and initially approved on April 5, 2010. Reformulated OxyContin was developed with physicochemical properties that are intended to make the tablet more difficult to manipulate for purposes of abuse or misuse. Both original and reformulated OxyContin are opioid agonist products. Original OxyContin was indicated for the management of moderate to severe pain when a continuous, around-the-clock opioid analgesic is needed for an extended period of time.

In correspondence dated August 10, 2010, Purdue notified FDA that it had ceased shipment of original OxyContin, and FDA subsequently moved original OxyContin to the ''Discontinued Drug Product List'' section of the Orange Book. In a letter to FDA dated March 19, 2013, Purdue requested that FDA withdraw approval of NDA 20–553 for original OxyContin, noting that the original formulation of OxyContin was subject to abuse and misuse, and that it was ''not possible to develop labeling or REMS provisions that would create a positive risk/benefit ratio for the original formulation of OxyContin.'' In that letter, Purdue waived its right to a hearing.

On April 18, 2013, FDA published notice of its determination that original OxyContin, NDA 20–553, was withdrawn from sale for reasons of safety or effectiveness (78 FR 23273). The notice concluded that ''[o]riginal OxyContin . . . poses an increased potential for abuse by certain routes of administration, when compared to reformulated OxyContin. Based on the totality of the data and information available to the Agency at this time, FDA concludes that the benefits of original OxyContin no longer outweigh its risks.''

Under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(e)), and under authority delegated by the Commissioner to the Director, Center for Drug Evaluation and Research, approval of NDA 20–553, and all amendments and supplements thereto, is withdrawn (see **DATES**). Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 355(a) and 331(d)).

Dated: July 30, 2013.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 2013–18694 Filed 8–6–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-day Comment Request: National Institute of Mental Health Data Access Request and Use Certification

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Mental Health (NIMH), the National Institutes of Health, has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 28, 2013, Volume 78, Number 102, Pages 31947–31948 and allowed 60-days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Mental Health (NIMH), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact: Keisha Shropshire, NIMH Project Clearance Liaison, Science Policy and Evaluation Branch, OSPPC, NIMH, NIH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Rockville Pike, Bethesda, MD 20892, or call 301–443–4335 or email your request, including your address to: *kshropsh@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: The National Institute of Mental Health Data Access Request and Use Certification (previously National Database for Autism Research Data Access Request), 0925–0667, Revision, Expiration Date: 01/31/2016; National Institute of Mental Health (NIMH), National Institutes of Health (NIH).

Need and Use of Information Collection: NIMH recently received OMB approval for use of the National Database for Autism Research (NDAR) Data Use Certification (DUC) Form. NIMH is interested in renaming this form the ''NIMH Data Access Request and Use Certification (DUC) Form'' and using it to meet the unique data access

needs of all NIMH data repositories. The NIMH DUC form is necessary for ''Recipient'' Principal Investigators and their organization or corporations with approved assurance from the DHHS Office of Human Research Protections to access data or images from NIMH repositories and datasets for research purposes. The primary use of this information is to document, track, monitor, and evaluate the use of the NIMH repositories/datasets, as well as to notify interested recipients of updates, corrections or other changes to the database. There are currently three data repositories/sets positioned to use the NIMH DUC form: NDAR, the NIH Pediatric MRI Data Repository (PedsMRI), and the NIMH Clinical Research Datasets (NCRD).

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 380.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Type of respondent	Number of respondents	Frequency of response	Average time per response (in hours)	Annual hour burden
NIMH Data Access Request and Use Certification.	Principal Investigators/Research Assistant.	240	1	95/60	380

Dated: July 25, 2013.

Sue Murrin,

Executive Officer, NIMH, NIH.

[FR Doc. 2013–19072 Filed 8–6–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-day Comment Request: Autism Spectrum Disorder Research Portfolio Analysis

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Mental Health (NIMH), the National Institutes of Health, has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 24, 2013, Volume 78, Number 101, Pages 31568–31569 and allowed 60-days for public comment. One public comment was received; in this comment, a request was made for access to any data that is collected on autism projects that are funded. This comment was considered, but it did not result in alteration to the data collection or data management process because steps are already in place to make the data publicly accessible via an online *Web Tool* on the IACC Web site. No comments that specifically addressed cost and hour burden were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Mental Health (NIMH), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact: The Office of Autism Research Coordination, NIMH, NIH, Neuroscience Center, 6001 Executive Blvd., MSC 9663, Room 6184, Bethesda, MD 20892 or Email your request, including your address to: *iaccpublicinquiries@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Autism Spectrum Disorder (ASD) Research Portfolio Analysis, 0925—NEW-National Institute of Mental Health (NIMH), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of the ASD portfolio analysis is to collect research funding data from U.S. and international ASD research funders, to assist the Interagency Autism Coordinating Committee (IACC) in fulfilling the requirements of the Combating Autism Act, and to inform the committee and interested stakeholders of the funding landscape and current directions for ASD research. Specifically, these analyses will examine the extent to which current funding and research topics align with the *IACC Strategic Plan for ASD Research.* The findings will help guide future funding priorities by outlining current gaps and opportunities in ASD research as well as serving to highlight annual activities and research progress.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 419.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents (funders)	Number of respondents	Number of response per respondent	Average time per response (in hours)	Total burden hours
U.S. Federal	26	36	15/60	234
U.S. Private	12	54	15/60	162
International Government	4	14	15/60	14
International Private	4	9	15/60	9

Dated: July 26, 2013.

Sue Murrin,

Executive Officer, NIMH, NIH.

[FR Doc. 2013–19089 Filed 8–6–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Review Career Development Awards.

Date: August 14, 2013.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Raul A. Saavedra, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 1, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18962 Filed 8–6–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public. Individuals planning to attend the teleconference may do so by calling the toll-free number, 866–692–3158 and entering the passcode: 2868336.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: August 13, 2013.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: NICHD Director will discuss his response to the recommendations in the report of the Blue Ribbon Panel for Medical Rehabilitation Research at NIH.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 2A03, Bethesda, MD 20892–2425, (Telephone Conference Call).

Contact Person: Ralph M. Nitkin, Ph.D., Director, B.S.C.D., Biological Sciences and Career Development, NCMRR, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6100 Executive Boulevard, Room 2A03, Bethesda, MD 20892–7510, (301) 402–4206, *nitkinr@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the need to coordinate the availability of the Board membership to participate with the Institute in reviewing the proposed response to the recommendations in the report of the Blue Ribbon Panel on Medical Rehabilitation Research at NIH.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 1, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18990 Filed 8–6–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Biodemography of Aging.

Date: August 15, 2013.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Cardiovascular Sciences.

Date: September 4–5, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301–435–5575, *hamannkj@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 1, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–18961 Filed 8–6–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0696]

Certificate of Alternative Compliance for the M/V IRON STAN, 1246342

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the Uninspected Towing Vessel M/V IRON STAN as required by 33 U.S.C. 1605(c) and 33 CF. 81.18.

DATES: The Certificate of Alternative Compliance was issued on June 10, 2013.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2013–0696 in the ''SEARCH'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LT Steven Melvin, District Nine, Prevention Branch, U.S. Coast Guard, telephone 216–902–6343. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A Certificate of Alternative Compliance, as allowed for under 33 U.S.C. 1605(c) and 33 CFR 81.18, has been issued for the M/V IRON STAN. The vessel's primary purpose is to push a passenger barge that operates on the Chicago River and a limited area of Lake Michigan, within 1 mile of shore. The unique design of the vessel did not lend itself to full compliance with Annex I of the Inland Rules Act.

The Commandant, U.S. Coast Guard, certifies that full compliance with the Inland Rules Act would interfere with the special functions/intent of the vessel and would not significantly enhance the safety of the vessel's operation. Placing the masthead light in the required position would interfere with the vessel's ability to pass under bridges on the Chicago River.

The Certificate of Alternative Compliance authorizes the M/V IRON STAN to deviate from the requirements set forth in Annex I of the Inland Rules Act, and install a lower masthead light to substitute for the ordinary pair of masthead lights. The regularly positioned masthead lights will still be installed, but will be retracted throughout its tour underneath the bridges on the Chicago River only.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: July 30, 2013.

P. Albertson,

Captain, U.S. Coast Guard, Chief, Prevention Division, Ninth Coast Guard District.

[FR Doc. 2013–19101 Filed 8–6–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0491]

Consolidation of Officer in Charge, Marine Inspection For Outer Continental Shelf Activities; Eighth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Coast Guard is considering establishing a single Officer in Charge, Marine Inspection (OCMI) to oversee marine inspections for all Mobile Offshore Drilling Units and Floating Outer Continental Shelf Facilities (as defined in Coast Guard regulations) engaged directly in, capable of engaging directly in, or being constructed to engage directly in oil and gas exploration or production in the offshore waters of the Eighth Coast Guard District (referred to hereafter collectively as ''units''). Currently, these units are inspected by six separate OCMI offices across the Eighth Coast District. The Coast Guard believes that the consolidation of the six existing OCMI offices into one will promote efficiency and consistency for both the Coast Guard and the regulated industry.

DATES: Comments and related material must be received on or before September 6, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0491 using any one of the following methods:

(1) Online: *http://www.regulations.gov.*

(2) Fax: 202–493–2251.

(3) Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

If you have questions on this notice, call or email Commander Michael Zamperini, U.S. Coast Guard; telephone (202) 372–1230, email *Michael.B.Zamperini@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to submit comments and related material in response to this notice. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2013–0491) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* and follow the instructions on that Web site. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, go to *http://www.regulations.gov,* and follow the instructions on that Web site. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of 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.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The Eighth Coast Guard District in New Orleans, Louisiana has six OCMI field offices located along the Gulf Coast in Mobile, Alabama; New Orleans, Louisiana; Morgan City, Louisiana; Port Arthur, Texas; Houston, Texas; and Corpus Christi, Texas. Currently, each of these offices has full OCMI authority to conduct inspections of all vessels required to undergo Coast Guard inspection within their respective zones as defined in 33 CFR part 3. The functions of an OCMI are found in 33 CFR 1.01–20 and include inspection of vessels in order to determine that they comply with the applicable laws, rules, and regulations relating to safe construction, equipment, manning, and operation and that they are in a seaworthy condition for the services in which they are operated.

At the six field offices listed above, the OCMI also serves as the commanding officer of the unit. The title ''commanding officer'' refers to the highest ranking military official at a Coast Guard field office. In addition to being geographically separated from the Eighth Coast Guard District office, commanding officers exercise independent military justice and disciplinary authority over their entire staff. Commanding officers in the Eighth Coast Guard District report directly to the Eighth Coast Guard District Commander in New Orleans. Commanding officers also serve other statutory functions within their geographic area such as Federal On-Scene Coordinator (FOSC) for oil and hazardous material spills, Captain of the Port (COTP), and Federal Maritime Security Coordinator (FMSC). As OCMIs, they have authority to independently render decisions effecting the approval or disapproval of certain vessels to operate on the OCS. Any appeal of a decision made by an OCMI is made to the District Commander in accordance with 33 CFR 1.03–20.

In order to understand the various options discussed later in this notice, it is important to note that the Eighth Coast Guard District Commander also has various division chiefs on staff. Unlike commanding officers, division chiefs do not exercise military justice authority over their staffs and are co-located with the District Commander. Division chiefs report directly to the District Commander and historically have not served as OCMI, FOSC, COTP, or FMSC. Should the role of OCMI be assigned to a division chief, appeals from the OCMI level would also be made to the District Commander.

Vessels requiring Coast Guard inspection include Mobile Offshore Drilling Units (MODUs), Floating Outer Continental Shelf (OCS) Facilities (as defined in 33 CFR 140.10), and other similar vessels that engage in oil and gas exploration and production on the OCS. Coast Guard OCMIs are required to inspect these units when they are operating on the OCS.

The offshore oil and gas industry is currently experiencing substantial growth in the Gulf of Mexico. As a result, unit construction and operation in the Gulf of Mexico is expected to increase by 60% in the next five years. In order to keep pace with this growth, the Coast Guard is considering ways to increase efficiency and streamline inspection of offshore units. We are considering creating one office to serve as OCMI for MODUs and Floating OCS facilities, creating a single point of contact for scheduling inspections and promoting consistency of regulatory interpretation and enforcement across the Gulf for units operating on the OCS. At this time, we are not suggesting the inclusion of support vessels such as offshore supply vessels, crew boats, accommodation vessels, and similar vessels that routinely call on ports as falling under the authority of the OCS OCMI. Those vessels would continue to be inspected by the six existing OCMIs.

We are seeking public comment on the following questions to assist us in determining whether consolidating the OCMI function as described above is advisable and, if so, the manner in which it should be implemented:

(1) Do you support the consolidation of the OCMI function into a single office for the oversight and inspection of units operating on the OCS in the Eighth Coast Guard District? Why or why not?

(2) If a consolidated OCMI for the OCS were created, which of the following options is the most appropriate organizational placement of the consolidated OCMI within the Eighth Coast Guard District? (In each of the scenarios below, appeals to decisions made by the consolidated OCMI would be made to the Eighth Coast Guard District Commander.) Are there other options we should consider?

(a) Consolidate the OCMI function into one of the six existing OCMIs. This OCMI would retain the title of commanding officer they already have at their current unit, but their OCMI authority to inspect units would be expanded to include all of the Eighth Coast Guard District.

(b) Make the consolidated OCMI a member of the staff of one of the six existing OCMIs. This OCMI would not hold the title of commanding officer.

(c) Make the consolidated OCMI a division chief on the Eighth Coast Guard District staff. This OCMI would not hold the title of commanding officer.

(d) Create a new command separate from the existing six OCMI commands with the consolidated OCMI as the commanding officer.

(3) If the consolidated OCMI for the OCS were created, where in the Eighth Coast Guard District should the offices of the consolidated OCMI be physically located?

We ask that all comments submitted in response to this request include the reasoning behind the comment to better inform our decision making. This request for comments should not be construed as suggesting that the Eighth Coast Guard District will create a consolidated OCMI for the OCS. Whether, and in what format, this position would be created will depend on a number of factors including public responses to this request, staffing requirements, legal constraints, and budget impacts.

Specific questions regarding this request should be addressed to

Commander Michael Zamperini whose contact information is located above the ''For Further Information Contact'' section.

This notice is issued under the authority of 5 U.S.C 552(a), 14 U.S.C. 92, and DHS Delegation 0170.1 II (23).

Dated: August 1, 2013.

J. C. Burton,

Captain, U.S. Coast Guard, Director of Inspections & Compliance.

[FR Doc. 2013–19098 Filed 8–6–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5690–N–10]

60-Day Notice of Proposed Information Collection: Promise Zones

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, 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:* October 7, 2013.

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 202–402–5564 (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: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109. 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. Mussington.

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: Promise Zones.

OMB Approval Number: Pending OMB approval.

Type of Request: New Collection.

Form Number: Pending Assignment.

Description of the need for the information and proposed use: Under the Promise Zones initiative, the federal government will invest and partner with high-poverty urban, rural, and tribal communities to create jobs, increase economic activity, improve educational opportunities, leverage private investment, and reduce violent crime. Additional information about the Promise Zones initiative can be found at *www.hud.gov/promisezones*, and questions can be addressed to *promisezones@hud.gov.* This notice estimates burden for applying for the designation.

Respondents (i.e. affected public): State, Local, or Tribal Governments.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Qualifying Criteria/ Need—City and Neighborhood Maps	78	1	1	1	78	$40	$3120
Local leadership support—Documentation	78	1	1	1	78	40	3120
Need—Poverty rate	78	1	1	1	78	40	3120
Need—Crime rate	78	1	1	1	78	40	3120
Need—Employment rate	78	1	1	1	78	40	3120
Need—Vacancy rate	78	1	1	1	78	40	3120
Strategy—Community Assets and Neighborhood Position	78	1	1	1	78	40	3120
Strategy—Narrative	78	1	1	2	156	40	6240
Strategy—Evidence base	78	1	1	1	78	40	3120
Strategy—Sustainability and financial feasibility	78	1	1	1	78	40	3120
Capacity—Lead documentation	78	1	1	1	78	40	3120
Capacity—Partner documentation	78	1	1	1.5	117	40	4680
Capacity—Partner Organization Chart	78	1	1	2	156	40	6240
Capacity—Local government	78	1	1	1	78	40	3120
Capacity—Partnership commitments documentation	78	1	1	1.5	117	40	4680

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	78	1	1	18	1404	40	56,160

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: August 1, 2013.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2013–18992 Filed 8–6–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–R–2013–N147; FXRS1265066CCP0–134–FF06R06000]

Rocky Mountain Arsenal National Wildlife Refuge, Commerce City, CO; Comprehensive Conservation Plan and Environmental Impact Statement; Two Ponds National Wildlife Refuge, Arvada, CO; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a Comprehensive Conservation Plan (CCP) and an Environmental Impact Statement (EIS) for the Rocky Mountain Arsenal National Wildlife Refuge in Commerce City, Colorado. The Service also intends to prepare a CCP and an Environmental Assessment for the Two Ponds National Wildlife Refuge in Arvada, Colorado. These refuges are currently being managed under Comprehensive Management Plans developed in the mid-1990s and as part of the Rocky Mountain Arsenal National Wildlife Refuge Complex. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process of revising the management plans for these refuges.

DATES: To ensure consideration, please send your written comments by October 11, 2013. Submit comments by one of the methods under **ADDRESSES**. We will announce opportunities for public input in local news media throughout the CCP process.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

Email: rockymountainarsenal@fws.gov. Include ''Rocky Mountain Arsenal National Wildlife Refuge CCP'' or ''Two Ponds National Wildlife Refuge CCP,'' as appropriate, in the subject line of the message.

Fax: Attn: Bernardo Garza and Toni Griffin, Planning Team Leaders, 303/236–4792.

U.S. Mail: Bernardo Garza and Toni Griffin, Planning Team Leaders, Division of Refuge Planning, P.O. Box 25486, Denver, CO 80225–0486.

In-Person Drop-off: You may drop off comments during regular business hours at the above address, or at the Rocky Mountain Arsenal National Wildlife Refuge Complex administrative office located at 6550 Gateway Road, Commerce City, CO 80022.

FOR FURTHER INFORMATION CONTACT: Bernardo Garza, 303/236–4377 (phone) or *bernardo_garza@fws.gov* (email); Toni Griffin, 303/236–4378 (phone) or *toni_griffin@fws.gov* (email); or David C. Lucas, Chief, Division of Planning, 303/236–4366 (phone), P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing CCPs for the Rocky Mountain Arsenal National Wildlife Refuge in Commerce City, CO, and the Two Ponds National Wildlife Refuge in Arvada, CO. This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on these refuges and (2) to obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCPs.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act) as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each unit of the National Wildlife Refuge System (NWRS). The purpose for developing a CCP is to provide the managers of the units of the NWRS with a 15-year plan for achieving the units' purposes and contributing toward the mission of the NWRS, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify compatible wildlife-dependent recreational opportunities available to the public, including, where appropriate, opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCPs at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each unit within the NWRS and to determine how the public can enjoy public uses in the NWRS units. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation

opportunities that are compatible with each of the unit's establishing purposes and the mission of the NWRS.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of the Rocky Mountain Arsenal and Two Ponds National Wildlife Refuges.

We will conduct the environmental review of these projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.); NEPA regulations (40 CFR parts 1500–1508 and 43 CFR part 46); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Rocky Mountain Arsenal National Wildlife Refuge

The Rocky Mountain Arsenal National Wildlife Refuge is one of the nation's premier urban national wildlife refuges. Located within the highly urbanized Denver Metropolitan Area, it is approximately 16,000 acres in size and consists of a number of important fish and wildlife habitats, including native shortgrass and mixedgrass prairies, riparian corridors, numerous wetlands, and multiple lakes. The U.S. Army and Shell Corporation recently finished their remediation of the site, which included restoring thousands of acres of native grasslands, and the site is now being managed for wildlife conservation and compatible, wildlife-dependent public uses. This refuge supports many animals, including more than 271 species of birds, such as bald eagles, burrowing owls, and Swainson's hawks; coyote and red fox; bison and deer; raccoon and several other species of small mammals, amphibians, reptiles, and fish. Without traveling far from the Colorado Front Range region, people have a unique opportunity to connect with their natural environment. There are a variety of wildlife-dependent recreational opportunities available to the over 300,000 annual visitors, such as hiking trails, observing wildlife from the Auto Tour Route or the Wildlife Drive, participating in environmental education programs, and experiencing one of the best catch-and-release fisheries in Colorado. As part of the planning process, this refuge is considering reintroducing the endangered black-footed ferret (*Mustela nigripes*). This federally listed species is the only ferret native to North America and is considered one of the most endangered mammals in the world. Historically, this ferret species occurred throughout the Great Plains wherever prairie dogs (*Cynomys* spp.) were found. As a highly specialized predator, black-footed ferrets prey upon prairie dogs and use their underground burrows for shelter. Black-footed ferrets and prairie dogs are part of an ecosystem that has been dramatically altered and reduced in size over the past century. The proposed reintroduction of the black-footed ferret to this refuge is a positive step toward the recovery of this iconic prairie species.

Two Ponds National Wildlife Refuge

The Two Ponds National Wildlife Refuge—located in the heart of the City of Arvada, Colorado—is one the smallest urban unit of the NWRS and is part of the Rocky Mountain Arsenal National Wildlife Refuge Complex. This refuge is about 72 acres in size and consists of important fish and wildlife habitats such as native shortgrass prairie, native mixed-grass prairie, and wetland. The Two Ponds National Wildlife Refuge supports many animals, including more than 120 species of birds, coyote and red fox, muskrat, raccoon, and beaver, deer, several species of small mammals, amphibians, reptiles, and fish. In 1990, a local citizen's group—the Two Ponds Preservation Foundation—was instrumental in preserving this site from development. The group's efforts contributed to the establishment of this refuge in 1992. Since then, the refuge staff has worked to restore, enhance, and preserve a diversity of upland and wetland habitats for migratory and resident wildlife, and to provide many visitor experiences. Located conveniently within the Denver metro area, the refuge provides a unique opportunity for people to connect with their natural environment. A variety of wildlife-dependent recreational opportunities is available annually to more than 15,000 visitors—people can hike trails, observe and photograph wildlife, participate in environmental education programs, volunteer their talents, and join in a diverse array of community service projects.

Scoping: Preliminary Issues, Concerns, and Opportunities

Rocky Mountain Arsenal NWR

- Possibility of reintroducing black-footed ferrets: Habitat and prey needs; protection
- Management of the bison herd
- The Refuges' urban and wildlife interface as a gateway community and urban refuge
- The Refuge's role on the Rocky Mountain Greenway Trail and other such efforts
- The Refuges' role in the Service's ''Connecting People with Nature'' and other initiatives
- Relationship of the CCP to other landscape wide conservation efforts
- Implications of outdoor recreational opportunities on the Refuges' habitats and wildlife
- Habitat and invasive species management
- Successful outreach and engagement of nontraditional publics
- Expanding commercial development and urbanization surrounding the Refuge
- Necessary infrastructure (e.g., boardwalk, interpretive signs, parking lot, etc.)
- Involvement of different publics in the Refuge's wildlife-dependent public uses
- Law enforcement
- Habitat management tools, such as fire and chemical control, in highly urbanized areas
- Protection of remedy and facilities under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Two Ponds NWR

- Management and implications of the water canals that cross the refuge to surrounding cities
- The Refuges' urban and wildlife interface as a gateway community and urban refuge
- The Refuge's role on the Rocky Mountain Greenway Trail and other such efforts
- The Refuges' role in the Service's ''Connecting People with Nature'' and other initiatives
- Implications of outdoor recreational opportunities on the Refuges' habitat and wildlife
- Habitat and invasive species management
- Existing vs. necessary infrastructure (e.g., buildings, water control structures, etc.)
- Involvement of different publics in the Refuge's wildlife-dependent public uses
- Habitat management tools, such as fire and chemical control, in a highly urbanized area

We request input on these issues and other concerns affecting refuge management or public use during the planning process. We are especially interested in receiving public input in the following areas:

(a) What suggestions do you have for managing wildlife and habitat on the

refuges in the face of possible climate change and declining precipitation?

(b) What ideas do you have regarding visitor services and wildlife-dependent public uses on the refuges?

(c) What changes, if any, would you like to see in the management of Rocky Mountain Arsenal and Two Ponds National Wildlife Refuges?

(d) What concerns do you have regarding bison and prairie dog management or the reintroduction of species such as black-footed ferret at the Rocky Mountain Arsenal NWR?

We provide the above questions for your optional use. We have no requirement that you provide information; however, any comments the planning team receives will be used as part of the planning process.

Public Meetings

We will give the public opportunities to provide initial input via telephone, email, postal mail, fax (see **ADDRESSES**), and in person at public scoping meetings we will host throughout the Denver Metropolitan Area in July, August, and September, 2013. We will announce the details of the public meetings and other opportunities for public input in local news media throughout the CCP process. You may also send comments anytime during the planning process by U.S. mail, email, or fax. There will be additional opportunities to provide public input and comments once we have prepared a draft CCP.

Public Availability of Comments

Any comments we receive will become part of the administrative record and may be available to the public. Before submitting comments that include your address, phone number, email address, or other personal identifying information, 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.

Dated: July 10, 2013.

Matt Hogan,

Acting Regional Director, U. S. Fish and Wildlife Service, Mountain-Prairie Region.

[FR Doc. 2013–19052 Filed 8–6–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB00000.L17110000.PH0000. L.X.SS.020H0000; HAG13–0257]

Steens Mountain Advisory Council; Public Meeting Date Change

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Change in Public Meeting Date.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, and the U.S. Department of the Interior, Bureau of Land Management (BLM), the Steens Mountain Advisory Council (SMAC) will meet as indicated below:

DATES: The August 15–16, 2013 SMAC meeting has been rescheduled for Monday, September 30, and Tuesday, October 1, 2013, in Hines, Oregon. The exact meeting time, agenda, and location will be announced online at *www.blm.gov/or/rac/steens-rac-minutes.php* prior to September 20, 2013. A public comment period will be available each day of the session. Unless otherwise approved by the SMAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SMAC for a maximum of 5 minutes. Meeting times and the duration scheduled for public comment periods may be extended or altered when the authorized representative considers it necessary to accommodate necessary business and all who seek to be heard regarding matters before the SMAC.

FOR FURTHER INFORMATION CONTACT: Tara Martinak, Public Affairs Specialist, BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738–9424, (541) 573–4519, or email *tmartina@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The SMAC was initiated August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act (CMPA) of 2000 (Pub. L. 106–399). The SMAC provides representative counsel and advice to the BLM regarding new and unique approaches to management of the land within the bounds of the Steens Mountain CMPA; recommending cooperative programs and incentives for landscape management that meet human needs, and the maintenance and improvement of the ecological and economic integrity of the area. Tentative agenda items for the September 30–October 1, 2013, meeting include: The Steens Mountain Comprehensive Recreation Plan, the South Steens Allotment Management Plan, the BLM's Wild Horse and Burro Program, juniper management and Sage-grouse, and future meeting agendas, dates, and locations. Any other matters that may reasonably come before the SMAC may also be addressed. This meeting is open to the public in its entirety. Information to be distributed to the SMAC is requested prior to the start of each meeting.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Brendan Cain,

Burns District Manager.

[FR Doc. 2013–19032 Filed 8–6–13; 8:45 am]

BILLING CODE 4310–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[A10–1517–0008–000–00–0–2, 4P10000]

Notice of Intent To Contract for Hydroelectric Power Development on the San Juan-Chama Project, New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to accept proposals, select lessee, and contract for hydroelectric power development on the San Juan-Chama Project.

SUMMARY: Current Federal policy allows non-Federal development of electrical power resource potential on Federal water resource projects. The Bureau of Reclamation, (Reclamation), in coordination with the Department of Energy, Western Area Power Administration (Western), will consider proposals for non-Federal development of hydroelectric power on the San Juan-Chama Project at any or all of the conduit locations specified in this

Notice. Reclamation is considering such hydroelectric power development under a lease of power privilege. Western would have the first opportunity to purchase and/or market the power that would be generated by such development under a lease of power privilege. No Federal funds will be available for such hydroelectric power development. This Notice presents background information, proposal content guidelines, and information concerning selection of a non-Federal entity to develop hydroelectric power on the San Juan-Chama Project.

DATES: A written proposal and seven copies must be submitted on or before 5:00 p.m. (Mountain Standard Time) on January 6, 2014. A proposal will be considered timely only if it is received in the office of the Area Manager at or before 5:00 p.m. on the above-designated date. Interested entities are cautioned that delayed delivery to the Area Manager's office due to failures or misunderstandings of the entity and/or of mail, overnight, or courier services will not excuse lateness and, accordingly, are advised to provide sufficient time for delivery. Late proposals will not be considered.

ADDRESSES: Send written proposal and seven copies to Mr. Mike Hamman, Area Manager, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102–2352; telephone (505) 462–3551. A copy of the proposal should also be sent at or about the time it is due at Reclamation to Ms. Lynn Jeka, CRSP Manager, Western Area Power Administration, 150 Social Hall Avenue, Suite 300, Salt Lake City, Utah 84111–1534; telephone (801) 524–6372.

FOR FURTHER INFORMATION CONTACT: Technical data may be obtained from Mr. Joseph Alderete, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102–2352; telephone (505) 462–3578. Reclamation will be available to meet with interested entities only upon written request to Mr. Alderete. Upon request, Reclamation will provide an opportunity for a site visit. Reclamation reserves the right to schedule a single meeting and/or visit to address the questions of all entities that have submitted questions or requested site visits.

Information related to operation and maintenance of the Azotea Tunnel and the three other drop structures may be obtained by contacting Mr. Alderete or Mr. Victor Salazar, Bureau of Reclamation, Chama Field Division, 193 North Pinon Drive, P.O. Box 426, Chama, New Mexico 87520–0426; telephone (575) 756–2175.

Information related to Western's purchasing and/or marketing of the power may be obtained by contacting Ms. Lynn Jeka, CRSP Manager, Western Area Power Administration, 150 Social Hall Avenue, Suite 300, Salt Lake City, Utah 84111–1534; telephone (801) 524–6372.

SUPPLEMENTARY INFORMATION: The San Juan-Chama Project was authorized as a participating project of the Colorado River Storage Project on June 13, 1962, by Public Law 87–483. The project is a Federal Reclamation project located in northern New Mexico, near the town of Chama, and diverts Colorado River water through a series of three dams, three diversions, and three tunnels. The Azotea Tunnel Outlet empties into Willow Creek and has the capacity to deliver 950 cubic feet per second. Reclamation maintains easements along Willow Creek. The Jicarilla Apache Indian Reservation is an adjacent landowner.

Reclamation, in coordination with Western, is considering hydroelectric power development on the San Juan-Chama Project under a lease of power privilege at up to four conduit drops along the project. These locations are the Azotea Tunnel Outlet, the drop located at Station 1565+00, the drop located at Station 1702+75, and the drop located at Station 1831+17. The station drops are all located downstream of the Azotea Tunnel Outlet along Willow Creek and are all features of the San Juan-Chama Project.

A lease of power privilege is an alternative to Federal hydroelectric power development. It is a contractual right given to a non-Federal entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes. Leases of power privilege have terms not to exceed 40 years. The general authority for lease of power privilege under Reclamation law includes, among others, the Town Sites and Power Development Act of 1906 (43 U.S.C. 522) and the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) (1939 Act).

Reclamation will be the lead Federal agency for ensuring compliance with the National Environmental Policy Act (NEPA) for any lease of power privilege considered in response to this Notice. A lease of power privilege may be issued only after Reclamation has reviewed and approved compliance with NEPA, the National Historic Preservation Act (NHPA), and the Endangered Species Act (ESA). Any lease of power privilege on the San Juan-Chama Project must accommodate existing contractual commitments related to operation and maintenance of the Azotea Tunnel Outlet and other San Juan-Chama Project facilities. The lessee (*i.e.,* successful proposing entity) will be responsible for operation and maintenance of the proposed hydropower development within the existing Federal features. Because the United States is responsible for the operation and maintenance of the San Juan-Chama Project, a negotiated agreement will be included in the lease development process to address coordination of operation and maintenance, including cost-sharing arrangements associated with any additional operation and maintenance costs incurred due to operation of the hydropower facilities.

All costs incurred by the United States related to development and operation and maintenance of the hydropower facilities under a lease of power privilege, including NEPA compliance and development of the lease of power privilege, would be at the expense of the lessee. In addition, the lessee would be required to make annual payments to the United States for the use of a government facility in the amount of at least 3 mills per kilowatt-hour of generation. The lease issued to the lessee will contain provisions for inflation adjustments to the required annual payments throughout the term of the lease. Such annual payments to the United States would be deposited as a credit to the Upper Colorado River Basin Fund.

Proposal Content Guidelines

Interested parties should submit proposals explaining in as precise detail as is practicable how the hydropower potential would be developed. Proposals may include any or all of the conduit drops specified in this Notice. In their proposals, interested parties should:

(a) Provide all information relevant to the qualifications of the proposing entity to plan and implement such a project, including, but not limited to, information about preference status, the type of organization, length of time in business, experience in funding, design and construction of similar projects, industry rating(s) that indicate financial soundness and/or technical and managerial capability, experience of key management personnel, history of any reorganizations or mergers with other companies, and any other information that demonstrates the interested entity's organizational, technical, and financial ability to perform all aspects of the work. Interested parties should also

include a discussion of past experience in operating and maintaining similar facilities and provide references as appropriate. The term ''preference entity,'' as applied to a lease of power privilege, means an entity qualifying for preference under Section 9(c) of the 1939 Act as a municipality, public corporation or agency, or cooperative or other non-profit organization financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936, as amended.

(b) Provide geographical locations and describe principal structures and other important features of the proposed development including roads and transmission lines. Estimate and describe installed capacity and the capacity of the power facilities. Also describe seasonal or annual generation patterns. Include estimates of the electrical energy that would be produced from the facility for each month in dry, average, and wet hydrologic scenarios. If capacity and energy can be delivered to another location, either by the proposing entity or by potential wheeling agents, specify where capacity and energy can be delivered. Include concepts for power sales and contractual arrangements, involved parties, and the proposed approach to wheeling if required.

(c) Indicate plans for acquiring title to or the right to occupy and use lands necessary for the proposed development, including such additional lands as may be required during construction.

(d) Identify water rights applicable to the operation of the proposed development(s), the holder of such rights, and how these rights would be used, acquired, or perfected.

(e) Discuss any studies necessary to adequately define impacts of the development on the San Juan-Chama Project and the environment. Describe any significant environmental issues associated with the development and the proposing entity's approach for gathering relevant data and resolving or mitigating such issues to protect and enhance the quality of the environment. Explain any proposed use of the hydropower development for conservation and utilization of the available water resources in the public interest.

(f) Describe anticipated contractual arrangements with Reclamation, which has operation and maintenance responsibility for the San Juan-Chama Project feature(s), that are proposed for utilization in the hydropower development under consideration. Describe how the hydropower development would operate in harmony with the San Juan-Chama Project and existing applicable contracts related to operation and maintenance of San Juan-Chama Project feature(s) being considered for modification.

(g) Describe plans for assuming liability for damage to the operational and structural integrity of the San Juan-Chama Project caused by construction, operation, and/or maintenance of the hydropower development.

(h) Identify the organizational structure planned for the long-term operation and maintenance of any proposed hydropower development.

(i) Provide a management plan to accomplish such activities as planning, NEPA compliance, NHPA compliance, ESA compliance, lease of power privilege development, design, construction, facility testing, and start of hydropower production. Prepare schedules of these activities as applicable. Describe what studies are necessary to accomplish the hydroelectric power development and how the studies would be implemented.

(j) Estimate development cost. This cost should include all investment costs such as the cost of studies to determine feasibility, NEPA compliance, NHPA compliance, ESA compliance, design, construction, and financing as well as the amortized annual cost of the investment. Also, the annual operation, maintenance, and replacement expense for the hydropower development; annual lease payments to the United States; expenses that may be associated with the San Juan-Chama Project; and the anticipated return on investment should be included. If there are transmission or wheeling expenses associated with the hydropower development, these should also be included. Identify proposed methods of financing the hydropower development. An economic analysis should be presented that compares the present worth of all benefits and the costs of the hydropower development.

Selection of Lessee

Proposals will be evaluated with equal consideration given to the following criteria: (1) The relevant qualifications of the proposing entity, based on past experience, to develop similar hydropower projects in terms of complexity and scale; (2) the proposed overall design of the project in terms of how the principal structures fit within the existing project features, including the optimization of developing the hydropower potential with consideration to environmental factors; (3) the projected developmental and operational costs, including construction, operation and maintenance costs as well as the overall cost effectiveness of the power produced at the proposed hydropower facility; (4) the marketing plan for the power produced at the proposed hydropower facility; and (5) the proposed organizational structure for the long-term operation and maintenance of the proposed hydropower facility including the qualifications of the operating entity. A proposal will be deemed unacceptable if it is inconsistent with San Juan-Chama Project purposes, as determined by Reclamation.

Reclamation will give preference to those entities that qualify as preference entities (as defined under Proposal Content Guidelines, item (a), of this Notice) provided that their proposal is at least as well adapted to developing, conserving, and utilizing the water and natural resources as other submitted proposals and that the preference entity is well qualified. Preference entities would be allowed 30 days to improve their proposals, if necessary, to be made at least equal to a proposal(s) that may have been submitted by a non-preference entity.

Power Purchasing and/or Marketing Considerations

Western would have the first opportunity to purchase and/or market the power that would be generated by the project under a lease of power privilege and will be given 60 days from the date of the initial offer from the Lessee to make their decision. Western will consult with Reclamation on such power purchasing and/or marketing considerations.

In the event Western elects to purchase and/or market the power generated by the hydropower development, Western may market the power available from the project as part of its Salt Lake City Area Integrated Projects (SLIP) or on a stand-alone basis, first to preference entities qualified under criteria established by Western, and second to non-preference entities, by developing an individual marketing plan for this power. This marketing plan would be developed through a separate subsequent public process beginning with a notice in the **Federal Register** of Western's intent to market the power. The marketing plan would include all aspects of marketing the power, including assignment of power to qualified preference and/or non-preference entities, pricing, transmission, and delivery of power. Western would recover the costs it would incur in purchasing and/or marketing the power through the rates charged for the power. Firm power rates

would be established through a public process, initiated by a notice in the **Federal Register**, separate from the marketing plan.

Notice and Time Period To Enter Into Lease of Power Privilege

Reclamation will notify, in writing, all entities submitting proposals of Reclamation's decision regarding selection of the potential lessee. The selected potential lessee will have 15 months from the date of such notification to accomplish NEPA compliance, NHPA compliance, ESA compliance, and enter into a lease of power privilege for the proposed development of hydropower on the San Juan-Chama Project. The lease of power privilege will address only the sites identified in the lessee's proposal and will not provide broad development rights elsewhere on the San Juan-Chama Project. The lessee will then have up to 9 months from the date of execution of the lease to complete the designs and specifications and an additional year to begin construction. Such timeframes may be adjusted for just cause resulting from actions and/or circumstances that are beyond the control of the lessee.

Dated: June 27, 2013.

Larry Walkoviak,

Regional Director, Upper Colorado Region.

[FR Doc. 2013–18911 Filed 8–6–13; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A000 67F 134S180110; S2D2S SS08011000 SX066A00 33F 13xs501520]

Notice of Proposed Information Collection; Request for Comments

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for General Reclamation Requirements.

DATES: Comments on the proposed information collection must be received by October 7, 2013, to be assured of consideration.

ADDRESSES: Mail comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or via email at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require 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 the information collection that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR Part 874.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or number of respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

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

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR Part 874—General Reclamation Requirements.

OMB Control Number: 1029–0113.

Summary: Part 874 establishes land and water eligibility requirements, reclamation objectives and priorities and reclamation contractor responsibility. 30 CFR 874.17 requires consultation between the AML agency and the appropriate Title V regulatory authority on the likelihood of removing the coal under a Title V permit and concurrences between the AML agency and the appropriate Title V regulatory authority on the AML project boundary and the amount of coal that would be extracted under the AML reclamation project.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 17 State regulatory authorities and Indian tribes.

Total Annual Responses: 17.

Total Annual Burden Hours: 1,411.

Dated: August 1, 2013.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2013–19042 Filed 8–6–13; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2971]

Certain Flash Memory Chips and Products Containing the Same Notice of Receipt of Complaint; Solicitation of Comments Relating To the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Flash Memory Chips and Products Containing the Same,* DN 2971; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Spansion LLC on August 1, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash memory chips and products containing the same. The complaint names as respondents Macronix International Co., Ltd. of China; Macronix America, Inc. of CA; Macronix Asia Limited of Japan; Macronix (Hong Kong) Co., Ltd. of Hong Kong; Acer Inc. of Taiwan; Acer America Corporation of CA; ASUSTek Computer Inc. of Taiwan; Asus Computer International of CA; Belkin International, Inc. of CA; D-Link Corporation of Taiwan; D-Link System, Inc. of CA; Netgear Inc. of CA; Nintendo Co., Ltd. of Japan; and Nintendo of America, Inc. of WA. The complainant requests that the Commission issue a general exclusion order or in the alternative issue a limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing products during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

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 docket number (''Docket No. 2971'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures*[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the office of the Secretary and on EDIS.[5]

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 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: August 2, 2013.
By order of the Commission

Lisa R. Barton,
Acting Secretary to the Commission.

[FR Doc. 2013–19093 Filed 8–6–13; 8:45 am]

BILLING CODE 7020–02–P

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Docket No. 2970]

Certain Point-to-Point Network Communication Devices and Products Containing Same; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Point-to-Point Network Communication Devices and Products Containing Same,* DN 2970; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

(USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Straight Path IP Group, Inc. on August 1, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain point-to-point network communication devices and products containing same. The complaint names as respondents AmTran Logistics, Inc. of CA; AmTran Technology Co., Ltd. of Taiwan; LG Electronics Inc. of Korea; LG Electronics U.S.A., Inc. of NJ; LG Electronics MobileComm U.S.A, Inc. of CA; Panasonic Corporation of Japan; Panasonic Corporation of North America of NJ; Sharp Corporation of Japan; Sharp Electronics Corporation of NJ; Sony Computer Entertainment, Inc. of Japan; Sony Computer Entertainment America Inc. of CA; Sony Computer Entertainment America LLC of CA; Sony Corporation of Japan; Sony Corporation of America of NY; Sony Electronics Inc. of CA; Sony Mobile Communications AB of Sweden; Sony Mobile Communications (USA) Inc. of NC; Sony Ericsson Mobile Communications (USA) Inc. of GA; Toshiba Corporation of Japan; Toshiba America Inc. of NY; Toshiba America Information Systems, Inc. of CA; Vizio, Inc. of CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing products during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

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 docket number (''Docket No. 2970'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

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 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 1, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18970 Filed 8–6–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–837]

Certain Audiovisual Components and Products Containing the Same 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 and 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, specifically a limited exclusion order against certain infringing audiovisual components and products containing the same, imported by Funai Corporation, Inc. of Rutherford, New Jersey; Funai Electric Co., Ltd. of Osaka, Japan; P&F USA, Inc. of Alpharetta, Georgia; and Funai Service Corporation of Groveport, Ohio. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2392. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS)

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://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 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 interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are 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 Bonding issued in this investigation on July 31, 2013. Comments should address whether issuance of a limited exclusion order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the 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 complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the limited exclusion order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on August 30, 2013.

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 C.F.R. 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 837'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.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 the 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: August 1, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18964 Filed 8–6–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 337–TA–880

Certain Linear Actuators; Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 6) terminating the above-captioned investigation in its entirety based on withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3041. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 6, 2013, based on a complaint filed by Okin America, Inc. of Frederick, Maryland and Dewert Okin GmbH of Germany (collectively, ''Okin''). 78 FR 26393 (May 6, 2013). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain linear actuators by reason of infringement of U.S. Patent No 5,927,144. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Changzhou Kaidi Electrical Co. Ltd. of China and Kaidi LLC of Eaton Rapids, Michigan

(collectively, ''Kaidi'') as the respondents. The Office of Unfair Import Investigation was named as a participating party.

On June 27, 2013, Okin filed a motion to terminate the investigation in its entirety based on withdrawal of the complaint. The motion stated that Kaidi and the Commission investigative attorney do not oppose the motion. On July 9, 2013, the ALJ issued the subject ID, granting Okin's motion pursuant to section 210.21(a)(1) of the Commission's Rules of Practice and Procedure (19 CFR 210.21(a)(1)). No petitions for review of this ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: August 1, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–18971 Filed 8–6–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–017]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 9, 2013 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 in Inv. Nos. 701–TA–498 and 731–TA–1213–1214 (Preliminary) (Certain Steel Threaded Rod from India and Thailand). The Commission is currently scheduled to complete and file its determinations on or before August 12, 2013; views of the Commission are currently scheduled to be completed and filed on or before August 19, 2013.

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: August 1, 2013.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–19155 Filed 8–5–13; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation And Liability Act (''CERCLA'')

Notice is hereby given that on August 1, 2013, a proposed Consent Decree (''proposed Decree'') in *United States* v. *Richard Wilmer and Rock Weiss,* Civil Action No. 11–cv–02244–RM–MJW was lodged with the United States District Court for the District of Colorado.

In this action under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a) (''CERCLA''), the United States sought reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Cherokee Street Print Shop Wastes Superfund Site (''Site'') located at 4411 Cherokee Street in Denver, Colorado. The proposed Decree requires Settling Defendant Rock Weiss to pay $600 to the United States in reimbursement of response costs. Settling Defendant Rock Weiss has an inability to pay the United States' full demand.

The publication of this notice opens a period for public comment on the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Richard Wilmer, et al.,* D.J. Ref. No. 90–11–3–10179. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.25 (.25 cents per page reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–19022 Filed 8–6–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On July 29, 2013 the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Central District of California in the lawsuit entitled *United States* v. *Bentley Prince Street, Inc.,* Civil Action No. 13–cv–05455–CBM–JC.

The Consent Decree resolves claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607 related to releases and threatened releases of hazardous substances at the Puente Valley Operable Unit (''PVOU'') of the San Gabriel Valley Superfund Site, Area 4, Los Angeles County, California (the ''Site''). The Consent Decree resolves a claim against Bentley Prince Street, Inc., (''Bentley''), and recovers $15,000 in response costs. The Consent Decree contains a covenant not to sue for past and certain future costs and response work at the Site under Sections 106 and 107 of CERCLA and Section 7003 of RCRA.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Bentley Prince Street, Inc.,* D.J. Ref. No. 90–11–2–354/32. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–19005 Filed 8–6–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–365]

Final Adjusted Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2013

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice.

SUMMARY: This notice establishes final adjusted 2013 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA) and assessment of annual needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, as well as the 2013 aggregate production quotas for three recently temporarily controlled substances.

FOR FURTHER INFORMATION CONTACT: John W. Partridge, Executive Assistant, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Background

Section 306 of the CSA (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine. This responsibility has been delegated to the Administrator of the DEA through 28 CFR 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104. DEA published the 2013 established aggregate production quotas for controlled substances in Schedules I and II and assessment of annual needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine in the **Federal Register** (77 FR 59980) on October 1, 2012. That notice stated that the Deputy Administrator would adjust, as needed, the established aggregate production quotas in 2013 as provided for in 21 CFR 1303.13 and 21 CFR 1315.13. The 2013 proposed adjusted aggregate production quotas for controlled substances in Schedules I and II and assessment of annual needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine were subsequently published in the **Federal Register** on June 20, 2013, (78 FR 37237) in consideration of the outlined criteria. All interested persons were invited to comment on or object to the proposed adjusted aggregate production quotas and assessment of annual needs on or before July 22, 2013.

Analysis for Final Adjusted 2013 Aggregate Production Quotas and Assessment of Annual Needs

Consideration has been given to the criteria outlined in the June 20, 2013, notice of proposed adjusted aggregate production quotas and assessment of annual needs, in accordance with 21 CFR 1303.13 and 21 CFR 1315.13. Six companies submitted timely comments regarding a total of 30 Schedule I and II controlled substances. Comments received proposed that the aggregate production quotas for 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C–P); 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E); 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D); 2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine (2C–N); 2-(2,5-Dimethoxyphenyl)ethanamine (2C–H); 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C); 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I); 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–2); 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–4); 3,4-Methylenedioxymethamphetamine (MDMA); 4-Anilino-N-phenethyl-4-piperidine (ANPP); amphetamine (for sale); codeine (for conversion); dihydromorphine; diphenoxylate (for sale); gamma hydroxybutyric acid; hydrocodone; hydromorphone; levomethorphan; methadone; methadone intermediate; methylphenidate; morphine (for conversion); morphine (for sale); oxycodone (for sale); oripavine; oxymorphone (for conversion); oxymorphone (for sale); phenylacetone; and sufentanil were insufficient to provide for the estimated medical, scientific, research, and industrial needs of the United States, for export requirements, and for the establishment and maintenance of reserve stocks. One manufacturer commented that the APQ for thebaine was insufficient; however, that commenter was referring to a need for procurement quota for thebaine, which does not directly impact the APQ and, thus, was not considered. DEA did not previously propose adjustments to the 2013 assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine and received no comments concerning such.

DEA has taken into consideration the above comments along with the relevant 2012 year-end inventories, initial 2013 manufacturing quotas and import quotas, 2013 export requirements, actual and projected 2013 sales, research and product development requirements, and additional applications received. Based on all of the above, the Deputy Administrator has determined that the proposed adjusted 2013 aggregate production quotas and assessment of annual needs for dihydromorphine; diphenoxylate (for sale); gamma hydroxybutyric acid; hydromorphone; levomethorphan; morphine (for sale); oxymorphone (for sale); phenylacetone; psilocyn; sufentanil; ephedrine (for sale); phenylpropanolamine (for conversion); and pseudoephedrine (for sale) required additional consideration and hereby further adjusts the 2013 aggregate production quotas for those substances.

Regarding 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C–P); 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E); 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D); 2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine (2C–N); 2-(2,5-Dimethoxyphenyl)ethanamine (2C–H);

2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C); 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I); 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–2); 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–4); 3,4-Methylenedioxymethamphetamine (MDMA); 4-Anilino-N-phenethyl-4-piperidine (ANPP); amphetamine (for sale); codeine (for conversion); hydrocodone; methadone; methadone intermediate; methylphenidate; morphine (for conversion); oxycodone (for sale); oripavine; and oxymorphone (for conversion), the Deputy Administrator hereby determines that the proposed adjusted 2013 aggregate production quotas and assessment of annual needs for these substances and List I chemicals as published on June 20, 2013, (78 FR 37237) are sufficient to meet the current 2013 estimated medical, scientific, research, and industrial needs of the United States and to provide for adequate inventories.

As described in the previously published notice establishing the 2013 aggregate production quotas and assessment of annual needs, DEA has specifically considered that inventory allowances granted to individual manufacturers may not always result in the availability of sufficient quantities to maintain an adequate reserve stock pursuant to 21 U.S.C. 826(a), as intended. See 21 CFR 1303.24. This would be concerning if a natural disaster or other unforeseen event resulted in substantial disruption to the amount of controlled substances available to provide for legitimate public need. As such, DEA has included in all proposed revised Schedule II aggregate production quotas, and certain Schedule I aggregate production quotas, an additional 25% of the estimated medical, scientific, and research needs as part of the amount necessary to ensure the establishment and maintenance of reserve stocks. The resulting adjusted established aggregate production quotas will reflect these included amounts. This action will not affect the ability of manufacturers to maintain inventory allowances as specified by regulation. DEA expects that maintaining this reserve in certain established aggregate production quotas will mitigate adverse public effects if an unforeseen event resulted in substantial disruption to the amount of controlled substances available to provide for legitimate public need, as determined by DEA. DEA does not anticipate utilizing the reserve in the absence of these circumstances.

Pursuant to the above, the Deputy Administrator hereby finalizes the 2013 aggregate production quotas for the following Schedule I and II controlled substances and the 2013 assessment of annual needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, as follows:

Basic class	Final adjusted 2013 quotas
Temporarily Scheduled Substances	
(1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR–144)	15 g
[1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (XLR11)	15 g
N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (AKB48)	15 g
Schedule I	
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	45 g
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	45 g
1-[1-(2-Thienyl)cyclohexyl]piperidine	5 g
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200)	45 g
1-Butyl-3-(1-naphthoyl)indole (JWH–073)	45 g
1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR–18 and RCS–8)	45 g
1-Hexyl-3-(1-naphthoyl)indole (JWH–019)	45 g
1-Methyl-4-phenyl-4-propionoxypiperidine	2 g
1-Pentyl-3-(1-naphthoyl)indole (JWH–018 and AM678)	45 g
1-Pentyl-3-(2-chlorophenylacetyl)indole (JWH–203)	45 g
1-Pentyl-3-(2-methoxyphenylacetyl)indole (JWH–250)	45 g
1-Pentyl-3-(4-chloro-1-naphthoyl)indole (JWH–398)	45 g
1-Pentyl-3-(4-methyl-1-naphthoyl)indole (JWH–122)	45 g
1-Pentyl-3-[(4-methoxy)-benzoyl]indole (SR–19, RCS–4)	45 g
1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH–081)	45 g
2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C–P)	15 g
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E)	15 g
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D)	15 g
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C–N)	15 g
2-(2,5-Dimethoxyphenyl)ethanamine (2C–H)	15 g
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C)	15 g
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I)	15 g
2,5-Dimethoxy-4-ethylamphetamine (DOET)	12 g
2,5-Dimethoxy-4-n-propylthiophenethylamine	12 g
2,5-Dimethoxyamphetamine	12 g
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–2)	15 g
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–4)	15 g
3,4,5-Trimethoxyamphetamine	12 g
3,4-Methylenedioxyamphetamine (MDA)	30 g
3,4-Methylenedioxymethamphetamine (MDMA)	50 g
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	24 g
3,4-Methylenedioxy-N-methylcathinone (methylone)	35 g
3,4-Methylenedioxypyrovalerone (MDPV)	25 g
3-Methylfentanyl	2 g
3-Methylthiofentanyl	2 g

Basic class	Final adjusted 2013 quotas
4-Bromo-2,5-dimethoxyamphetamine (DOB)	12 g
4-Bromo-2,5-dimethoxyphenethylamine (2–CB)	12 g
4-Methoxyamphetamine	88 g
4-Methyl-2,5-dimethoxyamphetamine (DOM)	25 g
4-Methylaminorex	12 g
4-Methyl-N-methylcathinone (mephedrone)	25 g
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	68 g
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP–47, 497 C8-homolog)	53 g
5-Methoxy-3,4-methylenedioxyamphetamine	12 g
5-Methoxy-N,N-diisopropyltryptamine	12 g
5-Methoxy-N,N-dimethyltryptamine	10 g
Acetyl-alpha-methylfentanyl	2 g
Acetyldihydrocodeine	2 g
Acetylmethadol	2 g
Allylprodine	2 g
Alphacetylmethadol	2 g
Alpha-ethyltryptamine	12 g
Alphameprodine	2 g
Alphamethadol	2 g
Alpha-methylfentanyl	2 g
Alpha-methylthiofentanyl	2 g
Alpha-methyltryptamine (AMT)	12 g
Aminorex	12 g
Benzylmorphine	2 g
Betacetylmethadol	2 g
Beta-hydroxy-3-methylfentanyl	2 g
Beta-hydroxyfentanyl	2 g
Betameprodine	2 g
Betamethadol	2 g
Betaprodine	2 g
Bufotenine	3 g
Cathinone	12 g
Codeine-N-oxide	602 g
Desomorphine	5 g
Diethyltryptamine	12 g
Difenoxin	50 g
Dihydromorphine	3,990,000 g
Dimethyltryptamine	18 g
Gamma-hydroxybutyric acid	67,500,000 g
Heroin	25 g
Hydromorphinol	54 g
Hydroxypethidine	2 g
Ibogaine	5 g
Lysergic acid diethylamide (LSD)	30 g
Marihuana	21,000 g
Mescaline	13 g
Methaqualone	10 g
Methcathinone	14 g
Methyldihydromorphine	2 g
Morphine-N-oxide	655 g
N,N-Dimethylamphetamine	12 g
N-Benzylpiperazine	15 g
N-Ethylamphetamine	12 g
N-Hydroxy-3,4-methylenedioxyamphetamine	12 g
Noracymethadol	2 g
Norlevorphanol	52 g
Normethadone	2 g
Normorphine	18 g
Para-fluorofentanyl	2 g
Phenomorphan	2 g
Pholcodine	2 g
Properidine	2 g
Psilocybin	10 g
Psilocyn	12 g
Tetrahydrocannabinols	491,000 g
Thiofentanyl	2 g
Tilidine	10 g
Trimeperidine	2 g
Schedule II	
1-Phenylcyclohexylamine	3 g
1-Piperdinocyclohexanecarbonitrile	21 g

Basic class	Final adjusted 2013 quotas
4-Anilino-N-phenethyl-4-piperidine (ANPP)	2,250,000 g
Alfentanil	38,250 g
Alphaprodine	3 g
Amobarbital	9 g
Amphetamine (for conversion)	22,875,000 g
Amphetamine (for sale)	47,186,000 g
Carfentanil	6 g
Cocaine	240,000 g
Codeine (for conversion)	81,250,000 g
Codeine (for sale)	49,506,250 g
Dextropropoxyphene	19 g
Dihydrocodeine	250,000 g
Diphenoxylate	887,500 g
Ecgonine	144,000 g
Ethylmorphine	3 g
Fentanyl	2,108,750 g
Glutethimide	3 g
Hydrocodone (for sale)	99,625,000 g
Hydromorphone	6,750,000 g
Isomethadone	5 g
Levo-alphacetylmethadol (LAAM)	4 g
Levomethorphan	195 g
Levorphanol	4,500 g
Lisdexamfetamine	21,000,000 g
Meperidine	6,875,000 g
Meperidine Intermediate-A	6 g
Meperidine Intermediate-B	11 g
Meperidine Intermediate-C	6 g
Metazocine	6 g
Methadone (for sale)	33,125,000 g
Methadone Intermediate	40,500,000 g
Methamphetamine	3,912,500 g
[987,500 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,863,750 grams for methamphetamine mostly for conversion to a schedule III product; and 61,250 grams for methamphetamine (for sale)]	
Methylphenidate	96,750,000 g
Morphine (for conversion)	91,250,000 g
Morphine (for sale)	61,125,000 g
Nabilone	25,628 g
Noroxymorphone (for conversion)	9,000,000 g
Noroxymorphone (for sale)	1,262,500 g
Opium (powder)	91,250 g
Opium (tincture)	1,287,500 g
Oripavine	22,750,000 g
Oxycodone (for conversion)	10,250,000 g
Oxycodone (for sale)	153,750,000 g
Oxymorphone (for conversion)	18,375,000 g
Oxymorphone (for sale)	7,000,000 g
Pentobarbital	42,500,000 g
Phenazocine	6 g
Phencyclidine	30 g
Phenmetrazine	3 g
Phenylacetone	42,393,750 g
Racemethorphan	3 g
Remifentanil	3,750 g
Secobarbital	215,003 g
Sufentanil	6,880 g
Tapentadol	13,750,000 g
Thebaine	145,000,000 g
List I Chemicals	
Ephedrine (for conversion)	15,100,000 g
Ephedrine (for sale)	4,200,000 g
Phenylpropanolamine (for conversion)	44,800,000 g
Phenylpropanolamine (for sale)	6,100,000 g
Pseudoephedrine (for sale)	246,000,000 g

Aggregate production quotas for all other Schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero.

Dated: August 1, 2013.

Thomas M. Harrigan,

Deputy Administrator.

[FR Doc. 2013–19046 Filed 8–6–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Job Corps Placement and Assistance Record, Extension Without Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), 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) [44 U.S.C. 3506(c)(2)(A)]. This program helps 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, ETA is soliciting comments concerning the collection of data about Job Corps Placement Record [OMB Control No. 1205–0035, expires January 2014]: ETA 678 form, Job Corps Placement and Assistance Record. ETA form 678 currently captures information about a student's training and subsequent placement in a job, higher education or the military, as well as the name of the placement provider agency. Data generated from the form ETA 678 is used to evaluate overall placement outcomes. This form is critical to the program's evaluation process. It is the only form which documents a student's post-center placement status. This form is completed by either a Job Corps center records staff or a Career Transition Specialist for each student. Job Corps is not proposing any changes to ETA 678 form, Job Corps Placement Record.

A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before October 7, 2013.

ADDRESSES: Submit written comments to Marcus Gray, Office of Job Corps, Room N–4463, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3967 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Server at 877–889–5627 (TTY/TDD). Fax: 202–693–2767; email: *gray.marcus@dol.gov.* A copy of the proposed ICR can be obtained by contacting the person listed above.

SUPPLEMENTARY INFORMATION:

I. Background

Job Corps is the nation's largest residential, educational, and career technical training program for young Americans. Job Corps was established in 1964 by the Economic Opportunity Act, and currently is authorized by Title I–C of the Workforce Investment Act of 1998.

For almost 50 years, Job Corps has helped prepare a total of nearly 3 million at-risk young people ages 16 to 24 for success in our nation's workforce. With 125 centers in 48 states, Puerto Rico, and the District of Columbia, Job Corps assists students across the nation in attaining academic credentials, including a High School Diploma (HSD) and/or High School Equivalency credential, and career technical training, including industry-recognized credentials, state licensures, and pre-apprenticeship credentials.

Job Corps is administered by the Department through the Office of Job Corps and six Regional Offices. The Department awards and administers contracts for the recruiting and screening of new students, center operations, and the placement and transitional support of graduates and former enrollees. Large and small corporations and nonprofit organizations manage and operate 97 Job Corps centers under contractual agreements with the Department. These contract Center Operators are selected through a competitive procurement process that evaluates potential operators' technical expertise, proposed costs, past performance, and other factors, in accordance with the Competition in Contracting Act and the Federal Acquisition Regulations.

The remaining 28 Job Corps centers, called Civilian Conservation Centers, are operated by the U.S. Forest Service, via an interagency agreement. The Department has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program.

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the agency's function, including whether the information has 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, by encouraging 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

Type of Review: Extension

Title: Job Corps Placement Record

OMB Number: Control No. 1205–0035

Affected Public: Individuals or Households (Job Corps students) and Private Sector—(Job Corps centers)

Form(s): ETA 678

Total Annual Respondents: 34,000

Annual Frequency: Once (when placement occurs)

Total Annual Responses: 34,000

Average Time per Response: 7.43 minutes

Estimated Total Annual Burden Hours: 4,210

Total Annual Other Burden Costs for Respondents: $0

Comments submitted in response to this comment request will be summarized and 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: July 31, 2013.

Eric M. Seleznow,

Acting Assistant Secretary.

[FR Doc. 2013–19061 Filed 8–6–13; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Workforce Information Grants to States, Extension With Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act (PRA) of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps 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, ETA is soliciting comments concerning the collection of data about the Workforce Information Grants to States (WIGS), U.S. Office of Management and Budget (OMB) Control Number 1205–0417 that expires on July 31, 2014. ETA is requesting an addition to the collection requirements for these data, as well as requesting a three year extension.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 7, 2013.

ADDRESSES: Submit written comments to Anthony Dais or Frank Gallo, Office of Workforce Investment, Room C–4526, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone numbers 202–693–2784 or 202–693–3755, respectively (these are not toll-free numbers). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3015. Email: *Dais.Anthony@DOL.gov* or *Gallo.Frank@dol.gov,* respectively. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above or at the Labor Market Information WIN–WIN Network Community of Practice Web site (*https://winwin.workforce3one.org/view/1001317540353607180/info*).

SUPPLEMENTARY INFORMATION:

I. Background

On July 24, 2011, OMB approved ETA's annual policy guidance and application instructions for the Workforce Information Grants to States under OMB Control Number 1205–0417. ETA now requests OMB approval to make a change to this information collection. The purpose of this information collection is to comply with the Workforce Investment Act (WIA) Public Law 105–220, Sections 111(d)(8) and 309 (29 U.S.C. 2821(d)(8) and 49(l)(2), to maximize the use of workforce and economic information in employment and training programs and other activities at the state and local level. The data and workforce information services provided through WIGS support the development of data-driven policy, inform training and employment program design and investment decision-making, support consultations with strategic partners, and leverage limited labor market information-workforce information (LMI–WI) program grant resources. State workforce agencies use WIGS to develop and disseminate essential state and local LMI–WI for job seekers, employers, educators, economic developers, and others.

The addition to the currently approved information collection is to request that states submit their annual narrative progress reports on grant deliverables electronically using a reporting system that will allow DOL and the states to mine the reported data to identify successful practices, trends, challenges, and suggestions for improvement.

II. Review Focus

The Department 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

Type of Review: Extension with revision.

Title: Workforce Information Grants to States.

OMB Number: 1205–0417.

Affected Public: States and Territories.

Form(s): N/A.

Total Annual Respondents: 54.

Data collection activity	Number of respondents	Responses per year	Average time per response (hours)
Required economic report or analyses	54	1	434
Annual report to ETA	54	1	80
New annual reporting system	54	1	1

Total Annual Other Burden Cost for Respondents: 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: July 25, 2013.

Eric M. Seleznow,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2013–19059 Filed 8–6–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Employers Survey of the Short-Time Compensation Program (STC); New Collection

AGENCY: Employment and Training Administration, Labor.

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 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 (PRA) [44 U.S.C. 3505(c)(2)(A)]. PRA 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 the collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the collection of survey data from employers in a sub-set of states that operate a STC Program. The STC Program provides an opportunity for employers to reduce layoffs by temporarily reducing work hours for some employees. STC provides pro-rated unemployment insurance benefits for workers whose hours of work have been temporarily reduced. The proposed information collection is to examine employers' experiences, awareness, and perspectives of the STC Program in Kansas, Minnesota, Rhode Island, and Washington, through surveying the employers in these four States who have used the STC program, as well as employers who have not used the program. The objective of the study is to understand employers' awareness and perceptions of the STC program, including how various elements of the program affect their interest and participation.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 7, 2013.

ADDRESSES: Submit written comments to Gloribel Nieves-Cartagena, Office of Policy Development and Research, Room N5641, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–2771 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–2766. Email: *nieves-cartagena.gloribel@dol.gov.* A copy of the proposed information collection request (ICR) with applicable supporting documentation; including a description of likely respondents, proposed frequency of responses, and estimated total burden can be obtained free of charge by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

In February 2012, the Middle Class Tax Relief and Job Creation Act of 2012, was signed into law. Section 2164 requires the Secretary of Labor to survey employers in all States to determine their level of interest in participating in the STC Program. The proposed information collection is a preliminary step in support of complying with the 50-state survey requirement of Section 2164, and ETA is seeking approval to collect survey data from employers in four States with active STC.

The STC Program, also known as ''work sharing'' or ''shared work'', provides an opportunity for employers to reduce layoffs by temporarily reducing work hours of some employees. STC provides pro-rated unemployment insurance (UI) benefits for workers whose hours of work have been temporarily reduced. The U.S. program was first initiated in California in 1978 and a temporary national STC Program was adopted in 1982 under the Tax Equity and Fiscal Responsibility Act (Pub. L. 97–248). The STC Program became permanent in Federal law in 1992, when States were permitted to adopt their own STC programs as part of State UI laws. Under Section 303(a)(5) of the Social Security Act and Section 3304(a)(4) of the Federal Unemployment Tax Act, STC benefits may be paid from monies available in the Unemployment Trust Fund. Each State has an account within the Fund from which it pays benefits. Currently, 25 States and the District of Columbia have STC provisions in their UI laws.

The proposed study will examine employers' experiences, awareness, and perspectives of the STC Program in Kansas, Minnesota, Rhode Island, and Washington. Each of these four States has an active STC program. Employers in these four States who have used the STC Program, as well as employers in these four States who have not used the program, will be surveyed. The study will focus on the following four research areas:

(1) Characteristics of employers participating in the STC Program.

(2) Extent of employer participation in the STC Program.

(3) Employers' awareness, experiences, and views of the STC Program.

(4) Employers' opinion about workers view of STC.

Addressing these research areas will involve analyses of survey data as well as analyses of relevant UI administrative data and employer survey data. UI administrative data and employer survey data will be used to gain knowledge about the employer's awareness and experience with the STC Program and to examine the factors related to the employer's decision to apply. The results of the analyses will help to assess whether there are significant differences in the likelihood of participation across employer characteristics.

II. Review Focus

The Department 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

Type of Review: New Collection.

Title: Employers Survey of Short-Time Compensation Program.

OMB Number: 1205–0NEW.

Affected Public: Private Sector, Employers.

Data Collection Activity	Total respondents	Frequency	Total responses	Average time per respondent	Burden (hours)
Employer Survey of Short-Time Compensation	3,200	Once	3,200	27 minutes	1,440

Total Annual other Burden Cost for Respondents: $0.

Comments submitted in response to this comment request will be summarized and included in the request for Office of Management and Budget approval of the ICR; they will also become a matter of public record.

Dated: July 31, 2013.

Eric M. Seleznow,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2013–19063 Filed 8–6–13; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Waste Permit Applications Received Under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 671 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 6, 2013. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details:

Permit Application: 2014–006

1. *Applicant:* Eric Stangeland, Quark Expeditions.

Applicant Address: Quark Expeditions Inc., 93 Pilgrim Park, Suite 1 Waterbury, VT 05676.

Activity for Which Permit Is Requested

Waste Permit; Quark expeditions is planning to operate three vessels which will conduct tourist landings in the Antarctic. Each vessel will complete multiple cruises and multiple landings per cruise. Activities on shore include zodiac landings to visit wildlife, historic sites and research stations. Maximum passengers taken ashore at any one time will be limited to 100 persons. On selected voyages Quark plans to offer: (1) Guided excursions by kayak to suitably experienced and fit passengers, (2) the opportunity for a limited number of people to remain on shore to enjoy the polar night (3) the opportunity for a limited number of people to cross country ski at one or more specially selected locations (4) the opportunity for a limited number of people to downhill ski at one or more specially selected locations 5) the opportunity for a limited number of reasonably fit people to participate in ice climbing and mountaineering. No grey water, food waste or any garbage or solid waste would be brought or generated ashore during the course of the described activities. All human waste generated ashore would be contained and returned to the ship for storage and eventual proper disposal outside of the Antarctic.

Location

Western Antarctic Peninsula Region.

Dates

Dates permit valid: November 1, 2013 to March 31, 2017.

Nadene G. Kennedy,

Division of Polar Programs.

[FR Doc. 2013–19035 Filed 8–6–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education, #9487.

Dates: September 11, 2013, 9:00 a.m.–5:00 p.m., and September 12, 2013, 9:00 a.m.–2:00 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Beth Zelenski, National Science Foundation, Suite 705, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703–292–8500.

To help facilitate your entry into the building, contact Beth Zelenski (*ezelensk@nsf.gov*). Your request should be received on or prior to September 9, 2013.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda

September 11, 2013

- Update on NSF environmental research and education activities and collaborations
- Meeting with NSF Senior Leadership and Acting Director, Dr. Cora Marrett

September 12, 2013

- Discussion on urban sustainability issues
- Discussion on NSF merit review criteria

Dated: August 2, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–19092 Filed 8–6–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 6, 2013. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2014–005

1. *Applicant:* Brent Stewart.

Applicant Address

Hubbs-SeaWorld Research Institute, 2595 Ingraham Street, San Diego, California, 92109.

Activity for Which Permit Is Requested

Harmful Interference/Take. This application is to allow for the un-intentional and unexpected brief, minor disturbance to Antarctic birds and marine mammals at breeding, molting, and terrestrial, fast-ice, and sea-ice haul-out sites at various sub-Antarctic (within geographic coverage area of the Antarctic Treaty) and Antarctic locations during observational research to document several aspects of acoustic and non-acoustic behavior and ecology.

Research would be conducted using remote-controlled aerial platforms (i.e., quad-copters and hex-copters) equipped with small high-resolution cameras to document distribution, dispersion, habitat use, and abundance of seals and seabirds whenever conditions permit. These aerial sorties will be launched at least 50 to 100m from any wildlife should not be detectable visually or acoustically by wildlife during their operation. Flight altitudes would be 100 m or higher. Photographs and audio recordings also would be collected on the ground. No Antarctic Specially Protected Areas (ASPA) would be entered in pursuit of this research.

Research locations would be accessed from tour ships as part of their pre-scheduled landings and is therefore focused on visitor sites.

Location

Western Antarctic Peninsula region visitor sites.

Dates

Dates permit valid: October 1, 2013 to October 1, 2018.

Nadene G. Kennedy,

Division of Polar Programs.

[FR Doc. 2013–19034 Filed 8–6–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0073]

Japan Lessons-Learned Project Directorate Interim Staff Guidance JLD–ISG–2013–01; Guidance for Estimating Flooding Hazards Due to Dam Failure

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing the Final Japan Lessons-Learned Project Directorate Interim Staff Guidance (JLD–ISG), JLD–ISG–2013–01, ''Guidance for Estimating Flooding hazards due to Dam Failure'' (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13151A153). This ISG provides guidance and clarification to assist nuclear power reactors applicants and licensees with the flooding hazard reassessment in response to Enclosure 2 of the NRC staff's request for information, ''Request for Information Pursuant to section 50.54(f) of Title 10 of the *Code of Federal Regulations* (10 CFR), Regarding Recommendations 2.1, 2.3, and 9.3 of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident,'' dated March 12, 2012 (ADAMS Accession No. ML12053A340).

ADDRESSES: Please refer to Docket ID NRC–2013–0073 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly-available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0073. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3442; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The JLD–ISG–2013–01 is available under ADAMS Accession No. ML13151A153.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.
- *NRC's Interim Staff Guidance Web site:* Go to *http://www.nrc.gov/reading-rm/doc-collections/isg/japan-lessons-learned.html* and refer to JLD–ISG–2013–01.

FOR FURTHER INFORMATION CONTACT: Mr. G. Edward Miller, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001; telephone: 301–415–2481; email: *ed.miller@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background Information

The NRC staff developed JLD–ISG–2013–01 to provide guidance and clarification to assist nuclear power reactor licensees, applicants for power reactor licenses, and holders of construction permits in active or deferred status with the evaluation of flooding hazards due to dam failure.

On March 11, 2011, a magnitude 9.0 earthquake struck off the coast of the Japanese island of Honshu. The earthquake resulted in a large tsunami, estimated to have exceeded 14 meters (45 feet) in height, that inundated the Fukushima Dai-ichi nuclear power plant site. The earthquake and tsunami produced widespread devastation across northeastern Japan and significantly affected the infrastructure and industry in the northeastern coastal areas of Japan. When the earthquake occurred, Fukushima Dai-ichi Units 1, 2, and 3 were in operation and Units 4, 5, and 6 were shut down for routine refueling and maintenance activities. The Unit 4 reactor fuel was offloaded to the Unit 4 spent fuel pool. Following the earthquake, the three operating units automatically shut down and offsite power was lost to the entire facility. The emergency diesel generators (EDG) started at all six units providing alternating current (ac) electrical power to critical systems at each unit. The facility response to the earthquake appears to have been normal. Approximately 40 minutes following the earthquake and shutdown of the operating units, however, the first large tsunami wave inundated the site, followed by additional waves. The tsunami caused extensive damage to site facilities and resulted in a complete loss of all ac electrical power at Units 1 through 5, a condition known as station blackout. In addition, all direct current electrical power was lost early in the event on Units 1 and 2, and after some period of time at the other units. Unit 6 retained the function of one air-cooled EDG. Despite their actions, the operators lost the ability to cool the fuel in the Unit 1 reactor after several hours, in the Unit 2 reactor after about 70 hours, and in the Unit 3 reactor after about 36 hours, resulting in damage to the nuclear fuel shortly after the loss of cooling capabilities.

Following the events at the Fukushima Dai-ichi nuclear power plant, the NRC established a senior-level agency task force referred to as the Near-Term Task Force (NTTF). The NTTF was tasked with conducting a systematic and methodical review of the NRC's regulations and processes, and determining if the agency should make additional improvements to these programs in light of the events at Fukushima Dai-ichi. As a result of this review, the NTTF developed a comprehensive set of recommendations, documented in SECY–11–0093, ''Near-Term Report and Recommendations for Agency Actions Following the Events in Japan,'' dated July 12, 2011 (ADAMS Accession No. ML11186A950). These recommendations were enhanced by the NRC staff following interactions with stakeholders. Documentation of the staff's efforts is contained in SECY–11–0124, ''Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report,'' dated September 9, 2011 (ADAMS Accession No. ML11245A158), and SECY–11–0137, ''Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned,'' dated October 3, 2011 (ADAMS Accession No. ML11272A111).

As directed by the Commission's staff requirements memorandum (SRM) for SECY–11–0093, dated August 19, 2011 (ADAMS Accession No. ML112310021), the NRC staff reviewed the NTTF recommendations within the context of the NRC's existing regulatory framework and considered the various regulatory vehicles available to the NRC to implement the recommendations. SECY–11–0124 and SECY–11–0137 established the staff's prioritization of the recommendations based upon the potential for each recommendation to enhance safety.

As part of the SRM for SECY–11–0124, dated October 18, 2011, the Commission approved the staff's proposed actions, including the development of three information requests under 10 CFR 50.54(f). The information collected would be used to support the NRC staff's evaluation of whether further regulatory action was needed in the areas of seismic and flooding design and emergency preparedness.

In addition to Commission direction, the Consolidated Appropriations Act, Public Law 112–074, was signed into law on December 23, 2011. Section 402 of the law directs the NRC to require licensees to reevaluate their design basis for external hazards.

In response to the aforementioned Commission and Congressional direction, the NRC issued a request for information to all power reactor licensees and holders of construction permits under 10 CFR part 50 on March 12, 2012. The letter dated March 12, 2012, includes a request that licensees reevaluate flooding hazards at nuclear power plant sites using updated flooding hazard information and present-day regulatory guidance and methodologies. The letter also requests the comparison of the reevaluated hazard to the current design basis at the site for each potential flood mechanism. If the reevaluated flood hazard at a site is not bounded by the current design basis, licensees are requested to perform an integrated assessment. The integrated assessment will evaluate the total plant response to the flood hazard, considering multiple and diverse capabilities such as physical barriers, temporary protective measures, and operational procedures. The NRC staff will review the licensees' responses to this request for information and determine whether regulatory actions are necessary to provide additional protection against flooding.

Numerous public meetings were held to receive stakeholder input on the proposed guidance prior to its issuance formally for public comment. On April 25, 2013 (78 FR 24439), the NRC requested public comments on draft JLD–ISG–2013–01. In public meetings on May 2, 2013, and May 22, 2013, the NRC staff interacted extensively with external stakeholders to discuss, understand, and resolve public comments. Modifications were made to the text of the ISG in response to the public comments and the outcomes of the public meetings. Full detail of the comments, staff responses, and the staff's bases for changes to the ISG are contained in ''NRC Response to Public Comments'' to JLD–ISG–2013–01, which can be found under ADAMS Accession No. ML13151A161.

Backfitting and Issue Finality

This ISG does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' This ISG provides guidance on an acceptable method for implementing the March 12, 2012, request for information. Neither the information request nor the ISG require the modification or addition to systems, structures, or components, or design of a facility. Applicants and licensees may voluntarily use the guidance in JLD–ISG–2013–01 to comply with the request for information. The information received by this request may, at a later date, be used in the basis for imposing a backfit.

The appropriate backfit review process would be followed at that time.

Congressional Review Act

This interim staff guidance is a rule as designated in the Congressional Review Act (5 U.S.C. 801–808). OMB has found that this is not a major rule in accordance with the Congressional Review Act.

Dated at Rockville, Maryland, this 29th day of July 2013.

For The Nuclear Regulatory Commission.

David L. Skeen,

Director, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–19057 Filed 8–6–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50–133; NRC–2013–0130]

Pacific Gas and Electric Company, Humboldt Bay Power Plant, Unit 3, Notice of Public Meeting on the License Termination Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for license amendment; public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing notice that the NRC staff will conduct a meeting to discuss and accept public comments on the Humboldt Bay Power Plant (HBPP), Unit 3 License Termination Plan (LTP) on Tuesday, August 20, 2013, at 6:00 p.m. in the Great Room at the Warfinger Building, Eureka Public Marina, #1 Marina Way, Eureka, California.

The HBPP is located about four miles southwest of the city of Eureka, Humboldt County, California and consists of 143 acres of land. Unit 3, which is the NRC licensed reactor, is currently being decommissioned with the spent fuel now stored in the onsite Independent Spent Fuel Storage Installation. Unit 3 decommissioning commenced in May 2009. Following the start of a new power generation facility in 2010, the licensee commenced with the permanent shutdown of the fossil Units 1 and 2. Units 1 and 2 are being decommissioned in conjunction with Unit 3 decommissioning.

In accordance with the NRC regulations at § 50.82(a)(9) of Title 10 of the *Code of Federal Regulations* (10 CFR), all power reactor licensees must submit an application for termination of their license. The application for termination of license must be accompanied or preceded by an LTP to be submitted for NRC approval. Pacific Gas and Electric submitted the proposed LTP for HBPP with a license amendment application dated May 3, 2013. The LTP would be approved by license amendment if found acceptable by the NRC staff. The amendment would be subject to such conditions and limitations as the NRC staff deems appropriate and necessary. In accordance with 10 CFR 20.1405 and 10 CFR 50.82(a)(9)(iii), the NRC is providing notice to individuals in the vicinity of the site that the NRC: (1) Is in receipt of the HBPP LTP; (2) will hold a public meeting: and (3) will accept comments from affected parties.

The HBPP LTP is available for public viewing at the NRC's Public Document Room (PDR) or electronically through the NRC Agencywide Documents Access and Management System (ADAMS) at accession numbers ML131300009 and ML131300160. Documents may be examined, and/or copied for a fee, at the PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by email at *pdr@nrc.gov.*

Any meeting updates or changes will be made available on the NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/.*

FOR FURTHER INFORMATION CONTACT: Comments or questions regarding the HBPP LTP or the public meeting may be addressed to Mr. John B. Hickman, Mail Stop T–8–F5, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–3017 or via email *John.Hickman@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of July 2013.

For The Nuclear Regulatory Commission.

Bruce Watson,

Branch Chief, Reactor Decommissioning Branch, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–19054 Filed 8–6–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission [NRC–2013–0001].

DATES: Week of August 5, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 5, 2013

Monday, August 5, 2013

1:00 p.m. Affirmation Session (Public Meeting) (Tentative).

Proposed Commission Order in Response to Decision by D.C. Circuit in *Shieldalloy Metallurgical Corp.* v. *NRC* (Tentative).

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

Additional Information

By a vote of 5–0 on August 2, 2013, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on August 5, 2013.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify

Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: August 2, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–19171 Filed 8–5–13; 4:15 pm]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Notice; Special Meetings of the Board of Directors

TIME AND DATES: Wednesday, August 14, 2013, 3 p.m. Monday, August 19, 2013. (CLOSED)

PLACE: Offices of the Corporation, 1100 New York Avenue NW., Washington, DC.

STATUS: Meetings will commence at 3 p.m. (approx.).

MATTER TO BE CONSIDERED: 1. Insurance Project—Egypt.

CONTACT PERSON FOR INFORMATION: Information on the meetings may be obtained from Connie M. Downs at (202) 336–8438.

August 5, 2013.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 2013–19207 Filed 8–5–13; 4:15 pm]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–1; SEC File No. 270–244, OMB Control No. 3235–0208.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–1 (17 CFR 240.17a–1) under the Securities Exchange Act of 1934, as amended (the ''Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–1 requires that every national securities exchange, national securities association, registered clearing agency, and the Municipal Securities Rulemaking Board keep on file for a period of not less than five years, the first two years in an easily accessible place, at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records made or received by it in the course of its business as such and in the conduct of its self-regulatory activity, and that such documents be available for examination by the Commission.

There are 28 entities required to comply with the rule: 17 national securities exchanges, 1 national securities association, 9 registered clearing agencies, and the Municipal Securities Rulemaking Board. The Commission staff estimates that the average number of hours necessary for compliance with the requirements of Rule 17a–1 is 50 hours per year. In addition, 5 national securities exchanges notice-registered pursuant to Section 6(g) of the Act (15 U.S.C. 78f(g)) are required to preserve records of determinations made under Rule 3a55–1 under the Act (17 CFR 240.3a55–1), which the Commission staff estimates will take 1 hour per exchange, for a total of 5 hours. Accordingly, the Commission staff estimates that the total number of hours necessary to comply with the requirements of Rule 17a–1 is 1,405 hours. The average cost per hour is $63. Therefore, the total cost of compliance for all respondents is $88,515.

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission'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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F St. NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 1, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–19041 Filed 8–6–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15Ba2–5, SEC File No. 270–91, OMB Control No. 3235–0088.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 15Ba2–5 (17 CFR 240.15Ba2–5)—Registration of Fiduciaries, under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

On July 7, 1976, effective July 16, 1976 (*see* 41 FR 28948, July 14, 1976), the Commission adopted Rule 15Ba2–5 under the Exchange Act of 1934 to permit a duly-appointed fiduciary to assume immediate responsibility for the operation of a municipal securities dealer's business. Without the rule, the fiduciary would not be able to assume operation until it registered as a municipal securities dealer. Under the rule, the registration of a municipal securities dealer is deemed to be the registration of any executor, administrator, guardian, conservator,

assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such municipal securities dealer, provided that such fiduciary files with the Commission, within 30 days after entering upon the performance of his duties, a statement setting forth as to such fiduciary substantially the same information required by Form MSD or Form BD. The statement is necessary to ensure that the Commission and the public have adequate information about the fiduciary.

There is approximately 1 respondent per year that requires an aggregate total of 4 hours to comply with this rule. This respondent makes an estimated 1 annual response. Each response takes approximately 4 hours to complete. Thus, the total compliance burden per year is 4 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondent of approximately $80 (*i.e.,* 4 hours x $20).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates 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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number. Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street, NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 1, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–19038 Filed 8–6–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30639; 812–14071]

Ranger Alternative Management, L.P. and Ranger Funds Investment Trust; Notice of Application

August 1, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Ranger Alternative Management, L.P. (''Ranger'') and Ranger Funds Investment Trust (the ''Trust'').

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: *Filing Dates:* The application was filed on August 24, 2012, and amended on March 5, 2013, and July 30, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 26, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: 2828 N. Harwood Street, Suite 1600, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826 or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. The Trust initially will offer one series, the Ranger Global ETF (the ''Initial Fund''), which applicants state will seek long term capital appreciation through long positions and short sales (''Short Positions'') of U.S. and/or non-U.S. equity securities.

2. Ranger, a Texas limited partnership, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and will serve as investment adviser to the Initial Fund. The Advisor (as defined below) may in the future retain one or more sub-advisers (each a ''Subadvisor'') to manage the portfolios of the Funds (as defined below). Any Subadvisor will be registered under the Advisers Act or not subject to such registration. A registered broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act,'' and such persons registered under the Exchange Act, ''Brokers''), which may be an affiliate of the Advisor, will act as the distributor and principal underwriter of the Funds (''Distributor'').[1]

3. Applicants request that the order apply to the Initial Fund and any future series of the Trust or future series of other existing or future open-end

[1] Applicants request that the order also apply to future distributors that comply with the terms and conditions of the application.

management companies that are exchange-traded funds (''ETFs'') and that utilize active management investment strategies (''Future Funds''). Any Future Fund will (a) be advised by Ranger or an entity controlling, controlled by, or under common control with Ranger (each, an ''Advisor''), and (b) comply with the terms and conditions of the application.[2] The Initial Fund and Future Funds together are the ''Funds''. Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies, other assets, and other positions of the Fund (''Portfolio Positions'').[3] Funds may invest in ''Depositary Receipts.''[4] Each Fund will operate as an actively managed ETF. The Funds may invest in other open-end and/or closed-end investment companies and/or ETFs.

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund that is currently or subsequently part of the same ''group of investment companies'' as the Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act; (ii) any principal underwriter for the Fund; (iii) any Brokers selling Shares of a Fund to an Investing Fund (as defined below); and (iv) each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies, ''Investing Management Companies,'' such unit investment trusts, ''Investing Trusts,'' and Investing Management Companies and Investing Trusts together, ''Investing Funds''). Investing Funds do not include the Funds.[5]

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares and that the price of a Share will range from $10 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Fund (''Authorized Participant'') with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) A Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (b) a participant in the DTC (such participant, ''DTC Participant'').

6. In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and, to the extent practicable, on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will generally be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[6] On any given Business Day,[7] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[8] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[9] or (c) TBA Transactions,[10] Short Positions and other positions that cannot be transferred in kind[11] will be excluded from the Creation Basket.[12] If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Balancing Amount'').

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Funds holding non-U.S. investment (''Global Funds''), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or

[2] Any Advisor to a Future Fund will be registered as an investment adviser under the Advisers Act. All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[3] If a Fund invests in derivatives, then (a) the board of trustees (''Board'') of the Fund will periodically review and approve the Fund's use of derivatives and how the Advisor assesses and manages risk with respect to the Fund's use of derivatives, and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[4] Depositary Receipts are typically issued by a financial institution, a ''depositary'', and evidence ownership in a security or pool of securities that have been deposited with the depositary. A Fund will not invest in any Depositary Receipts that the Advisor or Subadvisor deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants, any Future Fund or any Subadvisor will serve as the depositary bank for any Depositary Receipts held by a Fund.

[5] An Investing Fund may rely on the order only to invest in Funds and not in any other registered investment company.

[6] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[7] Each Fund will sell and redeem Creation Units on any day the Fund is open for business, including as required by section 22(e) of the Act (each, a ''Business Day'').

[8] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value (''NAV'') for that Business Day.

[9] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[10] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[11] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[12] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Balancing Amount (defined below).

other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[13]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Stock Exchange''), on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Balancing Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Stock Exchange will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing the estimated NAV, on a per Share basis, which will be the sum of the current value of the Portfolio Positions that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

9. A Fund may recoup the settlement costs charged by NSCC and DTC by imposing a transaction fee on investors purchasing or redeeming Creation Units (the ''Transaction Fee''). The Transaction Fee will be borne only by purchasers and redeemers of Creation Units and will be limited to amounts that have been determined appropriate by the Advisor to defray the transaction expenses that will be incurred by a Fund when an investor purchases or redeems Creation Units.[14] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus (''Prospectus'') to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

10. Shares will be listed and traded at negotiated prices on a Stock Exchange and traded in the secondary market. Applicants expect that Stock Exchange specialists (''Specialists'') or market makers (''Market Makers'') will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Specialists or Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.[15] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[16] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant.

13. Neither the Trust nor any Fund will be marketed or otherwise held out as a ''mutual fund.'' Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' In any advertising material where features of obtaining, buying or selling Creation Units or Shares are described, or where there is reference to redeemability, there will be an appropriate statement to the effect that Shares are not individually redeemable.

14. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include a Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Positions held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[17]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or

[13] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[14] Where a Fund, as described above, permits an in-kind purchaser or redeemer to deposit or receive cash in lieu of depositing one or more Deposit or Redemption Instruments, the purchaser or redeemer may be assessed a higher Transaction Fee to offset the cost to the Fund of buying or selling those particular Deposit or Redemption Instruments. In all cases, the Transaction Fee will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

[15] If Shares are listed on NYSE Arca, Nasdaq or a similar electronic Stock Exchange, one or more member firms of that Stock Exchange will act as Market Maker and maintain a market for Shares trading on the Stock Exchange. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. If Shares are listed on a Stock Exchange such as the NYSE, one or more member firms will be designated to act as a Specialist and maintain a market for the Shares trading on the Stock Exchange. No Market Maker or Specialist will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within section 2(a)(3)(A) or (C) of the Act due to ownership of Shares, as described below.

[16] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[17] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, each Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for its NAV calculation at the end of such Business Day.

transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains immaterial.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Positions to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 12 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Positions of each Global Fund customarily clear and settle, but in all cases no later than 12 calendar days following the tender of a Creation Unit.[18]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 12 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state each Global Fund's statement of additional information (''SAI'') will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act

[18] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that it may otherwise have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company (''Investing Fund Advisor''), sponsor of an Investing Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company (''Investing Fund Sub-Advisor''), any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Advisor or any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor (''Investing Fund's Sub-Advisory Group'').

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate [19] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''independent directors or trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[20]

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Advisor (an ''Affiliated Fund'').

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[21] Applicants also

[19] An ''Investing Fund Affiliate'' is any Investing Fund Advisor, Investing Fund Sub-Advisor, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[20] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[21] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to,

Continued

request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are affiliated persons or second-tier affiliates.[22]

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. The Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund's Portfolio Positions, except as described above. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Positions currently held by the relevant Funds, and the valuation of the Deposit Instruments and Redemption Instruments will be made in the same manner, regardless of the identity of the purchaser or redeemer. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

19. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[23] Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Positions held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Advisor or any Subadvisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares in the same proportion as the vote of all other holders of the Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Advisor or a person controlling, controlled by or under common control with the Investing Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Advisor and any Investing Fund Sub-Advisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in Shares exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the independent directors or trustees, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of

transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[22] Applicants expect most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to also cover the in-kind transactions that may accompany such sales and redemptions.

[23] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Advisor will waive fees otherwise payable to the Investing Fund Sub-Advisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Advisor, or an affiliated person of the Investing Fund Sub-Advisor, other than any advisory fees paid to the Investing Fund Sub-Advisor or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Advisor. In the event that the Investing Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in Shares in excess of the limits in section 12(d)(1)(A), each Investing Fund and the Fund will execute an FOF Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70091; File No. SR–CBOE–2013–073]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Change the Expiration Date For Most Option Contracts to the Third Friday of the Expiration Month Instead of the Saturday Following the Third Friday

August 1, 2013.

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 July 19, 2013, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange rules to change the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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 is proposing to change the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday. More specifically, the Exchange is proposing to amend rule text referencing Saturday expirations. The Exchange notes, however, that this change will apply to all standard expiration contracts including those in which the rules are silent on the expiration date. The Exchange is making this filing to harmonize its rules in connection with a recently approved rule filing made by The Options Clearing Corporation (''OCC'') which made substantially similar changes.[3] The Exchange believes that the industry must remain consistent in expiration dates, and, thus, is proposing to update its rules to remain consistent with those of OCC. In addition, the Exchange understands that other exchanges will be filing similar rules to effect this industry-wide initiative.

Most option contracts (''standard expiration contracts'') currently expire at the ''expiration time'' (11:59 p.m. Eastern Time) on the *Saturday* following the third Friday of the specified expiration month (the ''expiration date'').[4] With this filing, the Exchange is proposing to give advance notice to its Trading Permit Holders (''TPHs'') that the expiration date for standard expiration contracts is changing to the third *Friday* of the expiration month.[5] (The expiration time would continue to be 11:59 p.m. Eastern Time on the expiration date.) The change would apply only to standard expiration contracts expiring after February 1, 2015, and the Exchange, similar to OCC, does not propose to change the expiration date for any outstanding option contracts. The change will apply only to series of option contracts opened for trading after the effective date of the OCC rule change and having expiration dates later than February 1, 2015. Option contracts having non-standard expiration dates (''non-standard expiration contracts'') will be unaffected by this proposed rule change, except that FLEX options having expiration dates later than February 1, 2015 cannot expire on a Saturday unless they are specified by OCC as grandfathered.[6]

In order to provide a smooth transition to the Friday expiration OCC has begun to move the expiration exercise procedures to Friday for all standard expiration contracts even though the contracts would continue to expire on Saturday.[7] After February 1, 2015, virtually all standard expiration contracts will actually expire on Friday. The only standard expiration contracts that will expire on a Saturday after February 1, 2015 are certain options that were listed prior to the effectiveness of the OCC rule change, and a limited number of options that may be listed prior to necessary systems changes of the options exchanges, which are expected to be completed in August 2013. After these systems changes are made, CBOE will not list any additional options with Saturday expiration dates falling after February 1, 2015. CBOE understands that the other exchanges are committed to the same listing schedule.

The Exchange notes that OCC, industry groups, clearing members and the other exchanges have been active participants in planning for the transition to the Friday expiration.[8] In March, 2012, OCC began to discuss moving standard contract expirations to Friday expiration dates with industry groups, including two Securities Industry and Financial Markets Association (''SIFMA'') committees, the Operations and Technology Steering Committee and the Options Committee, and at two major industry conferences, the SIFMA Operations Conference and the Options Industry Conference.[9] OCC also discussed the project with the Intermarket Surveillance Group and at an OCC Operations Roundtable. In each case, there was broad support for the initiative.[10]

Certain option contracts have already been listed with Saturday expiration dates as distant as December 2016 (which is the furthest out expiration as of the date of this filing). Additionally, until CBOE completes certain systems enhancements in August 2013, it

[3] See Securities Exchange Act Release No. 34–69772 (June 17, 2013), 78 FR 37645 (June 21, 2013) (order approving SR–OCC–2013–004).

[4] Examples of options with non-standard expiration contracts include: Volatility Index options (Rule 24.9(a)(5)), FLEX options (Rules 24A.4(a)(2)(iv) and 24B.4(a)(iv)), Quarterly Index expirations (Rule 24.9(c)), End of Week and End of Month expirations (Rule 24.9(e)), Quarterly Option Series (Rules 5.5(e) and 24.9(a)(2)(B)) and Short Term Option Series (Rules 5.5(d) and 24.9(a)(2)(A)).

[5] The Exchange has already given notice to TPHs regarding the anticipated change. *See* Exchange Regulatory Circular RG12–135 released on October 5, 2012.

[6] *See* note 4 *supra.*

[7] *See* SR–OCC–2013–04.

[8] *Id.*

[9] *Id.*

[10] *Id.*

remains possible that additional option contracts may be listed with Saturday expiration dates beyond February 1, 2015. For these contracts, transitioning to a Friday expiration for newly listed option contracts expiring after February 1, 2015 would create a situation under which certain options with open interest would expire on a Saturday while other options with open interest would expire on a Friday in the same expiration month.

Clearing members have expressed a clear preference to not have a mix of options with open interest that expire on different days in a single month.[11] Accordingly, OCC represented in its recently approved filing that it will not issue and clear any new option contract with a Friday expiration if existing option contracts of the same options class expire on the Saturday following the third Friday of the same month. However, Friday expiration processing will be in effect for these Saturday expiration contracts. As with standard expiration options during the transition period, exercise requests received after Friday expiration processing is complete but before the Saturday contract expiration time will continue to be processed without fines or penalties.

Thus, the Exchange is proposing to update its rules to reflect the above discussed change. More specifically, the Exchange is proposing to add Rule 1.1(mmm) to define ''Expiration Date'' to be consistent with the revised OCC definition.[12] The Exchange is also proposing to update Exchange Rules 23.5 and 24.9 which reference Saturday expiration dates (which are the only two Exchange rules that identify Saturday as the expiration date). Thus, consistent with the OCC filing, the Exchange is proposing to add language to these rules stating that any series expiring prior to February 1, 2015 will have a Saturday expiration date while any series expiring on or after February 1, 2015 will have a Friday expiration date.[13] The Exchange is also proposing, with this filing, to replace any reference in the purpose section of any past Exchange rule filings or previously released circulars to any expiration date other than Friday for a standard options contract with the new Friday standard. Essentially, the Exchange is now proposing to replace any historic references to expiration dates to be replaced with the proposed Friday expiration. As stated above, the Exchange believes the proposed change will keep the Exchange consistent with the processing at OCC and will enable the Exchange to give effect to the industry-wide initiative. In addition, the Exchange understands that other exchanges will be filing similar rules, thus creating a uniform expiration date for standard options on listed classes.

The Exchange plans to release another circular to TPHs to put TPHs on notice of this change prior to the implementation of the rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that keeping its rules consistent with those of the industry will protect all participants in the market by eliminating confusion. The proposed changes thus allow for a more orderly market by allowing all options markets, including the clearing agencies, to have the same expiration date for standard options. In addition, the proposed changes will foster cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities by aligning a pivotal part of the options processing to be consistent industry wide. If the industry were to differ, investors would suffer from confusion and be more vulnerable to violate different exchange rules. The proposed changes do not permit unfair discrimination between any TPHs because they are applied to all TPHs equally. In the alternative, the Exchange believes that it helps all TPHs by keeping the Exchange consistent with OCC practices and those of other Exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 does not believe the proposed rule change will impose a burden on intramarket competition because it will be applied to all TPHs equally. In addition, the Exchange does not believe the proposed rule change will impose any burden to intermarket competition because it will be applied industry wide and apply to all market participants. The proposed rule change is structured to enhance competition because the shift from an expiration date of the Saturday following the third Friday to the third Friday is anticipated to be adopted industry-wide and will apply to all multiply listed classes. This in turn will allow CBOE to compete more effectively with other exchanges making similar rule changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change. The Exchange notes, however, that a favorable comment was submitted to the OCC filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)[18] 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

[11] *Id.*

[12] *Id.*

[13] With the exception of expirations that were listed prior to the effective date of the OCC filing and have open interest.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–073 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–073. 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 Web site (*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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2013–073 and should be submitted on or before August 28, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–19037 Filed 8–6–13; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70092; File No. SR–OCC–2013–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To: (i) Provide Clarification Regarding the Applicability of Certain Provisions of OCC's By-Laws and Rules to Certain U.S. Dollar-Settled Gold Futures Designed to Replicate Positions in the Spot Market; and (ii) Remove Provisions Applicable Only to the Now-Discontinued U.S. Dollar-Settled Gold Futures That Were Based on the Value of Gold in the Spot Market With an Additional Daily Cost of Carry Feature

August 1, 2013.

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 July 25, 2013, The Options Clearing Corporation (''OCC'') 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 OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii)[3] of the Act and Rule 19b–4(f)(4)(ii)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to do the following: (i) Provide clarification regarding the applicability of certain provisions of OCC's By-Laws and Rules to certain U.S. dollar-settled gold futures designed to replicate positions in the spot market (''GLN 10 oz. Gold Futures'')[5] proposed to be traded by NASDAQ OMX Futures Exchange, Inc. (''NFX''); and (ii) remove provisions applicable only to the now-discontinued U.S. dollar-settled gold futures that were based on the value of gold in the spot market with an additional daily cost of carry feature that was designed to reflect the difference between the overnight lease rate for gold and the overnight interest rate for the U.S. dollar, which were also traded by NFX (''Swap Point Gold Futures'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC 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

OCC is proposing to modify its rules to provide clarification regarding the applicability of certain provisions of OCC's By-Laws and Rules to the clearance and settlement of GLN 10 oz. Gold Futures, which are proposed to be traded by NFX. A GLN 10 oz. Gold Future is a U.S. dollar-settled futures contract that tracks spot gold prices using a single contract month for a particular year. OCC's existing By-Laws and Rules already adequately accommodate OCC's clearing and settlement of GLN 10 oz. Gold Futures. However, OCC is proposing certain amendments in order to eliminate any potential confusion regarding the applicability of certain provisions that were specific to the now-discontinued Swap Point Gold Futures contracts. GLN 10 oz. Gold Futures differ from Swap Point Gold Futures, which previously were but are no longer cleared by OCC, in that they do not include a Cost of Carry Payment (defined below). Swap Point Gold Futures were U.S. dollar-settled futures contracts based on the value of gold with an additional daily cost of carry/interest payment feature that was designed to reflect the difference between the overnight lease rate for gold and the overnight interest rate for the U.S. dollar (the ''Cost of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] ''GLN'' will be the ticker symbol for these futures contracts.

Carry Payment''). NFX has advised OCC that it has no present intention to clear swap point contracts in the future.

(i) OCC's Proposed By-Laws and Rules Changes

OCC proposes to delete paragraph (f) of Rule 1301, which provided for OCC's determination of the Cost of Carry Payment to be paid or received by buyers and sellers of outstanding spot futures contracts. GLN 10 oz. Gold Futures do not possess this Cost of Carry Payment feature, and therefore Rule 1301(f) is not applicable to them. Swap Point Gold Futures—the only product previously cleared by OCC that possessed the Cost of Carry Payment feature—are no longer cleared by OCC, and Rule 1301(f) therefore is no longer needed, and OCC proposes to delete the provision from its Rules. Accordingly, the defined terms ''cost of carry payment'' and ''spot future,'' which were only utilized in the context of the cost of carry payment, are both superfluous, and OCC proposes to delete them from Article I of the By-Laws. OCC also proposes to delete a reference in Section 2(a) of Article XII of OCC's By-Laws to the applicability of the cost of carry payment provisions of Rule 1301 to buyers and sellers of spot futures.

(ii) OCC's Amendment to the Clearing Agreement and Schedule C

OCC performs the clearing function for NFX pursuant to the Clearing Agreement. The Clearing Agreement provides that NFX will provide settlement prices to OCC and indemnify OCC in the event that OCC uses an incorrect settlement price provided by NFX. Additionally, it provides that NFX will provide certain additional data necessary for the calculating of the Cost of Carry Payment (''Swap Point Data'') and indemnify OCC in the event OCC uses incorrect Swap Point Data provided by NFX. As OCC will no longer be clearing Swap Point Gold Futures, there is no need for the Clearing Agreement to address NFX's providing Swap Point Data, or for NFX to indemnify OCC for its use of such Swap Point Data. Therefore, OCC proposes to enter into an amendment to the Clearing Agreement deleting these provisions. The Clearing Agreement will continue to provide for NFX's indemnification of OCC in the event that OCC uses an incorrect settlement price provided by NFX. A copy of the proposed amendment to the Clearing Agreement is attached hereto as Exhibit 3A.

Pursuant to the terms of the Clearing Agreement, OCC has agreed to clear the specific types of contracts enumerated in the Agreement and may agree to clear additional types through the execution by both parties of a new ''Schedule C'' to the Agreement. A copy of the proposed new Schedule C providing for the clearance of GLN 10 oz. Gold Futures is attached hereto as Exhibit 3B.

(iii) Effect on Clearing Members

The proposed rule change relates to the clearing of a new product and will affect clearing members and their customers to the extent that they seek to trade GLN 10 oz. Gold Futures. The change will affect all such clearing members equally and should not impose any compliance burdens on clearing members, because GLN 10 oz. Gold Futures will be cleared using existing systems and will be margined similarly to other existing products.

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A(b)(3)(A) of the Securities Exchange Act of 1934, as amended (the ''Exchange Act'' or ''Act'') [6], because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the Commodity Futures Trading Commission (the ''CFTC'') without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. They accomplish this purpose by providing clarification regarding the applicability of certain provisions of OCC's By-Laws and Rules to GLN 10 oz. Gold Futures, and remove provisions of OCC's By-Laws and Rules that are only applicable to Swap Point Gold Futures, a discontinued product. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the Act because it relates solely to a commodity futures product subject to the exclusive jurisdiction of the Commodity Futures Trading Commission and therefore will not have any impact, or impose any burden, on competition in securities markets or any other market governed by the Act.

[6] 15 U.S.C. 78q–1.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(4)(ii) [8] thereunder. Pursuant to Rule 19b–4(f)(4)(ii),[9] a rule change may take effect upon filing if it primarily affects the clearing operations of the clearing agency with respect to products that are not securities and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service. As described above, this proposed rule change concerns futures products that are subject to the primary jurisdiction of the CFTC and does not adversely affect OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. Notwithstanding the foregoing, OCC will delay its implementation of this rule change until it is deemed certified under Regulation § 40.6 [10] of the CFTC.

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend this 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.[11]

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:

[7] 15 U.S.C. 78s(b)(3)(A)(iii).
[8] 17 CFR 240.19b–4(f)(4)(ii).
[9] *Id.*
[10] 17 CFR Part 40.
[11] 15 U.S.C. 78s(b)(3)(C).

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–OCC-2013–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2013–11. 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 of submission. The Commission will post all comments on the Commission's Internet Web site (*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 Web site 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 such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_13_11.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2013–11 and should be submitted on or before August 28, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated Authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–19040 Filed 8–6–13; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8412]

Culturally Significant Objects Imported for Exhibition Determinations: ''Heaven and Earth: Art of Byzantium from Greek Collections''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition ''Heaven and Earth: Art of Byzantium from Greek Collections,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about October 6, 2013, until on or about March 2, 2014, the J. Paul Getty Museum, Los Angeles, California, from on or about April 9, 2014, until on or about August 5, 2014, 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: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 30, 2013.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–19086 Filed 8–6–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8410]

Culturally Significant Objects Imported for Exhibition Determinations: ''Balthus: Cats and Girls—Paintings and Provocations''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition ''Balthus: Cats and Girls—Paintings and Provocations,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. 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 September 23, 2013, until on or about January 12, 2014, 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: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 29, 2013.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–19079 Filed 8–6–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8411]

Culturally Significant Objects Imported for Exhibition Determinations: ''Wols: Retrospective''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition ''Wols: Retrospective,'' imported from abroad for temporary exhibition within the United States, are of cultural

significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Menil Collection, Houston, Texas, from on or about September 12, 2013, until on or about January 12, 2014, 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: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 30, 2013.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–19084 Filed 8–6–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8413]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, August 27, 2013, in Room 1303 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the eighteenth Session of the International Maritime Organization's (IMO) Sub-Committee on Dangerous Goods, Solid Cargoes and Containers (DSC 18) to be held at the IMO Headquarters, United Kingdom, September 16–20, 2013.

The agenda items to be considered include:

—Adoption of the agenda
—Decisions of other IMO bodies
—Review of general cargo ship safety
—Development of amendments to CSC 1972 and associated circulars
—Development of measures to prevent loss of containers
—Development of amendments to the IMSBC Code and supplements, including evaluation of properties of solid bulk cargoes
—Development of amendments to the IMDG Code and supplements, including harmonization with the United Nations Recommendations on the transport of dangerous goods
—Revision of the guidelines for packing of cargo transport units
—Development of amendments to SOLAS and the relevant codes concerning mandatory carriage of appropriate atmosphere testing instruments on board ships
—Casualty and incident reports and analysis
—Biennial agenda and provisional agenda for DSC 19
—Any other business
—Report ot the Maritime Safety Committee

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Ms. Amy Parker, by email at *Amy.M.Parker@uscg.mil,* by phone at (202) 372–1423, by fax at (202) 372–1925, or in writing at Commandant (CG–ENG–5), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126 not later than August 20, 2013, 7 days prior to the meeting. Requests made after August 20, 2013 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.*

Dated: July 31, 2013.

Marc Zlomek,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2013–19083 Filed 8–6–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property at the Ottumwa Regional Airport (OTM), Ottumwa, Iowa.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Ottumwa Regional Airport, Ottumwa, Iowa, under the provisions of 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before September 6, 2013.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Tom Francis, Airport Manager, C/O Ottumwa Regional Airport 14802 Terminal St. Ottumwa, IA 50501, 641–683–0619.

FOR FURTHER INFORMATION CONTACT: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106, (816) 329–2644, *lynn.martin@faa.gov.*

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 2.21 acres of airport property, Lot #6, at the Ottumwa Regional Airport (OTM) under the provisions of 49 U.S.C. 47107(h)(2). On January 2, 2013, the Airport Manager at the Ottumwa Regional Airport requested from the FAA that approximately 2.21 acres of property, Lot #6, be released for sale to Al-Jon for use as a light manufacturing operation. On July 16, 2013, the FAA determined that the request to release property at the Ottumwa Regional Airport (OTM) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

Ottumwa Regional Airport (OTM) is proposing the release of one parcel, Lot #6, containing 2.21 acres, more or less. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Ottumwa Regional Airport (OTM) being

changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation facilities at the Ottumwa Regional Airport.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Ottumwa Regional Airport.

Issued in Kansas City, MO on July 26, 2013.

Jim A. Johnson,

Manager, Airports Division.

[FR Doc. 2013–19003 Filed 8–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2013–0041]

Buy America Policy

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of extension of deadline.

SUMMARY: The FHWA is extending the deadline for comments regarding the continued need, in whole or in part, for the general waivers from Buy America for manufactured products; for ferry boat equipment; and for pig iron and processed, pelletized, and reduced iron ores, which was published on July 10, 2013. The original deadline for submitting comments was August 9, 2013. This notice extends the deadline by 30 calendar days to September 8, 2013.

DATES: Comments must be received on or before September 8, 2013. Late filed comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit electronically at *http://www.regulations.gov* or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification or receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Page 19477–78).

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Yakowenko, Contract Administration Team Leader, Office of Program Administration, (202) 366–1562, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366–4928, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at: *http:www.regulations.gov.* Regulations.gov is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *http://www.archives.gov/federal-register/,* or the Government Printing Office's Web page at: *http://www.gpo.gov/fdsys.*

Background

On July 10, 2013, at 78 FR 41492, the FHWA published in the **Federal Register** a notice seeking comments regarding the continued need, in whole or in part, for the general waivers from Buy America for manufactured products; for ferry boat equipment; and for pig iron and processed, pelletized, and reduced iron ores. This notice also sought comment on the continuing need for the FHWA's minimal use threshold (currently established at $2,500 or 1/10 of 1 percent of the total contract value, whichever is greater). The original deadline for comments was August 8, 2013. In a letter dated July 23, 2013, the American Association of State Highway and Transportation Officials (AASHTO) submitted a comment to the docket for this notice requesting a 30-day extension to submit comments. This notice grants AASHTO's request and extends the deadline by 30 calendar days to September 8, 2013.

Issued on: August 2, 2013.

Victor M. Mendez,

FHWA Administrator.

[FR Doc. 2013–19176 Filed 8–5–13; 4:15 pm]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 28, Notice No. 1]

Emergency Order Establishing Additional Requirements for Attendance and Securement of Certain Freight Trains and Vehicles on Mainline Track or Mainline Siding Outside of a Yard or Terminal

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order (EO), which requires railroads operating on the general system to implement additional processes and procedures to ensure that certain unattended trains and vehicles [1] on mainline track or mainline siding outside of a yard or terminal are properly secured against unintended movement. FRA re-examined its regulations governing the securement of such equipment in light of the July 6, 2013, derailment in Lac-Mégantic, Quebec, Canada, which demonstrated the terrible consequences that can arise when a railroad accident results in a sudden release of flammable liquids. FRA's inspection data since January 2010 shows significant non-compliance with FRA's securement regulations, 49 CFR 232.103(n), with nearly 4,950 recorded defects in that time. Moreover, FRA has seen a number of serious accidents during rail transportation of flammable liquids since 2009, and there has been significant growth in these types of rail shipments since 2011. These factors lead FRA to the conclusion that additional action is necessary to eliminate an immediate hazard of death, personal injury, or significant harm to the environment, particularly in instances where certain hazardous materials are involved. As a result, FRA is ordering that each railroad take the following actions on mainline track or mainline siding outside of a yard or terminal to ensure

[1] A vehicle, as defined in 49 U.S.C. 20301, ''means a car, locomotive, tender, or similar vehicle.''

the safe transportation by rail of hazardous material:

1. No train or vehicle transporting hazardous materials as described in Appendix A shall be left unattended on a mainline track or mainline siding outside of a yard or terminal until the railroad develops, adopts, complies with and makes available to FRA upon request, a plan that identifies specific locations and circumstances when such trains or vehicles may be left unattended. The plan shall contain a sufficient safety justification for any determination allowing such trains or vehicles to be unattended. FRA will monitor such plans and if FRA determines that adequate justification is not provided, the railroad shall ensure that trains and equipment are attended until appropriate modifications to the plan are completed. FRA does not intend to grant approval to any plan. Each railroad shall notify FRA when it has developed a plan under this provision prior to the railroad operating pursuant to the plan.

2. Develop processes for the securement of unattended trains or vehicles transporting hazardous materials as described in Appendix A on mainline track or mainline siding outside of a yard or terminal if permitted by the railroad's plan required by this order that contains the following requirements:

a. The controlling locomotive cab must be locked or the reverser on the controlling locomotive must be removed and secured, and

b. Employees who are responsible for securing trains and vehicles transporting hazardous materials as described in Appendix A must communicate to the train dispatcher the number of hand brakes applied, the tonnage and length of the train or vehicle, the grade and terrain features of the track, any relevant weather conditions, and the type of equipment being secured; train dispatchers must record the information provided; and train dispatchers or other qualified railroad employees must verify and confirm with the train crew that the securement meets the railroad's requirements.

3. Review and verify, and adjust, as necessary, existing procedures and processes related to the number of hand brakes to be set on all unattended trains and vehicles and ensure the means of verifying that number is appropriate.

4. Implement operating rules and practices requiring the discussion of securement for any job that will impact or require the securement of any train or vehicle in the course of the work being performed.

5. Develop procedures to ensure that a qualified railroad employee inspects all equipment that any emergency responder has been on, under, or between for proper securement before the train or vehicle is left unattended.

Additionally, each railroad must provide notice of this EO to all employees affected by this EO to ensure that they have knowledge of the EO's requirements.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Administrator of FRA. 49 CFR 1.89. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws. 49 U.S.C. 20101, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice ''causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment.'' 49 U.S.C. 20104. These orders may immediately impose ''restrictions and prohibitions . . . that may be necessary to abate the situation.'' *Id.*

Lac-Mégantic Derailment

FRA has re-examined its requirements for securing trains and vehicles on mainline track and mainline sidings outside of a yard or terminal in the aftermath of the catastrophic July 6, 2013, accident involving loaded tank cars containing petroleum crude oil that occurred in the town of Lac-Mégantic, Quebec, Canada, on track owned by Montreal, Maine & Atlantic Railway Corporation (MMA), a company incorporated in the United States. While Canadian authorities are still investigating the accident and no final conclusions have been made, the following is known based on preliminary information released by the Transportation Safety Board of Canada.

According to Rail Safety Advisory Letters issued by the Transportation Safety Board of Canada on July 19, 2013, the incident is summarized as follows. At approximately 10:45 p.m. Eastern Daylight Time (EDT) on July 5, 2013, MMA train 2 was proceeding eastward from Montreal, Quebec, to St. John, New Brunswick. The train was approximately 4,700 feet long and weighed over 10,000 tons. It consisted of five locomotives, a loaded box car, and 72 loaded tank cars containing petroleum crude oil (U.S. DOT Hazard Class 3, UN 1267). At approximately 11:00 p.m. the train stopped near milepost 7.40 near Nantes, Quebec. At that location the operator of the train secured it and departed, leaving the train unattended on mainline track with a descending grade of approximately 1.2 percent.

At around 11:50 p.m. a local resident reported a fire on the controlling locomotive (MMA 5017) of the train. The local fire department was called and responded with another MMA employee. At approximately midnight, the controlling locomotive was shut down and the fire extinguished. After the fire was extinguished, the fire department and the MMA employee left the site.

At approximately 1:00 a.m. the next day (the early morning of July 6th) it appears that the train began rolling and picking up speed down the descending grade toward the town of Lac-Mégantic, Quebec, which sits approximately 30 miles from the United States-Canada border. Near the center of town, the box car and 63 of the loaded tank cars derailed. The locomotives, which separated from the train, traveled an additional ½ mile before coming to a stop. A number of derailed tank cars released product resulting in multiple explosions and subsequent fires. At this time, it is estimated that there were 42 fatalities and that 5 persons are still missing. There was also extensive damage to the town, and approximately 2,000 people were evacuated from the surrounding area. While the investigation is ongoing and the Transportation Safety Board of Canada has not reached any final conclusions, it has made a determination that the braking force applied to the train was insufficient to hold it on the 1.2-percent descending slope between Nantes and Lac-Mégantic.

In response to this accident, Transport Canada (the Canadian government department responsible for regulating transportation safety in Canada) issued an emergency railroad directive pursuant to Section 33 of the Canadian Railway Safety Act.[2] While Transport Canada explained in the emergency directive that the cause of the accident in Lac-Mégantic remains unknown, the emergency directive stated that:

> [I]n light of the catastrophic results of the Lac-Mégantic accident and in the interest of ensuring the continued safety and security of railway transportation, there is an immediate need to clarify the regime respecting unattended locomotives on main track and sidings and the transportation of dangerous

[2] Available online at: *http://www.tc.gc.ca/eng/mediaroom/backgrounders-safety-locomotives-7292.html.* Additionally, in response to this accident, the Transportation Safety Board of Canada issued Rail Safety Advisory Letter—09/13 regarding the securement of equipment and trains left unattended; available online at: *http://www.tsb.gc.ca/eng/medias-media/sur-safe/letter/rail/2013/r13d0054/r13d0054-617-09-13.asp.*

goods in tank cars using a one person crew to address any threat to the safety and security of railway operations.

As such, Transport Canada exercised its statutory emergency directive authority to order railroad companies operating in Canada to comply with certain requirements related to unauthorized entry into locomotive cabs, directional controls on locomotives, the application of hand brakes to cars left unattended for more than one hour, setting of the automatic brake and independent brake on any locomotive attached to cars that is left unattended for one hour or less, attendance related to locomotives attached to loaded tank cars transporting dangerous goods on main track, and the number of crew members assigned to a locomotive attached to loaded tank cars transporting dangerous goods on a main track or siding.

In addition, Transport Canada issued an accompanying order pursuant to paragraph 19(a)(1) of the Canadian Railway Safety Act directing railroad companies in Canada to formulate or revise certain railroad operating rules, respecting the safety and security of unattended locomotives, uncontrolled movements, and crew size requirements. The order provides that rules should be based on an assessment of safety and security risks, and shall at a minimum ensure that the cab(s) of unattended controlling locomotives are secure against unauthorized entry; ensure that the reversers of unattended locomotives are removed and secured; prevent uncontrolled movements of railway equipment by addressing the application of hand brakes; ensure the security of stationary railway equipment transporting dangerous goods; and provide for minimum operating crew requirements considering technology, length of train, speeds, classification of dangerous goods being transported, and other risk factors.

DOT is taking actions consistent with Transport Canada to ensure the safe transportation of products by rail in the United States, with a particular focus on certain hazardous materials that present an immediate danger for communities and the environment in the event of a train accident. Through this EO, FRA is addressing the immediate dangers that arise from unattended equipment that is left unsecured. Additionally, FRA and the Pipeline and Hazardous Materials Safety Administration (PHMSA) are issuing a joint Safety Advisory to railroads and commodity shippers detailing eight recommended actions the industry should take to better ensure the safe transport of hazardous materials. These recommendations include the following: Reviewing the details and lessons learned from the Lac-Mégantic accident; reviewing crew staffing levels; removing and securing the train's ''reverser'' when unattended; a thorough review of all railroad operating procedures, testing and operating rules around securing a train; reviewing Transport Canada's directives to secure and safely operate a train; and conducting a system-wide assessment of security risks when a train is unattended and identifying mitigation efforts for those risks. Additionally, the Safety Advisory recommends testing and sampling of crude oil for proper classification for shipment, as well as a review of all shippers' and carriers safety and security plans. Finally, FRA is convening an emergency meeting of FRA's Railroad Safety Advisory Committee to begin the deliberative process with FRA's stakeholders, including railroad management, railroad labor, shippers, car owners, and others, as the agency considers recommendations in the Safety Advisory that should be made a part of its regulations.

Safety Concerns Arising Out of the Lac-Mégantic Derailment

Generally, the transportation of hazardous materials by rail is extremely safe. The vast majority of hazardous materials shipped by rail each year arrive at their destinations safely and without incident. Indeed, in calendar year 2011, there were only 20 accidents in which a hazardous material was released out of approximately 2.2 million shipments of hazardous material transported by rail in the United States. However, the Lac-Mégantic incident demonstrates the substantial potential for danger that exists when an unattended train rolls away and derails resulting in the sudden release of hazardous materials into the environment. Although the Lac-Mégantic incident occurred in Canada, the freight railroad operating environment in Canada is similar to that in the United States, and a number of railroads operate in both countries.[3] Freight railroads in the United States also transport a substantial amount and variety of hazardous materials, including materials poisonous by inhalation (PIH), materials or toxic by inhalation (TIH), and explosive materials. Moreover, an increasing proportion of the hazardous materials being transported by rail is classified as flammable.[4]

The MMA train in the Lac-Mégantic incident was transporting 72 carloads of petroleum crude oil with five locomotives and a loaded box car. A similar type of train consist is commonly found on rail lines in the United States because crude oil is often transported in units of cars or by a unit train consisting virtually entirely of tank cars containing crude oil. Crude oil is often classified by an offeror as a flammable liquid; per PHMSA's Hazmat Regulations (HMR), however, its packing group can be I, II, or III depending on the blend of constituent crude oils. According to the Association of American Railroads (AAR), crude oil traffic increased 443 percent in the United States between 2005 and 2012. Much of this growth has occurred because of developments in North Dakota, as the Bakken formation in the Williston Basin has become a major source for oil production in the United States. Texas also has contributed to the growth of crude oil shipments by rail. As a result, carloads of crude oil increased from approximately 65,600 in 2011 to approximately 257,450 in 2012. The Bakken crude oil from North Dakota is primarily shipped via rail to refineries located near the U.S. Gulf Coast—particularly in Texas and Louisiana—or also to pipeline connections, most notably to connections located in Oklahoma. Crude oil is also shipped via rail to refineries on the East Coast and, to a lesser extent, refineries in other regions of the U.S.[5]

All indications from the U.S. Energy Information Administration (EIA) within the U.S. Department of Energy are that rail export capacity for Bakken crude oil from the Williston Basin will continue to expand to meet production.[6]

[3] As an example, MMA operates both in the United States and Canada, with approximately 510 miles of track in Maine, Vermont, and Quebec, and the tank cars transporting the crude oil that derailed in Lac-Mégantic originated in the Williston Basin of North Dakota.

[4] PHMSA prescribes a comprehensive regulatory safety system that categorizes hazardous materials into nine hazard classes based on the type of hazards presented by the materials. See 49 CFR Parts 172 and 173. Under PHMSA's regulations, crude oil, in most forms, meets the definition of a ''Class 3'' hazardous material, which signifies that it is a flammable liquid. Ethanol, discussed below, also is a Class 3 hazardous material. PIH materials, referenced above, include ''Class 2 and Division 2.3'' gases and ''Class 6, and Division 6.1'' poisons other than gases. Chlorine gas and anhydrous ammonia are two examples of PIH materials (Division 2.3) that are commonly transported by rail.

[5] *See* AAR's May 2013 paper ''Moving Crude Oil by Rail'' available online at: *https://www.aar.org/keyissues/Documents/Background-Papers/Crude-oil-by-rail.pdf.*

[6] *See* EIA reports ''Bakken crude oil price differential to WTI narrows over last 14 months,'' available online at: *http://www.eia.gov/todayinenergy/detail.cfm?id=10431;* and ''Rail delivery of U.S. oil and petroleum products continues to increase, but pace slows,'' available

Rail exports from the North Dakota region are forecast to increase over the next two years (as are pipeline exports). Much of the near-term growth in rail originations right now is a function of how quickly tank car manufacturers can produce new cars to meet the demand for tank cars, primarily for transporting Bakken crude oil. The rise in rail originations in crude oil is subject to changes in the number of tank cars available, price of crude oil, and overall production of crude oil in that region, and is also dependent on whether, or how quickly, additional pipeline export capacity from that region comes online. However, for the foreseeable future, all indications are for continued growth of rail originations of crude in that region as new tank car fleets come online to meet demand.

As demonstrated by the Lac-Mégantic derailment, in a catastrophic incident, crude oil is problematic when released because it is flammable. This risk is compounded because it is commonly shipped in large units. Similar dangers exist with other hazardous materials such as ethanol, which is another flammable liquid that is commonly transported by rail. More carloads of ethanol were transported via rail than any other hazardous material in 2012. Ethanol experienced an increase in traffic of 442 percent between 2005 and 2010. Although in 2012 the number of carloads dropped by 11 percent from 2010 levels, there were still approximately 366,000 carloads transported by rail. Since 2009, there have been at least four serious mainline derailments resulting in the breach of tank cars containing ethanol. While FRA recognizes that none of these four derailments resulted from a roll-away situation, they are instructive on the destructive potential of a derailment involving tank cars containing flammable products:

- On June 19, 2009, in Cherry Valley, IL, a Canadian National Railway train derailed 19 tank cars loaded with ethanol. Thirteen of the 19 derailed cars caught fire, and there were reports of explosions. One person died, and there were 9 reported injuries related to the fire. Additionally, approximately 600 residences were evacuated within a ½-mile radius of the derailment.
- On February 6, 2011, in Arcadia, OH, a Norfolk Southern Railway Co. (Norfolk Southern) train operating on single main track derailed 33 tank cars loaded with ethanol. The derailment caused a major fire and forced the evacuation of a one-mile radius around the derailment.
- On July 11, 2012, in Columbus, OH, a Norfolk Southern train derailed while operating on main track. Thirteen tank cars containing ethanol derailed resulting in a fire and the evacuation of 100 people within a one-mile radius of the derailment.
- On August 5, 2012, in Plevna, MT, a BNSF Railway Co. train derailed 18 cars while en route from Baker, MT. Seventeen of the 18 cars were tank cars loaded with denatured alcohol, a form of ethanol. Five of the cars caught on fire resulting in explosions, the burning of surrounding property not within the railroad's right-of-way, and the evacuation of the immediate area.

Although these accidents were serious, their results had potential for more catastrophic outcomes. The catastrophic releases created the potential for additional deaths, injuries, property damage, and environmental damage.

There are other hazardous materials that have similar potential for catastrophic danger. For example, accidents involving trains transporting other hazardous materials, including PIH materials, such as chlorine and anhydrous ammonia, can also result in serious consequences as evidenced by the following accidents:

- On July 18, 2001, 11 of 60 cars in a CSX Transportation, Inc. freight train derailed while passing through the Howard Street Tunnel in downtown Baltimore, MD. The train included 8 tank cars loaded with hazardous material; 4 of these were among the cars that derailed. A leak in a tank car containing tripropylene resulted in a chemical fire. A break in a water main above the tunnel flooded both the tunnel and the streets above it, resulting in the tunnel collapsing.
- On January 18, 2002, a Canadian Pacific Railway train containing 15 tank cars of anhydrous ammonia derailed half a mile from the city limits of Minot, ND due to a breaking of the rail at a joint. Five of these tank cars ruptured catastrophically, resulting in an ammonia vapor that spread 5 miles downwind over an area where 11,600 people lived. The accident caused one death, 11 serious injuries, and 322 minor injuries. Environmental cleanup costs reported to the National Transportation Safety Board (NTSB) were $8 million.
- On June 28, 2004, near Macdona, TX, a Union Pacific Railroad Company train passed a stop signal and collided with a BNSF train. A chlorine car was punctured and the chlorine gas that was released killed three and injured 32.
- On January 6, 2005, in Graniteville, SC, a Norfolk Southern train collided with another Norfolk Southern train that was parked on a customer side track, derailing both locomotives and 16 cars of the moving train. The accident was caused by a misaligned switch. Three tank cars containing chlorine derailed, one of which was punctured. The resulting chlorine exposure caused 9 deaths, approximately 554 people were taken to local hospitals, and an additional 5,400 people within a one-mile radius of the site were evacuated by law enforcement personnel. FRA's analysis of the total cost of the accident was $126 million, including fatalities, injuries, evacuation costs, property damage, environmental cleanup, and track out of service.

While train accidents involving hazardous materials are caused by a variety of factors, nearly one-half of all accidents are related to railroad human factors or equipment defects. FRA's data shows that since 2009, human factors have been the most common cause of reportable train accidents. Based on FRA's accident reporting data for the period from 2009 through 2012, 35.7 percent of train accidents were human factor-caused. With regard to the securement of unattended equipment, specifically, FRA accident data indicates that approximately 8.5 percent of human factor-caused train accidents from calendar year 2011 until April 2013 were the result of improper securement. This EO is intended to address some of the human factors failures that may cause unattended equipment to be improperly secured to protect against a derailment situation similar to that which occurred in Lac-Mégantic.

Securement Requirements

As previously noted, FRA has issued regulations designed to ensure that trains and vehicles are properly secured before being left unattended. *See* § 232.103(n). ''Unattended equipment'' is defined as ''equipment left standing and unmanned in such a manner that the brake system of the equipment cannot be readily controlled by a qualified person.'' *Id.* Section 232.103(n) addresses the securement of unattended equipment by stating that a train's air brakes must not be depended on to hold equipment standing unattended on a grade and further requires the application of a sufficient number of hand brakes to hold the equipment with the air brakes released and the ventilation of the brake pipe pressure to zero with the angle cock opened on one end of a cut of cars when not connected to a locomotive or other

online at: *http://www.eia.gov/todayinenergy/detail.cfm?id=12031.*

compressed air source. The regulations also require railroads to develop a process or procedure for verifying that the hand brakes that are applied are sufficient to hold the equipment with the air brakes released. When dealing with locomotives and locomotive consists, § 232.103(n)(3) establishes specific additional requirements:

- All hand brakes must be fully applied on all locomotives in the lead consist of an unattended train.
- All hand brakes must be fully applied on all locomotives in an unattended locomotive consist outside of yard limits.
- The minimum requirement for an unattended locomotive consist within yard limits is that the hand brake must be fully applied on the controlling locomotive.
- Railroads must develop, adopt, and comply with procedures for securing any unattended locomotive that is not equipped with an operative hand brake.

Additionally, FRA requires each railroad to adopt and comply with instructions addressing the throttle position, status of the reverse lever (commonly referred to as a ''reverser''), position of the generator field switch, status of the independent brakes, position of the isolation switch, and position of the automatic brake valve of an unattended locomotive. *See* § 232.103(n)(4).

In FRA's view, these regulations—when followed—substantially reduce the risk of movement of unattended equipment. However, FRA has found there is significant non-compliance among the railroads with respect to FRA's securement regulations. With limited resources, FRA can inspect only a small percentage of trains and vehicles for regulatory compliance. However, even with its limited resources, FRA has recorded nearly 4,950 securement defects in the course of its inspections since January 2010, an average of approximately 1,483 defects per year. With increased shipments of hazardous materials such as crude oil and ethanol, securement non-compliance, particularly on mainline track and mainline sidings outside of a yard or terminal, has become a serious, immediate safety concern. Therefore, additional measures are necessary to protect the health and safety of railroad employees, the general public, and the environment.

First, in this EO, FRA is prohibiting railroads from leaving trains or vehicles that are transporting hazardous materials as described in Appendix A unattended on mainline track or mainline siding outside of a yard or terminal unless the railroad adopts and complies with a plan that identifies the specific locations and circumstances for which it is safe and suitable for leaving such trains or vehicles unattended. The plan must contain sufficient analysis of the safety risks and any mitigating circumstances the railroad has considered in making its determination. FRA does not intend to grant approval to any plan, per se. However, FRA will monitor such plans and if FRA determines that adequate justification is not provided, the railroad shall ensure that trains and equipment are attended until appropriate modifications are made to the railroad's plan.

Second, FRA is requiring railroads to develop specific processes for employees responsible for securing any unattended train or vehicles transporting hazardous materials as described in Appendix A that must be left on mainline track or a mainline siding outside of a yard or terminal. The employees responsible for securing the train or vehicles must lock the controlling locomotive cab door before leaving it unattended or remove and secure the reverser. The reverser is the directional control for the locomotive. Removing it would put the locomotive in neutral, preventing it from moving forward or backward under the power of the engine. Additionally, employees must communicate to the train dispatcher the number of hand brakes applied, the tonnage of the train or vehicle, the grade and terrain features of the track, any other relevant weather conditions, and the type of equipment being secured. The dispatcher is then required to record the information provided by the employee. Finally, the dispatcher or other qualified railroad employee must verify and confirm with the train crew that the securement meets the railroad's requirements. This requirement provides a check on those individuals setting hand brakes to ensure appropriate securement procedures are followed. The requirement is similar to FRA's existing regulations that require employees to report to the train dispatcher when a main track switch in non-signaled territory has been restored to normal position and locked. FRA believes this type of notification and verification requirement will help ensure that employees responsible for securing equipment containing hazardous materials will follow appropriate procedures because the employee will need to fully consider the securement procedures in order to relay what was done to the dispatcher. Further, the dispatcher or other qualified railroad employee (e.g. a trainmaster, road foreman of engines, or another train crew employee) will be in a position to ensure that a sufficient number of hand brakes have been applied.

Third, this E.O. requires that railroads review, verify, and adjust, as necessary, existing requirements and instructions related to the number of hand brakes to be set on unattended trains and vehicles and that railroads review and adjust, as necessary, the procedures for verifying that the number of hand brakes is sufficient to hold the train or vehicle with the air brakes released. FRA's concern is that existing railroad processes and procedures related to setting and verifying hand brakes on unattended trains and equipment may not be sufficient to hold all trains and vehicles in all circumstances. FRA expects that the procedures and number of hand brakes required to be set will vary significantly, depending on a variety of factors, including, but not limited to: The length and weight of the train or vehicle(s), the location, the grade and other terrain features of the track, the weather conditions, the type of equipment being secured, and whether the hand brakes apply on one or more trucks of a piece of equipment. The procedures should also ensure that an additional margin of safety is provided when determining the number of hand brakes to be set in order to compensate for the differing ability of individuals to set a hand brake at a specified level. FRA also expects railroads to develop appropriate procedures to be followed by their employees to test or verify that the number of hand brakes set will hold the equipment with the air brakes released.

Fourth, this E.O. requires railroads to implement operating rules and practices requiring the job briefing of securement among crewmembers and other involved railroad employees before engaging in any job that will impact or require the securement of any train or vehicle in the course of the work being performed. This requirement is analogous to other Federal regulations that require crewmembers to have a job briefing before performing various tasks, such as confirming the position of a main track switch before leaving an area. The purpose of this job briefing requirement is to make certain that all crewmembers and other involved railroad employees are aware of what is necessary to properly secure the equipment in compliance with § 232.103(n).

Finally, FRA is requiring railroads to develop procedures to ensure that a qualified railroad employee inspects all equipment that any emergency responder has been on, under, or

between for proper securement before the rail equipment or train is left unattended. One of the facts that has come to light in the aftermath of the Lac-Mégantic derailment is that first responders were at milepost 7.4 near Nantes (along with an MMA employee) to check a report of a fire on the train. This was well after the operator had secured the train and left it unattended. Because it may be necessary for emergency responders to modify the state of the equipment if it is necessary for them to go on, under, or between equipment in order to perform their jobs, it is critical for the railroad to have a qualified employee inspect the equipment after the emergency responders have completed their jobs to ensure that the equipment is properly secured before it is again left unattended.

Finding and Order

While FRA recognizes that the transportation of hazardous materials by rail is extremely safe and that the vast majority of hazardous materials shipped by rail each year arrive at their destinations safely and without incident, FRA finds that there are gaps in the regulatory scheme that create an emergency situation involving a hazard of death, personal injury, or significant harm to the environment, with respect to securement of unattended vehicles and trains transporting a hazardous material of the type described in Appendix A to this E.O. on mainline track and mainline sidings outside of a yard or terminal. Accordingly, pursuant to the authority of 49 U.S.C. 20104, delegated to the FRA Administrator by the Secretary of Transportation, 49 CFR 1.89, it is hereby ordered that each railroad must institute and carry out the following measures, effective within 30 days after the date of this order:

1. No train or vehicles transporting the type and quantity of hazardous materials described in Appendix A (Appendix A Materials) shall be left unattended on a mainline track or mainline siding outside of a yard or terminal until the railroad develops, adopts, complies with and makes available to FRA upon request a plan that identifies specific locations and circumstances when such trains or vehicles may be left unattended. The plan shall contain a sufficient safety justification for any determination allowing such trains or vehicles to be unattended. FRA will monitor such plans and if FRA determines that adequate justification is not provided, the railroad shall ensure that trains and equipment are attended until appropriate modifications to the plan are completed. FRA does not intend to grant approval to any plan. Railroads shall notify FRA when the railroad has developed a plan under this provision prior to the railroad operating pursuant to the plan.

2. Railroads shall develop processes for securing unattended trains or vehicles transporting Appendix A Materials on a mainline track or mainline siding outside of a yard or terminal if permitted by the railroad's plan required under paragraph (1) of this order that contains the following requirements:

a. The controlling locomotive cab must be locked or the reverser on the controlling locomotive must be removed and secured.

b. Employees who are responsible for securing trains and vehicles transporting Appendix A Materials must communicate to the train dispatcher the number of hand brakes applied, the tonnage and length of the train or vehicle, the grade and terrain features of the track, any relevant weather conditions, and the type of equipment being secured; train dispatchers must record the information provided; and train dispatchers or other qualified railroad employees must verify and confirm with the train crew that the securement meets the railroad's requirements.

3. Railroads shall review and verify, and adjust, as necessary, existing procedures and processes related to the number of hand brakes to be set on all unattended trains and equipment and shall ensure the means of verifying that number is appropriate.

4. Railroads shall implement operating rules and practices requiring the job briefing of securement for any job that will impact or require the securement of any train or vehicle in the course of the work being performed.

5. Railroads shall develop procedures to ensure that a qualified railroad employee inspects all equipment that any emergency responder has been on, under, or between for proper securement before the train or vehicle is left unattended.

6. Notice of this E.O. shall be provided to all employees affected by this E.O..

Relief

Petitions for special approval to take actions not in accordance with this E.O. may be submitted to the Associate Administrator for Railroad Safety/Chief Safety Officer (Associate Administrator), who shall be authorized to dispose of those requests without the necessity of amending this E.O.. In reviewing any petition for special review, the Associate Administrator shall grant petitions only in which a petitioner has clearly articulated an alternative action that will provide, in the Associate Administrator's judgment, at least a level of safety equivalent to that provided by this E.O..

Penalties

Any violation of this order or the terms of any written plan adopted pursuant to this order to provide alternate protection shall subject the person committing the violation to a civil penalty of up to $105,000. 49 U.S.C. 21301. Any individual who willfully violates a prohibition stated in this order is subject to civil penalties under 49 U.S.C. 21301. In addition, such an individual whose violation of this order demonstrates the individual's unfitness for safety-sensitive service may be removed from safety-sensitive service on the railroad under 49 U.S.C. 20111. If appropriate, FRA may pursue criminal penalties under 49 U.S.C. 522(a) and 49 U.S.C. 21311(a), as well as 18 U.S.C. 1001, for the knowing and willful falsification of a report required by this order. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons

Upon issuance of this E.O., railroads shall immediately initiate steps to implement this E.O.. Railroads shall complete implementation no later than September 1, 2013. Notice of this E.O. will be provided by publishing it in the **Federal Register**.

Review

Opportunity for formal review of this E.O. will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. *See* 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, DC, on August 2, 2013.

Joseph C. Szabo,

Administrator.

Appendix A to Emergency Order 28

(1) Five or more tank car loads of any one or any combination of materials poisonous by inhalation as defined in 49 CFR 171.8, and including anhydrous ammonia (UN 1005) and ammonia solutions (UN 3318); or

(2) 20 rail car loads or intermodal portable tank loads of any one or any combination of materials listed in (1) above, or, any Division 2.1 flammable gas, Class 3 flammable liquid or combustible liquid, Class 1.1 or 1.2

explosive, or hazardous substance listed in 49 CFR 173.31(f)(2).[7]

[FR Doc. 2013–19215 Filed 8–6–13; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Safety Advisory 2013–06]

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2013–0196; Notice No. 13–13]

Lac-Mégantic Railroad Accident Discussion and DOT Safety Recommendations

AGENCY: Federal Railroad Administration (FRA) and Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory and Announcement of Emergency Meeting of the Railroad Safety Advisory Committee.

SUMMARY: A recent catastrophic railroad accident occurred in Canada when an unattended freight train containing hazardous materials rolled down a descending grade and subsequently derailed. It is currently estimated that this accident resulted in 42 fatalities, and 5 persons are still reported to be missing. In response, FRA issued Emergency Order No. 28 regarding the securement of trains, and FRA and PHMSA (collectively, DOT) are also issuing this safety advisory. This safety advisory discusses the circumstances surrounding the accident and makes certain safety-related recommendations to railroads operating in the United States. This safety advisory also provides notice of FRA's intent to schedule an emergency meeting of the Railroad Safety Advisory Committee to discuss this accident and potential regulatory actions to prevent similar future accidents from occurring.

FOR FURTHER INFORMATION CONTACT: Thomas J. Herrmann, Acting Director, Office of Safety Assurance and Compliance, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6404; Joseph St. Peter, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6047; or Charles Betts, Director, Standards and Rulemaking Division, Office of Hazardous Materials Safety, PHMSA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

Incident Summary

On July 6, 2013, a catastrophic accident involving a freight train containing loaded tank cars of petroleum crude oil occurred in the town of Lac-Mégantic, Quebec, on the Montreal, Maine & Atlantic Railway (MMA). While the accident is still being investigated by Canadian authorities and no final determinations have been made, the following is known based on preliminary information released by the Transportation Safety Board of Canada.[1]

According to Rail Safety Advisory Letters issued by the Transportation Safety Board of Canada on July 19, 2013, the incident is summarized as follows. At approximately 10:45 p.m. (EDT) on July 5, 2013, an MMA train was proceeding eastward from Montreal, Quebec, to St. John, New Brunswick. The train was approximately 4,700 feet long, weighed over 10,000 tons and consisted of five locomotives, a loaded box car, and 72 loaded tank cars containing petroleum crude oil (Class 3, UN 1267). At approximately 11:00 p.m. the train stopped near mile post 7.40 near Nantes, Quebec. At that location the single operator secured the train and departed, leaving the train unattended on mainline track with a descending grade of approximately 1.2 percent.

At approximately 11:50 p.m., a local resident reported a fire on the lead locomotive (MMA 5017) of the train and the local fire department was called and responded with another MMA employee. At approximately midnight, in accordance with established operating procedures, the lead locomotive was shut down and the fire extinguished. After the fire was extinguished, the fire department and the MMA employee left the site.

At approximately 1:00 a.m. the next day, it appears that the train began rolling and picking up speed down the descending grade toward the town of Lac-Mégantic, Quebec. Near the center of town, the train derailed. The locomotives separated from the train and came to a stop approximately ½ mile from the derailment site. The box car and 63 of the loaded tank cars derailed. A number of derailed tank cars released product resulting in multiple explosions and subsequent fires. At this time, it is estimated that there were 42 fatalities and 5 persons are still missing. There was also extensive damage to the town, and approximately 2,000 people were evacuated from the surrounding area.

Transport Canada Emergency Directive

In response to this accident, Transport Canada (the Canadian government department responsible for regulating transportation safety in Canada) issued an emergency railroad directive pursuant to Section 33 of the Canadian Railway Safety Act.[2] The directive ordered railroad companies in Canada to ensure that:

- Within five days of the issuance of the directive, all unattended controlling locomotives on a main track and sidings are protected from unauthorized entry into the cab;
- The directional controls, commonly known as reversers, are removed from any unattended locomotives, preventing them from moving forward or backward, on a main track or sidings;
- Their company's special instructions on hand brakes are applied to any locomotive attached to one or more cars that are left unattended for more than one hour on a main track or sidings;
- In addition to complying with their company's special instructions on hand brakes referred to in the item immediately above, the automatic brake is set in full service position and the independent brake is fully applied for any locomotive attached to one or more cars that are left unattended for one hour or less on a main track or sidings;
- No locomotive attached to one or more loaded tank cars transporting dangerous goods is left unattended on a main track; and
- No locomotive attached to one or more loaded tank cars transporting dangerous goods is operated on a main track or siding with fewer than two persons qualified under their company's requirements for operating employees.

Transport Canada explained in the emergency directive that the cause of

[7] *See* 49 CFR 173.115 for the definition of Division 2.1 flammable gas, 173.120 for definition of Class 3 flammable liquid; and 173.50 for the definition of the various classes of explosives.

[1] This accident occurred in Canada and DOT is neither responsible for determining, nor has jurisdiction to investigate, the cause of this accident. Further, Canadian authorities have not yet determined the cause of this accident. As such, nothing in this safety advisory is intended to attribute a definitive cause to this accident or place responsibility for the incident on the acts or omissions of any specific person or entity.

[2] Available online at: *http://www.tc.gc.ca/eng/mediaroom/backgrounders-safety-locomotives-7292.html.* Additionally, in response to this accident, the Transportation Safety Board of Canada issued Rail Safety Advisory Letter—09/13 regarding the securement of equipment and trains left unattended; available online at: *http://www.tsb.gc.ca/eng/medias-media/sur-safe/letter/rail/2013/r13d0054/r13d0054-617-09-13.asp.*

the accident in Lac-Mégantic remains unknown at this time. However, the emergency directive stated that, ''. . . in light of the catastrophic results of the Lac-Mégantic accident and in the interest of ensuring the continued safety and security of railway transportation, there is an immediate need to clarify the regime respecting unattended locomotives on main track and sidings and the transportation of dangerous goods in tank cars using a one person crew to address any threat to the safety and security of railway operations.'' As such, Transport Canada exercised its statutory emergency directive authority to order railroad companies in Canada to comply with the above-listed requirements. In addition, Transport Canada also issued an accompanying order pursuant to paragraph 19(a)(1) of the Canadian Railway Safety Act directing railroad companies in Canada to formulate or revise certain railroad operating rules, respecting the safety and security of unattended locomotives, uncontrolled movements, and crew size requirements. The order provides that rules should be based on an assessment of safety and security risks, and shall at a minimum:

- Ensure that the cab(s) of unattended controlling locomotives are secure against unauthorized entry;
- Ensure that the reversers of unattended locomotives are removed and secured;
- Prevent uncontrolled movements of railway equipment by addressing, at a minimum:
  - The application of handbrakes based on factors including but not limited to:
  - Tonnage, gradient, location and fatigue of the operator;
  - The application of independent and automatic brakes; and
  - The application of temporary or permanent derails as a secondary line of [defense] at high risk locations such as sidings used for storage or main track used for crew change-off, or in high risk conditions including consideration of the type of goods being transported and environmental conditions, in order to prevent movement due to tampering or accidental release of brakes from defective components;
- Ensure the security of stationary railway equipment transporting ''dangerous goods'' as this expression is defined in section 2 of the Transportation of Dangerous Goods Act; and
- Provide for minimum operating crew requirements considering technology, length of train, speeds, classification of dangerous goods being transported, and other risk factors.

Emergency RSAC Meeting

The Railroad Safety Advisory Committee (RSAC) is a group composed of railroad industry, labor, and governmental representatives. FRA established the RSAC in 1996 to develop recommendations on new regulatory standards and other rail safety program issues through a collaborative process with all segments of the rail community. FRA consults with the RSAC regularly regarding the development of its regulatory program, and also to advise the RSAC of emerging issues and statutory requirements, and to discuss other identified needs. The RSAC may consider a variety of approaches to address safety issues, including the use of industry standards, which can complement and be incorporated into FRA regulations.

In light of the Lac-Mégantic railroad accident, FRA is scheduling an emergency meeting of the RSAC to discuss the accident. FRA will publish a **Federal Register** notice to announce the date, time, and location of this meeting. At this emergency meeting FRA intends to address the safety requirements that were issued in Emergency Order No. 28, and the recommendations made in this safety advisory. FRA also plans to discuss the safety implications and potential costs and benefits of the requirements in Transport Canada's emergency directives discussed above, and safety-related initiatives going forward, including possible new RSAC tasks to implement such safety-related initiatives.

FRA requests that both freight and passenger railroads be prepared to discuss the Transport Canada directive requiring that two-person crews operate trains carrying hazardous materials on main track. FRA believes initiatives to require a minimum of two crewmembers for over-the-road trains (including both passenger and freight trains) could enhance safety. At the emergency RSAC meeting FRA expects to discuss the formulation of a task statement regarding appropriate train crew size for an RSAC working group to consider. FRA also requests that RSAC representatives be specifically prepared to discuss two other requirements contained in Emergency Order No. 28. First, FRA intends to discuss the appropriate types and quantities of hazardous materials that should preclude trains transporting such materials from being left unattended on main track and sidings. Emergency Order No. 28 currently specifies certain types and quantities of hazardous materials that trigger requirements regarding train attendance and securement procedures, but FRA would like to explore the issue further in conjunction with PHMSA. FRA also intends to discuss the various criteria and evaluation processes railroads have used, or intend to use, to formulate plans they may choose to adopt that identify locations where it is safe and suitable to leave trains unattended and secured on main track or sidings outside of yards or terminals.

DOT's Review of the Lac Mégantic Accident's Safety Implications

Canadian authorities investigating this accident have not yet identified the accident's cause. However, the known facts at this point raise apparent safety-related implications in several areas in which DOT regulates in the United States. In developing this safety advisory and in preparing to participate in the emergency RSAC meeting, DOT has considered particular existing Federal railroad and hazardous materials safety regulations, existing industry practices, and relevant accident and inspection data. As mentioned above, FRA has already issued Emergency Order No. 28 to address securement-related safety issues. Another area of concern is resultant dangers that occur when trains transporting hazardous materials are involved in accidents, in addition to broader concerns involving the securement of unattended rolling equipment. Transport Canada's emergency directive and accompanying order also raised potential human factor issues regarding crew size for trains transporting hazardous materials.

Transportation of Hazardous Materials

DOT is making two recommendations in this safety advisory that relate to the requirements in PHMSA's Hazardous Materials Regulations (49 CFR Parts 171–180; HMR). In addition to the two recommendations, the discussion below addresses the safety implications regarding the transportation of petroleum crude oil, and hazardous materials generally, by rail. As illustrated at Lac-Mégantic, it is often the hazardous materials being transported in a train that have the potential to cause the most harm.

Nonetheless, the transportation of hazardous materials by rail is extremely safe, and the vast majority of hazardous materials shipped by rail each year arrive at their destinations safely and without incident. In calendar year 2011, for example, out of the approximately 2.2 million shipments of hazardous materials transported by rail, there were only 20 accidents in which a hazardous

material was released. In these accidents, a total of 66 hazardous materials cars released some amount of product. DOT has developed and enforces a comprehensive regulatory framework for the safe rail transportation of hazardous materials. This comprehensive regulatory program serves to mitigate the safety risk associated with the rail transportation of hazardous materials. However, as this accident, and accidents such as the 2005 Graniteville, South Carolina incident in which a single breached railroad tank car containing chlorine resulted in nine fatalities indicate, both DOT and the rail industry must remain vigilant and continually seek to improve safety.

The train involved in the Lac-Mégantic accident was a unit train of tank cars containing petroleum crude oil. Industry statistics demonstrate that, in terms of rail originations, crude oil shipments are the fastest growing of all hazardous materials shipped by rail. According to the Association of American Railroads' (AAR) Annual Report of Hazardous Materials Transported by Rail for 2012, the number of crude oil originations has increased by 443% since 2005. Further, since 2005, rail shipments of ethanol have increased by a similar percentage. DOT anticipates that for the foreseeable future rail shipment originations of crude oil will remain high.[3] Both ethanol and crude oil are classified as Class 3 flammable or combustible liquids by the HMR.

The causes of rail accidents involving trains carrying hazardous materials are often related to railroad operational or mechanical failures. For example, as based on FRA's accident reporting data for the period from 2008 through 2012, railroad accident causes were allocated as follows: Human factors (35.7 percent); track and structures (34.5 percent); equipment (12.7 percent); signal and train control (2.4 percent); and miscellaneous (14.7 percent). DOT has taken a variety of actions to address these accident causes, including the promulgation of FRA's human factors regulation on operational tests and inspections involving handling equipment, switches, and fixed derails, passenger hours of service rules, regulations requiring the installation of positive train control systems on certain lines, regulations governing the use of distracting electronic devices by railroad operating employees, regulations governing conductor certification, the issuance of a notice of proposed rulemaking on the training of certain railroad employees, the issuance of a notice of proposed rulemaking regarding railroad track inspection practices, and the issuance of a notice of proposed rulemaking to require system safety programs on certain passenger railroads.

As applicable to the rail transportation of hazardous materials, and particularly tank car crashworthiness in instances when accidents do occur, PHMSA has issued numerous regulations designed to improve the accident survivability of rail tank cars carrying hazardous materials. Most recently, in 2009, PHMSA issued a final rule requiring newly constructed tank cars designed to carry materials toxic-by-inhalation (TIH materials or materials poisonous-by-inhalation (PIH materials)) to have increased side and head-impact puncture resistance by requiring a combination of thicker outer jackets and/or inner shells and the use of full head shields where not already mandated by regulation.[4] The rule also establishes enhanced standards and features to protect the valves, top fittings and nozzles of newly constructed TIH materials tank cars and imposes a 50 mile-per-hour (''mph'') speed limit for all trains transporting loaded tank cars containing TIH materials.

Further, PHMSA is currently formulating an advanced notice of proposed rulemaking addressing, among other items, safety improvements to DOT Specification 111 tank cars, which are commonly used to transport crude oil and ethanol. DOT has also scheduled a public meeting on August 27–28 to discuss improving the safety of the transportation of hazardous materials by rail. As the above discussion indicates, DOT has already taken steps to provide for the safety of transportation of hazardous materials by rail, and will continue to evaluate the need for additional safety measures as details of the Lac-Mégantic accident become known.

DOT's HMR-related recommendations below are in regard to the proper classification of crude oil and the HMR's requirements regarding railroad and hazardous materials offeror and carrier safety and security plans. First, the HMR require that an offeror[5] of a hazardous material properly classify and describe the hazardous material. *See* 49 CFR § 173.22. To attest compliance with the HMR, an offeror of a hazardous material must also certify that the hazardous material being offered into transportation is offered in compliance with the HMR. In the case of petroleum crude oil, relevant properties to properly classify the material include: Flash point, corrosivity, specific gravity at loading and reference temperatures, and the presence and concentration of specific compounds such as sulfur (as found in sour crude oil). The classification requirements in the HMR ultimately determine the appropriate and authorized selection of the packaging, the fill densities and outage, accompanying hazard communications (markings, labels and placards), transportation safety and operational controls, and safety and security planning; and, if necessary, they enable the most effective and informed emergency response.

Crude oil transported by rail often derives from different sources and is then blended, so it is critical that offerors properly classify a hazardous material and select the proper HMR-authorized packaging for transportation of that hazardous material. Section 173.150(f) of the HMR allows flammable liquids such as petroleum crude oil with a flash point at or above 38 °C (100 °F) that do not meet the definition of any other hazard class to be reclassified as a combustible liquid, and excepts such combustible liquids from certain HMR requirements, to include the requirement that the material be transported in a DOT-specification bulk packaging.[6] As such, AAR 211 class cars are permitted, in certain instances, to be used to transport crude oil that has been classified as a Packing Group III

[3] The U.S. Energy Information Administration anticipates that crude oil rail export capacity from the Bakken region, located mostly in North Dakota, will increase over the next two years. *See http://www.eia.gov/todayinenergy/detail.cfm?id=10431.* Much of the near term growth in rail originations is currently a function of how quickly tank car manufacturers can produce new cars to meet the demand for tank cars, primarily for Bakken crude oil. The rise in rail originations in crude oil is subject to changes in the number of tank cars available, price of crude oil, and overall production of crude oil in that region, and is also dependent on whether, or how quickly, additional pipeline export capacity from that region comes online. However, for the foreseeable future, all indications are for continued growth of rail originations of crude in that region as new tank car fleets come online to meet demand. Bakken crude oil is primarily shipped via rail to refineries located near the U.S. Gulf Coast or also to pipeline connections, most notably to connections located in Oklahoma. Crude oil is also shipped via rail to refineries on the East Coast and, to a lesser extent, refineries in other regions of the U.S. *See* Association of American Railroads *Moving Crude Oil by Rail* (May 2013), *https://www.aar.org/keyissues/Documents/Back ground-Papers/Crude-oil-by-rail.pdf.*

[4] 74 FR 1770 (Jan. 13, 2009).

[5] *See* 49 CFR 171.8 for the definition of ''person who offers'' or ''offeror.''

[6] Section 172.102, Special Provision B1, states, ''If the material has a flash point at or above 38 °C (100 °F) and below 93 °C (200 °F), then the bulk packaging requirements of § 173.241 of this subchapter are applicable.''

material with a relatively high flash point. This distinction has safety implications if the crude oil being transported has been improperly classified and actually has a lower flash point and is a Packing Group I or II flammable liquid material. As such, DOT recommends that offerors evaluate their processes for testing, classifying, and packaging the crude oil that they offer into transportation via railroad tank car as required by Part 173 of the HMR. The frequency and type of testing should be based on an offeror's knowledge of the hazardous material, with specific consideration given to the volume of hazardous material shipped, the variety of sources that the hazardous material is generated from, and the processes that generate the hazardous material.

With regard to DOT's next HMR-related recommendation, the HMR also include requirements that specifically address safety and security plans for the transportation of certain hazardous materials. Specifically, Subpart I part 172 requires security plans to include an assessment of transportation security risks for shipments of hazardous materials (e.g., a large bulk quantity of Class 3 material such as crude oil meeting the criteria for Packing Group I or II). *See* 49 CFR 172.800–802. This assessment at a minimum must include elements addressing personnel security, unauthorized access, and en route security. The plan must also include security duties for each position or department that is responsible for implementing the plan as well as the training of hazardous materials employees. DOT is recommending that offerors and carriers of hazardous materials review their plans adopted in accordance with subpart I of part 172 of the HMR that govern the safety and security of the transportation of railroad tank cars containing hazardous materials. DOT recommends that after such review offerors and carriers of hazardous materials evaluate whether their existing plans adequately address known or potential safety and security risks and, as necessary, amend the plans as to ensure the continued safe and secure transportation of railroad tank cars containing hazardous materials.

Securement of Unattended Equipment

Next, with regard to the securement of unattended equipment, FRA accident data indicates that approximately 8.5% of human factor-caused accidents from calendar year 2011 until April 2013 were the result of improper securement. Existing Federal regulations, at 49 CFR part 232, require that railroads adopt procedures to ensure that unattended equipment is secured. FRA conducts inspections on a regular basis to monitor compliance with these applicable railroad securement procedures that railroads adopt in accordance with FRA's securement regulation. A review of FRA's inspection data indicates that since 2010, FRA inspectors have conducted 163,510 observations for compliance with railroad procedures adopted to comply with FRA's securement requirements for both passenger and freight trains at § 232.103 and at 49 CFR part 238. FRA inspectors have discovered 5,236 instances where these railroad securement procedures were not complied with, and recommended violations in 1,625 of those instances. FRA's Emergency Order No. 28 was based, in part, on the above information, and requires railroads in the United States to adopt certain additional securement procedures to prevent accidents like the one that occurred at Lac-Mégantic when trains make uncontrolled movements.

In addition to those requirements conveyed in the emergency order, this safety advisory makes additional train securement-related recommendations. Existing Federal regulations, at 49 CFR part 217, require that railroads conduct operational tests to ensure their employees' compliance with railroad operating rules, and particularly those rules which are most likely to cause the most accidents or incidents. *See* 49 CFR 217.9(c)(1). As the above statistics indicate, a failure to comply with railroads' securement procedures account for approximately 8.5% of human factor caused accidents. When these accidents are viewed in light of the Lac-Mégantic accident, it is clear that compliance with Federal regulation and accompanying railroad procedures governing the securement of unattended equipment is safety-critical. Thus, DOT is recommending that railroads evaluate their current operational testing practices for securement-related rules compliance, and determine whether their current testing practices are sufficient, both in quality and quantity of the operational tests performed.

In making this recommendation, FRA also notes that past audits of railroads' operational testing records indicate, that in certain instances, there are significant discrepancies between the number of operating rules compliance failures that railroads record when compared with the ratio of operating rule failures that FRA inspectors observe during compliance inspections. DOT encourages railroads to use the recommendations in this safety advisory to ensure that their operational testing practices, particularly as related to securement and all human factor-related operating rules, are evaluated for effectiveness. Operational testing should regularly take place under all operation conditions in which railroad employees perform duties. DOT encourages railroads to utilize all tools at their disposal, to include checking locomotive downloads to monitor compliance with railroad rules requiring certain actions be taken (e.g., air brake release) to verify that a sufficient number of handbrakes have been set to prevent a train's movement. FRA plans to place particular emphasis on its inspection efforts related to monitoring railroad compliance with securement procedures.

Two additional recommendations below also relate to preventing the unauthorized movement of trains. The first of these recommendations relates to removing the reverse lever (reverser), when the lever is capable of being removed from the control stand by a train crewmember, from the controlling locomotive of any train left unattended on a main track outside of yard limits. Emergency Order No. 28 addresses requirements regarding the status of the reverser for trains transporting certain hazardous materials that are left unattended on mainline track or mainline sidings outside of a yard or terminal. The recommendation in this safety advisory is meant to address any train or locomotive consist left unattended on main track outside of yard or terminal, regardless of commodity being transported. Railroads are currently required by 49 CFR 232.103(n)(4) to adopt procedures to govern the status of the reverse lever (reverser) on unattended locomotives. Typically, the rules adopted by railroads to comply with § 232.103(n)(4) require that the reverser of an unattended locomotive be removed from the control stand but do not require that the lever otherwise be removed from a train or secured. In an effort to ensure that any persons, primarily railroad trespassers, are unable to easily initiate unauthorized movements of any unattended trains outside of yard limits, DOT is recommending that railroads amend their procedures adopted to comply with § 232.103(n)(4) to require that when the reverser is removed from the controlling locomotive of an unattended train that the lever is actually removed from the cab or otherwise secured in a place where a trespasser cannot readily access the lever. As the Lac-Mégantic accident illustrates, the uncontrolled movement of a train can have catastrophic consequences. DOT will also evaluate

whether future regulatory activities should require railroad procedures be amended to enhance requirements governing access to an unattended train's reverser lever. DOT looks forward to discussing this issue and receiving information from the industry regarding this issue at the emergency RSAC meeting.

The Transport Canada emergency directive also contained a provision regarding the status of a train's automatic and independent brakes when a train is left unattended on a main track or siding for one hour or less. Existing § 232.103(n)(4) of FRA's regulations requires that railroads adopt and comply with procedures governing the status of the independent and automatic brake valves (in addition to the status of the reverser lever as discussed directly above) when locomotives are left unattended. Traditionally, such rules adopted to comply with § 232.104(n)(4) in the United States already require that a train's independent and automatic brakes be applied when a train is left unattended for any period of time. Thus, DOT has chosen not to address that item in this safety advisory, but plans to discuss this topic along with all of the items addressed by the Transport Canada emergency directive and order at the emergency RSAC meeting.

Next, DOT is also recommending that railroads evaluate risks at locations where trains are regularly left unattended on main track outside of yard limits, such as at crew change points. DOT recommends that after identifying locations where increased risks exist (for example, due to grade conditions or trespasser accessibility to unattended trains at particular locations) railroads adopt procedures to mitigate such risks that could result in unauthorized or uncontrolled train movements. DOT understands that many railroads that transport hazardous materials by rail may have already implemented certain portions of such an evaluation in complying with 49 CFR 172.800–172.820 of the HMR, which as discussed above govern planning requirements for the transportation of hazardous materials. DOT also recognizes that railroads may undertake such evaluations if they choose to submit a plan to DOT regarding where trains containing certain hazardous materials may be left unattended, as described in Emergency Order No. 28. However, DOT recommends that such analysis/evaluation of how to mitigate risks be undertaken specifically for locations on main track where all trains are regularly left unattended outside of yard limits, as whether or not a train contains hazardous materials, an uncontrolled or unauthorized movement of such train can have catastrophic consequences, especially on main track where passenger trains might also travel.

Human Factors

Finally, Transport Canada's emergency directive and order implicate other human factors issues such as crew size, personnel available to secure trains, operator fatigue, and the possible use of derails as a secondary line of defense against runaway trains at certain, higher risk, locations. DOT is making two recommendations below regarding these issues. First, DOT is making a recommendation regarding railroad crew staffing practices. Transport Canada's directive contained a specific requirement that railroads in Canada operate trains carrying loaded hazardous materials tank cars over main track and sidings with at least two crew members. DOT believes that railroad safety is enhanced through the use of multiple crew members and recommends below that railroads review their crew staffing practices for over-the-road train movements of trains transporting 20 or more tank car loads of Class 3 flammable or combustible liquids, as well as certain of the amount and type of hazardous materials specified in AAR's Circular No. OT–55–M, October 1, 2012 (Circular),[7] and, as necessary, amend those practices to ensure safety. DOT intends to explore with the RSAC the appropriate level of crew staffing for over-the-road train operations. As mentioned above, at the emergency RSAC meeting FRA expects to ask the RSAC to consider the creation of a task statement regarding appropriate crew size for both freight and passenger operations for an RSAC working group to consider.

DOT is also recommending below that railroads evaluate all of the other human factors raised by Transport Canada with regard to train operations in the United States, particularly as related to train operations on main track, and amend those procedures as necessary. FRA plans to address this recommendation, and, as discussed above, also plans to address any other items at the emergency RSAC meeting that are raised in Transport Canada's emergency directive and order that are not otherwise addressed in Emergency Order No. 28 or this safety advisory.

Recommended Railroad Actions: In light of the above discussion, and in an effort to maintain safety of the Nation's rail system, DOT recommends that railroads:

1. Review with their employees the circumstances of the Lac-Mégantic accident described in this Safety Advisory.

2. DOT believes that railroad safety is enhanced through the use of multiple crew members. Accordingly, railroads should review their crew staffing practices for over-the-road trains that transport:

(a) Five or more tank car loads of any one or any combination of materials poisonous by inhalation as defined in 49 CFR 171.8, and including anhydrous ammonia (UN 1005) and ammonia solutions (UN 3318); or

(b) 20 rail car loads or intermodal portable tank loads of any one or any combination of materials listed in (a) above, or, any Division 2.1 flammable gas, Class 3 flammable liquid or combustible liquid, Class 1.1 or 1.2 explosive, or hazardous substance listed in 49 CFR 173.31(f)(2).[8]

After such review, DOT recommends that railroads amend existing practices as necessary to ensure the safe movement of trains containing the above-listed hazardous materials on main track and sidings. DOT intends to explore with the RSAC the appropriate level of crew staffing for over-the-road train operations.

3. Amend their procedures adopted to comply with 49 CFR 232.103(n)(4) by requiring that the reverser lever of the controlling locomotive of a train or locomotive consist be either removed from the cab of the controlling locomotive or otherwise secured (when such reversers are capable of being removed by a train crewmember) to prevent unauthorized movement of any train or locomotive consist left unattended on mainline track or mainline siding outside of a yard or terminal.

4. Review both their operational testing programs (as adopted in accordance with 49 CFR 217.9) and relevant accident data related to the securement of unattended equipment to determine whether it is appropriate to increase the frequency of, or to otherwise enhance, operational tests performed to determine the extent of railroad employee compliance with operating rules governing the proper securement of unattended equipment. DOT also recommends that railroads ensure that their operational tests are conducted under all operational conditions, and that the results of such operational tests are accurately reflected

[7] Available online at: *http://boe.aar.com/CPC-1242_OT-55-M.pdf.*

[8] *See* 49 CFR 173.115 for the definition of Division 2.1 flammable gas, 173.120 for definition of Class 3 flammable liquid; and 173.50 for the definition of the various classes of explosives.

in the records required to be kept by 49 CFR 217.9(d).

5. Conduct system-wide evaluations to identify particular hazards (e.g., grade, train commodity, trespasser accessibility) which increase securement and other safety risks at crew change locations and other locations where any trains or rolling equipment are regularly left unattended. After identifying hazards at these locations, railroads should adopt procedures to mitigate risks that could result in unauthorized or uncontrolled train movements.

6. Review the other requirements in Transport Canada's emergency directive and order, to include human factor requirements such as operator fatigue, the use of derails as a secondary line of defense at high risk locations, and available personnel to secure a train, and, as necessary, amend the procedures governing these issues to ensure the safety of train operations, particularly as they relate to train operations conducted on main track.

Recommended Hazardous Materials Actions: In light of the above discussion, and in an effort to maintain safety of the Nation's rail system, DOT recommends that:

1. Offerors evaluate their processes to ensure that hazardous materials are properly classed and described in accordance with the HMR.

2. Offerors and carriers of hazardous materials review their safety and security plans adopted in accordance with subpart I of part 172 of the HMR. Offerors and carriers evaluate whether the existing plans adequately address personnel security, unauthorized access, and en-route security and, as necessary, amend the plans as to ensure the continued safe and secure transportation of railroad tank cars containing hazardous materials.

DOT encourages railroad and hazardous material industry members to take actions that are consistent with the preceding recommendations, and to take other complementary actions to help ensure the safety of the Nation's railroads. DOT may modify this safety advisory, issue additional safety advisories, or take other appropriate actions necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under its rail and hazardous materials safety authority.

Issued in Washington, DC, on August 2, 2013.

Robert Lauby,

Acting Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–19211 Filed 8–6–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Qualified State Tuition Programs.

DATES: Written comments should be received on or before October 7, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to LaNita Van Dyke, at (202) 622–3215, or at Internal Revenue Service, Room 6511, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov*

SUPPLEMENTARY INFORMATION:

Title: Qualified State Tuition Programs.

OMB Number: 1545–1614.

Regulation Project Number: REG–106177–97.

Abstract: This regulation affects qualified tuition programs (QTPs) described in Code section 529 and individuals receiving distributions from the programs. Information will be used by the IRS and individuals receiving QTP distributions to verify compliance with section 529 and to determine the taxable amount of a distribution.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: State, local or tribal governments and individuals or households.

Estimated Number of Respondents/Recordkeepers: 52.

Estimated Time per Respondent/Recordkeeper: 81,889 hrs, 37 minutes.

Estimated Total Annual Reporting/Recordkeeping Burden Hours: 4,258,260.

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. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have 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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 11, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–19000 Filed 8–6–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation, TD 9353, Section 1045 Application to Partnerships.

DATES: Written comments should be received on or before October 7, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to LaNita Van Dyke at Internal Revenue Service, Room 6511, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3215, or through the Internet at *Lanita.Vandyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Section 1045 Application to Partnerships.

OMB Number: 1545–1893.

Regulation Project Number: TD 9353.

Abstract: This document contains regulations relating to the application of section 1045 of the Internal Revenue Code (Code) to partnerships and their partners. These regulations provide rules regarding the deferral of gain on a partnership's sale of qualified small business stock and deferral of gain on a partner's sale of qualified small business stock distributed by a partnership. The final regulations affect partnerships that invest in qualified small business stock and their partners. This document also provides notice of a public hearing on the proposed regulations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of the currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

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. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have 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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 11, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–18999 Filed 8–6–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 11, 2013.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, September 11, 2013, at 12 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue MS W–406, Seattle, WA 98174, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

July 31, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–19001 Filed 8–6–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The Meeting will be held Thursday, September 19, 2013.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley or Patti Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988)

that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, September 19, 2013, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley or Ms. Patti Robb. For more information please contact Ms. Smiley or Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

July 31, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–18998 Filed 8–6–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 25, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, September 25, 2013 at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

July 31, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–18997 Filed 8–6–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 11, 2013.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, September 11, 2013 at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–834–2203, or write TAP Office, 2 Metro Tech Center, 100 Myrtle Avenue 7th Floor, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

July 31, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–18996 Filed 8–6–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 17, 2013.

FOR FURTHER INFORMATION CONTACT: Linda Rivera at 1–888–912–1227 or (202) 622–8390.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Tuesday, September 17, 2013 at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Linda Rivera. For more information please contact: Ms. Rivera at 1–888–912–1227 or (202) 622–8390, or write TAP Office, 1111 Constitution Avenue NW., Room 1509- National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing Toll-free issues and public input is welcomed.

July 31, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–18993 Filed 8–6–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 10, 2013.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or (954) 423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Tuesday, September 10, 2013, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Donna Powers at 1–888–912–1227 or (954) 423–7977, or write TAP Office, 1000 S. Pine Island Road, Plantation, FL 33324 or contact us at the Web site: *http://www.improveirs.org*.

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

July 31, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–19002 Filed 8–6–13; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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No. 152 August 7, 2013

Part II

Department of Health and Human Services

Center for Medicare & Medicaid Services
42 CFR Part 418
Medicare Program; FY 2014 Hospice Wage Index and Payment Rate Update; Hospice Quality Reporting Requirements; and Updates on Payment Reform; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1449–F]

RIN 0938–AR64

Medicare Program; FY 2014 Hospice Wage Index and Payment Rate Update; Hospice Quality Reporting Requirements; and Updates on Payment Reform

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule updates the hospice payment rates and the wage index for fiscal year (FY) 2014, and continues the phase out of the wage index budget neutrality adjustment factor (BNAF). Including the FY 2014 15 percent BNAF reduction, the total 5 year cumulative BNAF reduction in FY 2014 will be 70 percent. The BNAF phase-out will continue with successive 15 percent reductions in FY 2015 and FY 2016. This final rule also clarifies how hospices are to report diagnoses on hospice claims, and provides updates to the public on hospice payment reform. Additionally, this final rule changes the requirements for the hospice quality reporting program by discontinuing currently reported measures and implementing a Hospice Item Set with seven National Quality Forum (NFQ) endorsed measures beginning July 1, 2014, as proposed. Finally, this final rule will implement the hospice Experience of Care Survey on January 1, 2015, as proposed.

DATES: *Effective Date:* These regulations are effective on October 1, 2013.

FOR FURTHER INFORMATION CONTACT:

Debra Dean-Whittaker, (410) 786–0848, for questions regarding the hospice experience of care survey.

Robin Dowell, (410) 786–0060, for questions regarding quality reporting for hospices and collection of information requirements.

Hillary Loeffler, (410) 786–0456, for general questions about hospice payment.

Katherine Lucas, (410) 786–7723 for questions regarding payment reform.

Anjana Patel, (410) 786–2120, for questions regarding the FY 2014 hospice wage index and payment rates.

Kelly Vontran, (410) 786–0332, for questions on diagnosis reporting on hospice claims.

SUPPLEMENTARY INFORMATION:

Wage Index Addenda: In the past, the wage index addenda referred to in the preamble of our proposed and final rules were available in the **Federal Register**. However, the wage index addenda of the annual proposed and final rules will no longer be available in the **Federal Register**. Instead, these addenda will be available only through the internet on the CMS Web site at: (*http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html.*) Readers who experience any problems accessing any of the wage index addenda related to the hospice payment rules that are posted on the CMS Web site identified above should contact Anjana Patel at 410–786–2120.

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Acronyms

Because of the many terms to which we refer by acronym in this final rule, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

APU Annual Payment Update
BBA Balanced Budget Act of 1997
BLS Bureau of Labor Statistics
BMI Body Mass Index
BNAF Budget Neutrality Adjustment Factor
CAD Coronary Artery Disease
CAHPS® Consumer Assessment of Healthcare Providers and Systems
CBSA Core-Based Statistical Area
CCW Chronic Conditions Warehouse
CFR Code of Federal Regulations
CHC Continuous Home Care
CMS Centers for Medicare & Medicaid Services
COPD Chronic Obstructive Pulmonary Disease
CoPs Conditions of Participation

CR Change Request
CVA Cerebrovascular Accident
CY Calendar Year
DME Durable Medical Equipment
FEHC Family Evaluation of Hospice Care
FR Federal Register
FY Fiscal Year
GAO Government Accountability Office
GIP General Inpatient Care
HCFA Healthcare Financing Administration
HHS Health and Human Services
HIS Hospice Item Set
HQRP Hospice Quality Reporting Program
ICD–9–CM International Classification of Diseases, Ninth Revision, Clinical Modification
ICD–10–CM International Classification of Diseases, Tenth Revision, Clinical Modification
IDG Interdisciplinary Group
IPPS Inpatient Prospective Payment System
IRC Inpatient Respite Care
LCD Local Coverage Determination
LUPA Low Utilization Payment Amount
MAP Measure Applications Partnership
MedPAC Medicare Payment Advisory Commission
MFP Multi-factor Productivity
MSA Metropolitan Statistical Area
NEC Not Elsewhere Classified
NF Long Term Care Nursing Facility
NPI National Provider Identifier
NQF National Quality Forum
OACT Office of the Actuary
OIG Office of Inspector General
OMB Office of Management and Budget
PEACE Prepare, Embrace, Attend, Communicate, and Empower
PRA Paperwork Reduction Act
PRRB Provider Reimbursement Review Board
QAPI Quality Assessment and Performance Improvement
RFA Regulatory Flexibility Act
RHC Routine Home Care
SBA Small Business Administration
SNF Skilled Nursing Facility
TEFRA Tax Equity and Fiscal Responsibility Act of 1982
TEP Technical Expert Panel

I. Executive Summary

A. Purpose

This final rule updates the payment rates for hospice providers for fiscal year (FY) 2014 as required under section 1814 (i) of the Social Security Act (the Act). The updates incorporate the use of updated hospital wage index data, the 5th year of the 7-year Budget Neutrality Adjustment Factor (BNAF) phase-out, and an update to the hospice payment rates by the hospice payment update percentage. Additionally, this final rule clarifies diagnosis reporting on hospice claims, provides an update on hospice payment reform and additional data collection requirements, and makes changes to the quality reporting requirements for hospice providers.

B. Summary of the Major Provisions

In this final rule we update the hospice payment rates for FY 2014 by 1.7 percent as described in section IV.C.3. We also update the FY 2014 hospice wage index with more current wage data, and the BNAF will be reduced by an additional 15 percent for a total BNAF reduction of 70 percent as described in section IV.C.3. The August 6, 2009 FY 2010 Hospice Wage Index final rule (74 FR 39384) finalized a 10 percent reduced BNAF for FY 2010 as the first year of a 7-year phase-out of the BNAF, to be followed by an additional 15 percent per year reduction in the BNAF in each of the next 6 years. The total BNAF phase-out will be complete by FY 2016. This final rule also clarifies diagnosis reporting on hospice claims, especially regarding the use of non-specific symptom diagnoses; provides an update on hospice payment reform and additional data collection requirements; and finalizes a technical regulations text change. Additionally, this final rule changes the requirements for the hospice quality reporting program by discontinuing currently reported measures and implementing a Hospice Item Set with seven National Quality Forum (NQF) endorsed measures beginning July 1, 2014, as proposed. Finally, this final rule will implement the hospice Experience of Care Survey on January 1, 2015, as proposed.

C. Summary of Costs, Benefits, and Transfers

Provision description	Total
FY 2014 Hospice Payment Rate Update	The overall economic impact of this final rule is an estimated $160 million in increased payments to hospices.
Costs for Hospices to Submit Data	The total cost to hospice providers, for submitting data to the Hospice Item Set starting in July 2014, is $14.3 million.

II. Background

A. Hospice Care

Coping with a life-limiting illness can be an overwhelming experience, physically, emotionally and spiritually, for both the person and his or her family. Recognition that the care needs at end-of-life are different from other health care needs is a foundation of the Medicare Hospice Benefit. Hospice is a compassionate care philosophy and practice for those who are terminally ill. It is a holistic approach to treatment that recognizes that the impending death of an individual warrants a change from curative to palliative care. Palliative care means ''patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice'' (42 CFR 418.3). Palliative care is at the core of hospice philosophy and care practices. The person beginning hospice care, or his or her representative, needs to understand that his or her illness is no longer responding to medical interventions to cure or slow the progression of disease and then must choose to stop further curative attempts while palliative care continues and intensifies, as needed, for continued symptom management. As we stated in the June 5, 2008 Hospice Conditions of Participation final rule (73 FR 32088), palliative care is an approach that ''optimizes quality of life by anticipating, preventing, and treating suffering.'' The goal of palliative care in hospice is to improve the quality of life of individuals and their families facing the issues associated with life-threatening illness through the prevention and relief of suffering by means of early identification, assessment and treatment of pain and other issues. In addition, palliative care in hospice includes coordinating care services, reducing unnecessary diagnostics or ineffective therapies, and offering ongoing conversations with individuals and their families about changes in the disease and shifts in the plan of care to meet the changing needs with disease progression as the individual approaches the end-of-life.

Medicare hospice care is palliative care for individuals with a prognosis of living 6 months or less if the terminal illness runs its normal course. As generally accepted by the medical community, the term ''terminal illness'' refers to an advanced and progressively deteriorating illness, and the illness is diagnosed as incurable. When an individual is terminally ill, many health problems are brought on by underlying

condition(s), as bodily systems are interdependent. In the June 5, 2008 Hospice Conditions of Participation final rule (73 FR 32088), we stated ''the medical director must consider the primary terminal condition, related diagnoses, current subjective and objective medical findings, current medication and treatment orders, and information about unrelated conditions when considering the initial certification of the terminal illness.'' As referenced in our regulations at 42 CFR 418.22(b)(1), to be eligible for Medicare hospice services, the beneficiary's attending physician (if any) and the hospice medical director must certify that the individual is terminally ill, that is, the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course as defined in section 1861(dd)(3)(A) of the Act and our regulations at § 418.3. The certification of terminal illness must include a brief narrative explanation of the clinical findings that supports a life expectancy of 6 months or less as part of the certification and recertification forms as stated in § 418.22(b)(3).

The goal of hospice care is to make the hospice patient as physically and emotionally comfortable as possible, with minimal disruption to normal activities, while remaining primarily in the home environment. Hospice care uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through the use of a broad spectrum of professional and other caregivers and volunteers. While the goal of hospice care is to allow for the individual to remain in his or her home environment, circumstances during the end-of-life may necessitate short-term inpatient admission to a hospital, skilled nursing facility (SNF), or hospice facility for procedures necessary for pain control or acute or chronic symptom management that cannot be managed in any other setting. These acute hospice care services are to ensure that any new or worsening symptoms are intensively addressed so that the individual can return to his or her home environment under routine hospice care. Short-term, intermittent, inpatient respite services are also available to the family of the hospice patient when needed to relieve the family or other caregivers. Additionally, an individual can receive continuous home care during a period of crisis in which an individual requires primarily continuous nursing care to achieve palliation or management of acute medical symptoms so that the individual can remain at home. Continuous home care may be covered on a continuous basis for as much as 24 hours a day, and these periods must be predominantly nursing care per our regulations at § 418.204. A minimum of 8 hours of care must be furnished on a particular day to qualify for the continuous home care rate (§ 418.302(e)(4)).

B. History of the Medicare Hospice Benefit

Before the creation of the Medicare Hospice Benefit, hospice was originally run by volunteers who cared for the dying. During the early development stages of the Medicare Hospice Benefit, hospice advocates, working with legislators, were clear that they wanted a Medicare benefit available that provided all-inclusive care for terminally-ill individuals, provided pain relief and symptom management, and offered the opportunity to die with dignity in the comfort of one's home rather than in an institutional setting.[1] As stated in the August 22, 1983 proposed rule entitled ''Medicare Program; Hospice Care'' (48 FR 38146), ''the hospice experience in the United States has placed emphasis on home care. It offers physician services, specialized nursing services, and other forms of care in the home to enable the terminally ill individual to remain at home in the company of family and friends as long as possible.'' The concept of a beneficiary ''electing'' the hospice benefit and being certified as terminally ill were two key components in the legislation responsible for the creation of the Medicare Hospice Benefit (section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), (Pub. L. 97–248)). Section 122 of TEFRA created the Medicare Hospice Benefit, which was implemented on November 1, 1983. Under section 1861(dd) of the Social Security Act (the Act), codified at 42 U.S.C. 1395x(dd), we provide coverage of hospice care for terminally ill Medicare beneficiaries who elected to receive care from a Medicare-certified hospice. Our regulations at § 418.54(c) stipulate that the comprehensive hospice assessment must identify the patient's physical, psychosocial, emotional, and spiritual needs related to the terminal illness and related conditions, and address those needs in order to promote the hospice patient's well-being, comfort, and dignity throughout the dying process. The comprehensive assessment must take into consideration the following factors: the nature and condition causing admission (including the presence or lack of objective data and subjective complaints); complications and risk factors that affect care planning; functional status; imminence of death; and severity of symptoms. The Medicare Hospice Benefit requires the hospice to cover all reasonable and necessary palliative care related to the terminal prognosis and related conditions, as described in the patient's plan of care. The December 16, 1983 Hospice final rule (48 FR 56008) requires hospices to cover care for interventions to manage pain and symptoms. Clinically, related conditions are any physical or mental conditions that are related to or caused by either the terminal illness or the medications used to manage the terminal illness.[2] Additionally, the hospice Conditions of Participation at § 418.56(b), hospice must provide all services necessary for the palliation and management of the terminal illness, related conditions and interventions to manage pain and symptoms. Therapy and interventions must be assessed and managed in terms of providing palliation and comfort without undue symptom burden for the hospice patient or family.[3] For example, a hospice patient with lung cancer (the terminal illness) may receive inhalants for shortness of breath (related to the terminal condition). The patient may also suffer from metastatic bone pain (a related condition) and would be treated with opioid analgesics. As a result of the opioid therapy, the patient may suffer from constipation (an associated symptom) and require a laxative for symptom relief. It is often not a single diagnosis that represents the terminal prognosis of the patient, but the combined effect of several conditions that makes the patient's condition terminal. We are restating what we communicated in the December 16, 1983 Hospice final rule (48 FR 56010), regarding what is related versus unrelated to the terminal illness: ''. . . we believe that the unique physical condition of each terminally ill individual makes it necessary for these decisions to be made on a case-by-case basis. It is our general view that hospices are required to provide virtually all the care that is needed by terminally ill patients.'' Therefore, unless there is clear evidence that a

[1] Connor, Stephen (2007). Development of Hospice and Palliative Care in the United States. OMEGA. 561(1), p. 89–99.

[2] Harder, PharmD, CGP, Julia. (2012). To Cover or Not To Cover: Guidelines for Covered Medications in Hospice Patients. The Clinician. 7(2), p. 1–3.

[3] Paolini, DO, Charlotte. (2001). Symptoms Management at End of Life. JAOA. 101(10). p. 609–615.

condition is unrelated to the terminal prognosis, all services would be considered related. It is also the responsibility of the hospice physician to document why a patient's medical needs would be unrelated to the terminal prognosis.

The fundamental premise upon which the hospice benefit was designed was the ''revocation'' of traditional curative care and the ''election'' of hospice care for end-of-life symptom management and maximization of quality of life, as stated in the December 16,1983 Hospice final rule (48 FR 56008). After electing hospice care, the patient typically returns to the home from an institutionalized setting or remains in the home, to be surrounded by family and friends, and to prepare emotionally and spiritually for death while receiving expert symptom management and other supportive services. Election of hospice care also includes waiving the right to Medicare payment for curative treatment for the terminal prognosis, and instead receiving palliative care to manage pain or symptoms.

The benefit was originally designed to cover hospice care for a finite period of time that roughly corresponded to a life expectancy of 6 months or less. Initially, beneficiaries could receive three election periods: Two 90-day periods and one 30-day period. Currently, Medicare beneficiaries can elect hospice care for two 90-day periods and an unlimited number of subsequent 60-day periods; however, the expectation remains that beneficiaries have a life expectancy of 6 months or less if the terminal illness runs its normal course.

C. Services Covered by the Medicare Hospice Benefit

One requirement for coverage under the Medicare Hospice Benefit is that hospice services must be reasonable and necessary for the palliation and management of the terminal illness and related conditions. Section 1861(dd)(1) of the Act establishes the services that are to be rendered by a Medicare certified hospice program. These covered services include: Nursing care; physical therapy; occupational therapy; speech-language pathology therapy; medical social services; home health aide services (now called hospice aide services); physician services; homemaker services; medical supplies (including drugs and biologics); medical appliances; counseling services (including dietary counseling); short-term inpatient care (including both respite care and procedures necessary for pain control and acute or chronic symptom management) in a hospital, nursing facility, or hospice inpatient facility; continuous home care during periods of crisis and only as necessary to maintain the terminally ill individual at home; and any other item or service which is specified in the plan of care and for which payment may otherwise be made under Medicare, in accordance with Title XVIII of the Act.

Section 1814(a)(7)(B) of the Act requires that a written plan for providing hospice care to a beneficiary who is a hospice patient be established before care is provided by, or under arrangements made by, that hospice program and that the written plan be periodically reviewed by the beneficiary's attending physician (if any), the hospice medical director, and an interdisciplinary group (described in section 1861(dd)(2)(B) of the Act).

The services offered under the hospice benefit must be available, as needed, to beneficiaries 24 hours a day, 7 days a week (section 1861(dd)(2)(A)(i) of the Act). Upon the implementation of the hospice benefit, the Congress expected hospices to continue to use volunteer services, though these services are not to be reimbursed (see Section 1861(dd)(2)(E) of the Act and 48 FR 38149). The hospice interdisciplinary group should be comprised of paid hospice employees as well as hospice volunteers, as stated in the August 22, 1983 Hospice proposed rule (48 FR 38149). This expectation is in line with the history of hospice and philosophy of holistic, comprehensive, compassionate, end-of-life care.

The National Hospice Study was initiated in 1980 through a grant sponsored by the Robert Wood Johnson and John A. Hartford Foundations and CMS (formerly, the Health Care Financing Administration (HCFA)). The study was conducted between October 1980 and March 1983. The study summarized the hospice care philosophy as the following:

- Patient and family know of the terminal condition.
- Further medical treatment and intervention are indicated only on a supportive basis.
- Pain control should be available to patients as needed to prevent rather than to just ameliorate pain.
- Interdisciplinary teamwork is essential in caring for patient and family.
- Family members and friends should be active in providing support during the death and bereavement process.
- Trained volunteers should provide additional support as needed.

In the August 22, 1983 Hospice proposed rule (48 FR 38149), we stated ''the hospice benefit and the resulting Medicare reimbursement is not intended to diminish the voluntary spirit of hospices''.

D. Medicare Payment for Hospice Care

Sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Act, and our regulations in part 418, establish eligibility requirements, payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418, subpart G, provides for a per diem payment in one of four prospectively-determined rate categories of hospice care (routine home care, continuous home care, inpatient respite care, and general inpatient care), based on each day a qualified Medicare beneficiary is under hospice care (once the individual has elected it). This per diem payment is to include all of the hospice services needed to manage the beneficiaries' care, as required by section 1861(dd)(1) of the Act. There has been little change in the hospice payment structure since the benefit's inception. The per diem rate based on level of care was established in 1983, and this payment structure remains today with some adjustments, as noted below:

1. Omnibus Budget Reconciliation Act of 1989

Section 6005(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L 101–239) amended section 1814(i)(1)(C) of the Act and provided for the following two changes in the methodology concerning updating the daily payment rates: (1) Effective January 1, 1990, the daily payment rates for routine home care and other services in included in hospice care were increased to equal 120 percent of the rates in effect on September 30, 1989; and (2) the daily payment rate for routine home care and other services included in hospice care for fiscal years beginning on or after October 1, 1990, were the payment rates in effect during the previous Federal fiscal year increased by the hospital market basket percentage increase.

2. Balanced Budget Act of 1997

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L 105–33) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were updated by a factor equal to the hospital market basket percentage increase, minus 1 percentage point. Payment rates for FYs from 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the

payment rates for subsequent FYs will be the hospital market basket percentage increase for the FY. The Social Security Act requires us to use the inpatient hospital market basket to determine hospice payment rates.

3. FY 1998 Hospice Wage Index Final Rule

In the August 8, 1997 FY 1998 Hospice Wage Index final rule (62 FR 42860), we implemented a new methodology for calculating the hospice wage index based on the recommendations of a negotiated rulemaking committee. The original hospice wage index was based on 1981 Bureau of Labor Statistics hospital data and had not been updated since 1983. In 1994, because of disparity in wages from one geographical location to another, the Hospice Wage Index Negotiated Rulemaking Committee was formed to negotiate a new wage index methodology that could be accepted by the industry and the government. This Committee was comprised of representatives from national hospice associations; rural, urban, large and small hospices, and multi-site hospices; consumer groups; and a government representative. The Committee decided that in updating the hospice wage index, aggregate Medicare payments to hospices would remain budget neutral to payments calculated using the 1983 wage index, to cushion the impact of using a new wage index methodology. To implement this policy, a BNAF would be computed and applied annually to the pre-floor, pre-reclassified hospital wage index when deriving the hospice wage index, subject to a wage index floor.

4. FY 2010 Hospice Wage Index Final Rule

Inpatient hospital pre-floor and pre-reclassified wage index values, as described in the August 8, 1997 Hospice Wage Index final rule are subject to either a budget neutrality adjustment or application of the wage index floor. Wage index values of 0.8 or greater are adjusted by the budget neutrality adjustment factor (BNAF). Starting in FY 2010, a 7-year phase-out of the BNAF began (August 6, 2009 FY 2010 Hospice Wage Index final rule (74 FR 39384), with a 10 percent reduction in FY 2010, and additional 15 percent reduction for a total of 25 percent in FY 2011, an additional 15 percent reduction for a total 40 percent in FY 2012, and an additional 15 percent reduction for a total of 55 percent in FY 2013. The phase-out will continue with an additional 15 percent reduction for a total reduction of 70 percent in FY 2014, an additional 15 percent reduction for a total reduction of 85 percent in FY 2015, and an additional 15 percent reduction for complete elimination in FY 2016. We note that the BNAF is an adjustment, which increases the hospice wage index value. Therefore, the BNAF reduction is a reduction in the amount of the BNAF increase applied to the hospice wage index value. It is not a reduction in the hospice wage index value, or in the hospice payment rates.

5. The Affordable Care Act

Starting with FY 2013 (and in subsequent FYs), the market basket percentage update under the hospice payment system referenced in sections 1814(i)(1)(C)(ii)(VII) and 1814(i)(1)(C)(iii) of the Act will be annually reduced by changes in economy-wide productivity, as specified in section 1886(b)(3)(B)(xi)(II) of the Act, as amended by section 3132(a) of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (the Affordable Care Act)). In FY 2013 through FY 2019, the market basket percentage update under the hospice payment system will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions as specified in section 1814(i)(1)(C)(v) of the Act).

In addition, sections 1814(i)(5)(A) through (C) of the Act, as amended by section 3132(a) of the Affordable Care Act, require hospices to begin submitting quality data, based on measures to be specified by the Secretary, for FY 2014 and subsequent fiscal years. Beginning in FY 2014, hospices which fail to report quality data will have their market basket update reduced by 2 percentage points.

Section 1814(a)(7)(D)(i) of the Act was amended by section 3132 (b)(2)(D)(i) of the Affordable Care Act, and requires, effective January 1, 2011, that a hospice physician or nurse practitioner have a face-to-face encounter with an individual to determine continued eligibility of the individual for hospice care prior to the 180th-day recertification and each subsequent recertification and attest that such visit took place. When implementing this provision, we decided that the 180th-day recertification and subsequent recertifications corresponded to the recertification for a beneficiary's third or subsequent benefit periods (August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47314)).

Further, section 1814(i)(6) of the Act, as amended by section 3132(a)(1)(B) of the Affordable Care Act, authorizes the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and other purposes. The types of data and information suggested in the Affordable Care Act would capture accurate resource utilization, which could be collected on claims, cost reports, and possibly other mechanisms, as the Secretary determines to be appropriate. The data collected may be used to revise the methodology for determining the payment rates for routine home care and other services included in hospice care, no earlier than October 1, 2013, as described in section 1814(i)(6)(D) of the Act. In addition, we are required to consult with hospice programs and the Medicare Payment Advisory Commission (MedPAC) regarding additional data collection and payment revision options.

6. FY 2012 Hospice Wage Index Final Rule

When the Medicare Hospice Benefit was implemented, the Congress included an aggregate cap on hospice payments, which limits the total aggregate payments any individual hospice provider can receive in a year. The Congress stipulated that a ''cap amount'' be computed each year. The cap amount was set at $6,500 per beneficiary when first enacted in 1983 and is adjusted annually by the change in the medical care expenditure category of the consumer price index for urban consumers from March 1984 to March of the cap year (section 1814(i)(2)(B) of the Act). The cap year is defined as the period from November 1st to October 31st. As we stated in the August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314), for the 2012 cap year and subsequent cap years, the hospice aggregate cap will be calculated using the patient-by-patient proportional methodology, within certain limits. We will allow existing hospices the option of having their cap calculated via the original streamlined methodology, also within certain limits. New hospices will have their cap determinations calculated using the patient-by-patient proportional methodology. The patient-by-patient proportional methodology and the streamlined methodology are two different methodologies for counting beneficiaries when calculating the hospice aggregate cap. A detailed explanation of these methods is found in the August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314). If a hospice's total

Medicare reimbursement for the cap year exceeded the hospice aggregate cap, then the hospice would have to repay the excess back to Medicare.

E. Trends in Medicare Hospice Utilization

Since the implementation of the hospice benefit in 1983, and especially within the last decade, there has been substantial growth in hospice utilization. The number of Medicare beneficiaries receiving hospice services has grown from 513,000 in FY 2000 to over 1.3 million in FY 2012. Similarly, Medicare hospice expenditures have risen from $2.9 billion in FY 2000 to $14.7 billion in FY 2012. Our Office of the Actuary (OACT) projects that hospice expenditures are expected to continue to increase by approximately 8 percent annually, reflecting an increase in the number of Medicare beneficiaries, more beneficiary awareness of the Medicare Hospice Benefit for end-of-life care, and a growing preference for care provided in home and community-based settings. However, this increased spending is partly due to an increased average lifetime length of stay for beneficiaries, from 54 days in 2000 to 86 days in FY 2010, an increase of 59 percent.

There have also been noted changes in the diagnosis patterns among Medicare hospice enrollees, with a growing percentage of beneficiaries with non-cancer diagnoses. Specifically, there were notable increases between 2002 and 2007 in neurologically-based diagnoses, including various dementia diagnoses. Additionally, there have been significant increases in the use of non-specific, symptom-classified diagnoses, such as ''debility'' and ''adult failure to thrive.'' In FY 2012, both ''debility'' and ''adult failure to thrive'' were in the top five claims-reported hospice diagnoses and were the first and third most common hospice diagnoses, respectively (see Table 2 below).

TABLE 2—THE TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES, FY 2002, FY 2007, FY 2012

Rank	ICD–9/Reported principal diagnosis	Total patients	Percentage
	Year: 2002 Total Patients = 663,406		
1	162.9 Lung Cancer	73,769	11
2	428.0 Congestive Heart Failure	45,951	7
3	799.3 Debility Unspecified	36,999	6
4	496 COPD	35,197	5
5	331.0 Alzheimer's Disease	28,787	4
6	436 CVA/Stroke	26,897	4
7	185 Prostate Cancer	20,262	3
8	783.7 Adult Failure To Thrive	18,304	3
9	174.9 Breast Cancer	17,812	3
10	290.0 Senile Dementia, Uncomp.	16,999	3
11	153.0 Colon Cancer	16,379	2
12	157.9 Pancreatic Cancer	15,427	2
13	294.8 Organic Brain Synd Nec	10,394	2
14	429.9 Heart Disease Unspecified	10,332	2
15	154.0 Rectosigmoid Colon Cancer	8,956	1
16	332.0 Parkinson's Disease	8,865	1
17	586 Renal Failure Unspecified	8,764	1
18	585 Chronic Renal Failure (End 2005)	8,599	1
19	183.0 Ovarian Cancer	7,432	1
20	188.9 Bladder Cancer	6,916	1
	Year: 2007 Total Patients = 1,039,099		
1	799.3 Debility Unspecified	90,150	9
2	162.9 Lung Cancer	86,954	8
3	428.0 Congestive Heart Failure	77,836	7
4	496 COPD	60,815	6
5	783.7 Adult Failure To Thrive	58,303	6
6	331.0 Alzheimer's Disease	58,200	6
7	290.0 Senile Dementia Uncomp.	37,667	4
8	436 CVA/Stroke	31,800	3
9	429.9 Heart Disease Unspecified	22,170	2
10	185 Prostate Cancer	22,086	2
11	174.9 Breast Cancer	20,378	2
12	157.9 Pancreas Unspecified	19,082	2
13	153.9 Colon Cancer	19,080	2
14	294.8 Organic Brain Syndrome NEC	17,697	2
15	332.0 Parkinson's Disease	16,524	2
16	294.10 Dementia In Other Diseases w/o Behav. Dist.	15,777	2
17	586 Renal Failure Unspecified	12,188	1
18	585.6 End Stage Renal Disease	11,196	1
19	188.9 Bladder Cancer	8,806	1
20	183.0 Ovarian Cancer	8,434	1
	Year: 2012 Total Patients = 1,328,651		
1	799.3 Debility Unspecified	161,163	12
2	162.9 Lung Cancer	89,636	7
3	783.7 Adult Failure To Thrive	86,467	7
4	428.0 Congestive Heart Failure	84,333	6

TABLE 2—THE TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES, FY 2002, FY 2007, FY 2012—Continued

Rank	ICD–9/Reported principal diagnosis	Total patients	Percentage
5	496 COPD	74,786	6
6	331.0 Alzheimer's Disease	64,199	5
7	290.0 Senile Dementia, Uncomp.	56,234	4
8	429.9 Heart Disease Unspecified	32,081	2
9	436 CVA/Stroke	31,987	2
10	294.10 Dementia In Other Diseases w/o Behavioral Dist.	27,417	2
11	174.9 Breast Cancer	22,421	2
12	153.9 Colon Cancer	22,197	2
13	157.9 Pancreatic Cancer	22,007	2
14	332.0 Parkinson's Disease	21,183	2
15	185 Prostate Cancer	21,042	2
16	294.8 Other Persistent Mental Dis.-classified elsewhere	17,762	1
17	585. 6 End Stage Renal Disease	17,545	1
18	518.81 Respiratory Failure	12,962	1
19	294.11 Dementia In Other Diseases w/Behavioral Dist.	11,751	1
20	188.9 Bladder Cancer	10,511	1

Source: FY 2002, 2007, and 2012 hospice claims data from the Chronic Conditions Warehouse (CCW), accessed on February 14 and February 20, 2013.

Note(s): The frequencies shown represent beneficiaries that had a least one claim with the specific ICD–9 code reported as the principal diagnosis. Beneficiaries could be represented multiple times in the results if they have multiple claims during that time period with different principal diagnoses.

III. Summary of the Provisions of the Proposed Rule

The May 10, 2013 FY 2014 hospice proposed rule (78 FR 27823) included the following clarifications, proposals, and updates:

- Diagnosis reporting on claims;
- Proposed update to the Hospice Quality Reporting Program;
- FY 2014 Rate Update;
- Update on Hospice Payment Reform and Data Collection; and
- Technical and Clarifying Regulations Text Change.

A. Diagnosis Reporting on Claims

The FY 2014 Hospice Wage Index and Payment Rate Update proposed rule clarified appropriate diagnosis reporting on hospice claims. No proposals were made regarding diagnosis coding. These clarifications are not to preclude any clinical judgment in determining a beneficiary's eligibility for hospice services. Eligibility for hospice services is based on meeting the eligibility requirements as stated in § 418.20 of our regulations: ''an individual must be—

(a) Entitled to Part A of Medicare; and

(b) Certified as being terminally ill in accordance with § 418.22.''

1. ICD–9–CM Coding Guidelines

The hospice benefit covers all care for the terminal illness, related conditions, and for the management of pain and symptoms. HIPAA, federal regulations, and the Medicare hospice claims processing manual all require that ICD–9–CM Coding Guidelines be applied to the coding and reporting of diagnoses on hospice claims. Regarding diagnosis reporting on hospice claims, we clarified in our July 27, 2012 FY 2013 Hospice Wage Index notice (77 FR 44247 through 44248) that all providers are required to code and report the principal diagnosis as well as all coexisting and additional diagnoses related to the terminal condition or related conditions to more fully describe the Medicare patients they are treating.

2. Use of Nonspecific Symptom Diagnoses

The proposed rule included additional diagnosis clarifications to address current and ongoing diagnosis reporting patterns noted on hospice claims, more specifically the use of nonspecific, symptom diagnoses and certain dementia diagnoses. In the proposed rule, we clarified that the ICD–9–CM codes of ''debility'' and ''adult failure to thrive'' listed in the ICD–9–CM Coding Guidelines under the classification, ''Symptoms, Signs, and Ill-defined Conditions'', are not to be used as principal diagnoses when a related definitive diagnosis has been established or confirmed by the provider. Therefore, in the proposed rule, we clarified that ''debility'' and ''adult failure to thrive'' should not be used as principal hospice diagnoses on the hospice claim form. When reported as a principal diagnosis, these would be considered questionable encounters for hospice care, and the claim would be returned to the provider for a more definitive principal diagnosis. ''Debility'' and ''adult failure to thrive'' could be reported on the hospice claim as other, additional, or coexisting diagnoses. The principal diagnosis reported should be the condition determined by the certifying hospice physician(s) as the diagnosis most contributory to the terminal decline.

3. Use of ''Mental, Behavioral and Neurodevelopmental Disorders'' ICD–9–CM Codes

The proposed rule also clarified the ICD–9–CM Coding Guidelines for certain dementia codes that are reported on hospice claims. There are several, but not all, codes that fall under the classification, ''Mental, Behavioral and Neurodevelopmental Disorders,'' that encompass multiple dementia diagnoses that are frequently reported principal hospice diagnoses on hospice claims, but are not appropriate principal diagnoses per ICD–9–CM Coding Guidelines.

4. Guidance on Coding of Principal and Other, Additional, and/or Co-Existing Diagnoses

In the proposed rule, we reiterated that diagnosis reporting on the hospice claims should include the appropriate selection of principal diagnoses as well as the other, additional and coexisting diagnoses related to the terminal illness. In the July 27, 2012 FY 2013 Hospice Wage Index notice (77 FR 44247), we provided in-depth information regarding longstanding, existing ICD–9–CM Coding Guidelines. We also discussed related versus unrelated diagnosis reporting on claims and clarified that ''all of a patient's coexisting or additional diagnoses'' related to the terminal illness or related conditions should be reported on the hospice claim. Based on analysis of preliminary claims data from the first quarter of FY 2013 (October 1, 2012 through December 31, 2012), 72 percent

of providers still only report one diagnosis on the hospice claim. This hospice diagnosis data is comparable to the hospice diagnosis data reported in the July 27, 2012 FY 2013 Hospice Wage Index notice (77 FR 44242), in which we stated that over 77 percent of the hospice claims reported only a principal diagnosis.

Information on a patient's related and unrelated diagnoses should already be included as part of the hospice comprehensive assessment and appropriate interventions for the palliation and management of the terminal illness and related conditions should be incorporated into the patient's plan of care, as determined by the hospice interdisciplinary group (IDG).

5. Transition to ICD–10–CM

The proposed rule reminded the hospice industry that ICD–10–CM will replace the ICD–9–CM on October 1, 2014. A critical issue associated with the transition to ICD–10–CM involves the matter of crosswalking between the ICD–9–CM and ICD–10–CM code sets. The term ''crosswalking'' is generally defined as the act of mapping or translating a code in one code set to a code or codes in another code set. (The terms ''crosswalking'' and ''mapping'' are sometimes used interchangeably.) Understanding crosswalking will be important to physicians during the transition phase when learning which new ICD–10 code to use in place of an ICD–9 code. We provided information regarding the crosswalks from ICD–9–CM to ICD–10–CM and this information is available for free and can be downloaded from the NCHS Web site, *www.cdc.gov/nchs/icd/icd10cm.htm.* Hospices should not substitute crosswalking for learning and fully implementing ICD–10–CM into their procedures. Additional information regarding the transition to ICD–10–CM is available through the CMS Web site at: *http://www.cms.gov/Medicare/Coding/ICD10/index.html?redirect=/icd10.*

B. Hospice Quality Reporting Program

- We proposed to eliminate two currently reported measures, the structural measure related to Quality Assurance and Performance Improvement (QAPI) and the NQF #0209 pain measure, and we offered an alternate proposal to retain the currently reported NQF #0209 pain measure until a suitable comfort outcome measure is available as described in section III.B.3 of the FY 2014 hospice wage index and payment update proposed rule (78 FR 27835);
- We proposed to implement the Hospice Item Set (HIS), a standardized patient-level data collection vehicle, effective 7/1/2014 and to utilize the seven NQF-endorsed measures derived from the HIS in the hospice quality reporting program as described in section III.B.4 of the FY 2014 hospice wage index and payment update proposed rule (78 FR 27836); and
- We proposed that hospices begin national implementation of the Hospice Experience of Care Survey by participating in a dry run in January 2015 through March 2015, and then, beginning in April 2015, conduct monthly implementation of the survey through December 2015 to meet the requirements of the 2017 annual payment update as described in section III.B.6 of the FY 2014 hospice wage index and payment update proposed rule (78 FR 27837).

C. FY 2014 Hospice Wage Index and Rates Update

The proposed updates to the hospice rates for FY 2014 are as follows:

- Update the hospice wage index using the 2013 pre-floor, pre-reclassified hospital wage index as discussed in section III.C.1 of the FY 2014 hospice wage index and rate update proposed rule (78 FR 27839);
- Update the hospice wage index taking into account the application of the hospice floor or budget neutrality adjustment factor reduced an additional 15 percent, for a BNAF phase-out of 70 percent as finalized in the FY 2010 hospice wage index final rule (74 FR 39384), as discussed in section III.C.2 of the FY 2014 hospice wage index and rate update proposed rule (78 FR 27840); and
- Apply the hospice payment update percentage, as discussed in section III.C.3 of the FY 2014 hospice wage index and rate update proposed rule, to the FY 2013 hospice payment rates as discussed in section III.C.4 of the FY 2014 hospice wage index and rate update proposed rule (78 FR 27841 through 27842).

D. Update on Hospice Payment Reform and Data Collection

We did not make any payment reform proposals or solicit comments on this section, but included updates and a discussion of payment reform activities, including:

- A discussion of reform options, including the U-shaped curve model, a tiered model that uses the U-shaped curve, a short-stay add-on payment, and case-mix adjustment.
- A discussion of rebasing a portion of the routine home care (RHC) payment rate; adjusting for current costs would reduce the FY 2014 RHC rate by 10.1 percent.
- A discussion of the Office of Inspector General (OIG) and MedPAC recommendations to reduce payments to hospices for RHC patients in nursing facilities, to account for duplication of aide services. The claims visit data on aide services revealed that hospice patients in nursing facilities receiving more visits, but shorter visits than patients at home; however, on average, hospice patients in nursing facilities receive 22 percent more minutes of aide care than hospice patients at home.
- A discussion of reform research findings related to cost reports and general inpatient care (GIP), and a link to the Abt Hospice Study Technical Report and an Abt review of the literature.
- A summary of comments received from a December, 2012 CMS Web site posting about additional data collection on hospice claims; a forthcoming Change Request will finalize the data collection this summer.
- An update on the status of the hospice cost report revisions, which were published as part of a Paperwork Reduction Act notice in the **Federal Register** on April 29, 2013.

E. Technical and Clarifying Regulations Text Change

We proposed a technical change to correct an erroneous cross reference in our regulations text at § 418.311, as discussed in section III.E of the FY 2014 Hospice Wage Index and Rate Update proposed rule (78 FR 27847).

IV. Analysis and Responses to Public Comments

We received approximately 125 comments, many of which contained multiple comments, on the FY 2014 hospice wage index and payment rate update proposed rule. We received comments from various trade associations, private insurers, individual hospices, hospitals, physicians, medical directors, nurses, visiting nurses associations, home health agencies, hospice volunteers, and individuals. We appreciate the numerous thoughtful and insightful comments received and believe that communication and collaboration between CMS and all hospice stakeholders is imperative. The comments received and our responses to these comments are grouped by subject area and are summarized below.

A. Diagnosis Reporting on Hospice Claims

We made no new proposals regarding ICD–9–CM Coding Guidelines in the FY 2014 Hospice Wage Index and Payment Rate Update proposed rule. However, we did make clarifications regarding ICD–9–CM Coding Guidelines for the selection of principal diagnoses and additional diagnoses. These clarifications are not to preclude any clinical judgment in determining a beneficiary's eligibility for hospice services. Eligibility for hospice services is based on meeting the eligibility requirements as stated in § 418.20 of our regulations: ''. . . an individual must be—

(a) Entitled to Part A of Medicare; and

(b) Certified as being terminally ill in accordance with § 418.22.''

Specifically, we clarified the following:

• ''Debility'' or ''adult failure to thrive'' should not be used as a principal hospice diagnosis on the hospice claim form per ICD–9–CM Coding Guidelines. ''Debility'' and/or ''adult failure to thrive'' may be used as another, additional, or coexisting diagnosis on the hospice claim form. If ''debility'' or ''adult failure to thrive'' is reported as the principal diagnosis on the hospice claim forms, these claims will be returned to the provider for more definitive coding.

• Dementia codes classified under ''Mental, Behavioral and Neurodevelopmental Disorders'' are among the top twenty hospice claims reported diagnoses. Many of these codes are not appropriate as principal diagnoses because of manifestation/etiology guidelines or sequencing conventions under the ICD–9–CM Coding Guidelines. Particular attention must be paid to dementia diagnoses which are found under two separate ICD–9–CM classifications: ''Mental, Behavioral, and Neurodevelopmental Disorders'' and ''Diseases of the Nervous System and Sense Organs.'' There are also dementia codes that are classified under ''Diseases of the Nervous System and Sense Organs'' that also have sequencing conventions and, therefore, are not appropriate as principal diagnoses on the hospice claim.

• We provided ICD–9–CM coding guidance regarding the coding of principal and other, additional, and/or coexisting diagnoses. The principal diagnosis should reflect the condition to be chiefly responsible for the services provided. ICD–9–CM Coding Guidelines specify that the circumstances of an inpatient hospital admission diagnosis are to be used in determining the selection of a principal diagnosis. ICD–9–CM Coding Guidelines also state to ''code all documented conditions at the time of the encounter/visit, and require or affect patient care treatment or management.'' The principal diagnosis reported on the hospice claim form should be determined by the hospice as the diagnosis most contributory to the terminal prognosis.

• Hospice providers are expected to report all coexisting or additional diagnoses related to the terminal illness and related conditions on the hospice claim to be in compliance with existing policy, and provide data needed for evaluating potential hospice payment reform methodologies.

• We reminded providers of the transition to ICD–10–CM, which will replace ICD–9–CM on October 1, 2014.

• Crosswalking from ICD–9–CM to ICD–10–CM is important for providers in understanding the transition between these two code sets.

We received 109 comments on diagnosis reporting on hospice claims, which are summarized below according to subsection.

1. ICD–9–CM Coding Guidelines

The hospice benefit covers all care for the terminal illness and related conditions, including the management of pain and symptoms. HIPAA, federal regulations, and the Medicare hospice claims processing manual all require that ICD–9–CM Coding Guidelines be applied to the coding and reporting of diagnoses on hospice claims. Regarding diagnosis reporting on hospice claims, we clarified in our July 27, 2012 FY 2013 Hospice Wage Index notice (77 FR 44247 through 44248) that all providers should code and report the principal diagnosis as well as all coexisting and additional diagnoses related to the terminal condition or related conditions to more fully describe the Medicare patients they are treating.

Comment: Several commenters expressed concern that the coding clarification would require that hospices have a professional coder for coding claims, which would create a financial burden on hospice providers. Some commenters believed that we were asking hospices to hire professional coders. Other commenters thought that we were asking physicians to spend time determining the proper ICD–9–CM code for the claim.

Response: We did not state in the FY 2014 hospice wage index and payment update proposed rule that any hospice provider would be expected or required to have a professional coder to complete the coding on the hospice claims. Our discussion of the coding guidelines in the proposed rule was to assist hospice providers in complying with longstanding policies. In our regulations at 45 CFR 162.1002, the Secretary adopted the ICD–9–CM code set, including The Official ICD–9–CM Guidelines for Coding and Reporting. The CMS' Hospice Claims Processing Manual (Pub 100–04, chapter 11) requires that hospice claims include other diagnoses ''as required by ICD–9–CM Coding Guidelines''. In the proposed rule, we provided guidance from the ICD–9–CM Official Guidelines for Coding and Reporting to highlight coding guidelines for principal and other diagnosis selection, as well as the various coding and sequencing conventions found therein. This clarification of the coding guidelines was in response to the monitoring of diagnostic reporting patterns noted on hospice claims, especially in regards to the reporting of only one diagnosis and the use of diagnoses not appropriate as principal diagnoses per the ICD–9–CM Coding Guidelines. We believe there are ample, available resources in regards to the ICD–9–CM Coding Guidelines to support hospice providers who choose not to have a professional coder complete their hospice claims, including the links provided within the proposed rule. These free resources are available at the following links: *http://www.cms.gov/Medicare/Coding/ICD9ProviderDiagnosticCodes/index.html?redirect=/ICD9ProviderDiagnosticCodes/, http://www.cms.gov/medicare-coverage-database/staticpages/icd-9-code-lookup.aspx,* or on the CDC's Web site at: *http://www.cdc.gov/nchs/data/icd9/icd9cm_guidelines_2011.pdf.*

Additionally, more information regarding guidance for hospice claims coding can be found in the CMS' Hospice Claims Processing manual (Pub 100–04, chapter 11) available at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c11.pdf. Finally, while hospice physicians use their clinical judgment to determine the principal diagnosis and related conditions, we do not require them to determine to the actual codes associated with those diagnoses for inclusion on the hospice claim. Hospices have the flexibility to determine how to take the physicians' information about diagnoses and translate it into the appropriate codes on the claim.*

2. Use of Non-Specific, Symptom Diagnoses

The proposed rule included additional diagnosis clarifications to address current and ongoing diagnosis

reporting patterns noted on hospice claims, more specifically the use of nonspecific, symptom diagnoses and certain dementia diagnoses. In the proposed rule, we clarified that the ICD–9–CM codes of ''debility'' and ''adult failure to thrive'' are listed in the ICD–9–CM Coding Guidelines under the classification, ''Symptoms, Signs, and Ill-defined Conditions'', and are not to be used as principal diagnoses when a related definitive diagnosis has been established or confirmed by the provider. Therefore, in the proposed rule, we clarified that ''debility'' and ''adult failure to thrive'' should not be used as principal hospice diagnoses on the hospice claim form. When reported as a principal diagnosis, these would be considered questionable encounters for hospice care, and the claim would be returned to the provider for a more definitive principal diagnosis. ''Debility'' and ''adult failure to thrive'' could be reported on the hospice claim as other, additional, or coexisting diagnoses. The principal diagnosis reported should be the condition determined by the certifying hospice physician(s) as the diagnosis most contributory to the terminal decline.

Comment: We received numerous comments in support of or acknowledging the need for these diagnostic clarifications and enforcement of existing coding guidelines. Several commenters acknowledged understanding the need to identify a principal hospice diagnosis when a patient has multiple diagnoses instead of using ''debility'' or ''adult failure to thrive.'' Another commenter stated that their hospice program has tried to avoid the use of ''debility'' as a principal hospice diagnosis and agreed that this diagnosis has been over-used nationally; several commenters acknowledged that there has been ''sloppy diagnosing'' with the use of ''debility'' and ''adult failure to thrive.'' One commenter stated that the use of ''debility'' or ''adult failure to thrive'' is most often a ''failure to diagnose.'' One commenter stated that ''debility'' cannot be reported as a cause of the death on a death certificate in his state and that he had to select a different diagnosis for an immediate cause of death as well as a secondary, longer-term related cause. Several commenters asked what to expect regarding the application of the Local Coverage Determination (LCD) guidelines provided by the Home Health and Hospice Medicare Administrative Contractors.

Response: We appreciate that some hospice providers are recognizing the issues regarding the inappropriate use of ''debility'' or ''adult failure to thrive'' as a principal hospice diagnosis reported on the hospice claim and are attempting to take steps to more fully describe their patient populations. We will continue to work with our Home Health and Hospice contractors to ensure that all LCDs will reflect these principal hospice diagnostic coding clarifications and that those eligible Medicare hospice beneficiaries will continue to have access to the benefits of hospice care. This collaboration will not be limited to the release of Change Requests, which can be found on our hospice Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Hospice-Transmittals.html.* Additionally, we encourage all interested stakeholders to participate in the CMS Home Health and Hospice Open Door Forums where questions, concerns and issues can be addressed with specialists within CMS. Information regarding Open Door Forums can be found on our Web site at *http://www.cms.gov/Outreach-and-Education/Outreach/OpenDoorForums/index.html.*

Comment: There were a number of commenters who expressed concern that no longer allowing the use of ''debility'' or ''adult failure to thrive'' as a principal hospice diagnosis would limit or prohibit access to hospice care for Medicare beneficiaries. Commenters stated that by not allowing these two diagnoses to be coded as a principal hospice diagnosis, they believed that beneficiaries would elect hospice later in their disease trajectories. Other commenters felt that eligible beneficiaries would not be admitted to hospice care at all because a single definitive terminal diagnosis could not be determined by the certifying physician. Other commenters stated that it is difficult to determine a single principal terminal diagnosis for beneficiaries with multiple chronic or coexisting conditions.

Response: Patient-centered care is at the core of the Medicare hospice benefit. Our mission is to be effective stewards of public funds, and we are committed to strengthening and modernizing the nation's health care system to provide access to high quality care. We believe that Medicare beneficiaries who are approaching end-of-life are at their most vulnerable state and should be afforded the most comprehensive and responsible clinical judgment. Medicare beneficiaries who are hospice eligible should be fully informed by their health care providers, including hospice providers, as to their conditions contributing to their terminal decline and their treatment options for ongoing care. We are aware that diagnosing diseases and determining prognosis is not always a perfect science. Certifying physicians should use their best clinical judgment in determining the principal diagnosis and related conditions, based on the hospice comprehensive assessment and review of any and all other clinical documentation.

It remains our belief that the goal of hospice care is to provide comprehensive, holistic, and individualized services to eligible Medicare beneficiaries. In order to receive these comprehensive hospice services, Medicare beneficiaries must be certified as terminally ill. This certification is based on the recommendation of the medical director in consultation with, or with input from, the beneficiary's attending physician (if any) and a comprehensive assessment of all body systems. The hospice regulations require that this certification be based on a variety of factors when making the clinical determination that a patient has a life expectancy of 6 months or less, should the illness run its normal course. The regulations in § 418.25(b), Admission to hospice care, state, ''In reaching a decision to certify that the patient is terminally ill, the hospice medical director must consider at least the following information:

- Diagnosis of the terminal condition of the patient.
- Other health conditions, whether related or unrelated to the terminal condition.
- Current clinical relevant information supporting all diagnoses.''

Based on this certification and the Medicare beneficiary's election of the hospice benefit, initial and ongoing comprehensive assessments are conducted to establish and maintain the hospice plan of care. A comprehensive hospice plan of care starts with accurate and thorough assessment and identification of the conditions (including diseases and symptoms) contributing to the terminal prognosis. This comprehensive plan of care is to include all the services and care needed for the management and palliation of the terminal illness and related conditions. This hospice plan of care is to include the following, per the Hospice Conditions of Participation:

- Interventions to manage pain and symptoms;
- A detailed statement of the scope and frequency of services necessary to meet the specific patient and family needs;
- Measurable outcomes anticipated from implementing and coordinating the plan of care;

• Drugs and treatment necessary to meet the needs of the patient;

• Medical supplies and appliances to meet the needs of the patient; and,

• The interdisciplinary group's documentation of the patient's or representative's level of understanding, involvement, and agreement with the plan of care, in accordance with the hospice's own policies, in the clinical record (§ 418.56(c)).

A hallmark clinical characteristic of both ''debility'' and ''adult failure to thrive'' is the presence of multiple primary conditions. According to ICD 9 Coding Guidelines, codes that fall under the classification ''Symptoms, Signs, and other Ill-defined Conditions'', such as ''debility'' and ''adult failure to thrive'', can only be used as a principal diagnosis when a related definitive diagnosis has not been established or confirmed by the provider. The individual diagnosed with ''debility'' or ''adult failure to thrive'' may have multiple comorbid conditions that individually, may not deem the individual to be terminally ill. However, the collective presence of these multiple comorbid conditions will contribute to the terminal prognosis of the individual. Additionally, Medicare beneficiaries waive their right to Medicare payment for curative treatments under the Medicare Hospice Benefit; hospice providers are clinically and ethically responsible for ensuring that eligible Medicare beneficiaries are made fully aware of all of the conditions contributing to their terminal decline so they can make the informed decision as to which treatment approaches they would like to pursue.

As ''debility'' and ''adult failure to thrive'' are nonspecific, ill-defined, symptom diagnoses, they should not be reported as principal diagnosis. Rather, the condition that the hospice medical director determines is most contributory to the terminal prognosis should be reported as the principal diagnosis on the hospice claim and all other related conditions to the terminal prognosis should be reported as additional diagnoses. Therefore, the claim should include not only a principal diagnosis, but all other related diagnoses as well, to more fully describe the clinical picture of the terminally ill individual. In fact, reporting all of the related conditions that are contributing to the terminal prognosis on the hospice claim may also further support the eligibility for hospice services. Therefore, we do not believe that these coding clarifications will or should create any limitations or barriers to accessing Medicare hospice services by eligible Medicare beneficiaries, as coding on claims occurs after the beneficiary is fully informed and has chosen to elect and access hospice services. In fact, adherence to the ICD–9–CM Coding Guidelines should promote access to appropriate and comprehensive hospice services. Medicare beneficiaries should always expect the right care at the right time and care that best suits their individual clinical status as well as their treatment preferences. Further, some medical experts have argued that these non-specific, ill-defined terms should be abandoned because they do not assist in the thoughtful evaluation of patients who may have treatable, underlying conditions.[4] We are clarifying these coding guidelines so that hospice providers can be more intentional about addressing all of the beneficiary's identified needs as he or she approaches end-of-life. One physician commenter stated that he reviews old records, calls attending physicians, and uses professional judgment to thoughtfully evaluate his patients for hospice care.

Analysis conducted by our hospice payment reform contractor, Abt Associates, of Medicare hospice beneficiaries with ''debility'' or ''adult failure to thrive'' reported as their principal hospice diagnosis, but no reported secondary diagnoses in FY 2012 revealed that over 50 percent of these hospice beneficiaries had seven or more chronic conditions and 75 percent had four or more chronic conditions as identified in the Chronic Condition Data Warehouse. The Chronic Condition Data Warehouse is a research database that includes Medicare, Medicaid assessments and Part D drug event data to support research designed to improve the quality of care and reduce cost and utilization. These chronic conditions include: Alzheimer's disease, non-Alzheimer's dementia, senile degeneration of the brain, congestive heart failure, chronic obstructive pulmonary disease, ischemic heart disease, chronic kidney disease, and various cancer diagnoses. While these conditions are labeled as chronic, many of these are often terminal conditions as well, while others are contributory to the terminal prognosis of the individual. See Table 3 below:

TABLE 3—CHRONIC CONDITIONS OF THOSE BENEFICIARIES WITH ''DEBILITY'' OR ''ADULT FAILURE TO THRIVE'' REPORTED AS PRINCIPAL HOSPICE DIAGNOSIS BUT WITH NO SECONDARY DIAGNOSES REPORTED, FY 2012

	Percent
Percent of Beneficiaries with Anemia	76
Percent of Beneficiaries with Alzheimer's Disease and Related Disorders or Senile Dementia	66
Percent of Beneficiaries with Rheumatoid Arthritis/Osteoarthritis	66
Percent of Beneficiaries with Ischemic Heart Disease	63
Percent of Beneficiaries with Depression	55
Percent of Beneficiaries with Heart Failure	53
Percent of Beneficiaries with Chronic Kidney Disease	43
Percent of Beneficiaries with Chronic Obstructive Pulmonary Disease and Bronchiectasis	39
Percent of Beneficiaries with Osteoporosis	39
Percent of Beneficiaries with Alzheimer's Disease	38
Percent of Beneficiaries with Stroke	34
Percent of Beneficiaries with Atrial Fibrillation	28
Percent of Beneficiaries with Hip/Pelvic Fracture	20
Percent of Beneficiaries with Asthma	13
Percent of Beneficiaries with Acute Myocardial Infarction	9
Percent of Beneficiaries with Breast Cancer	7
Percent of Beneficiaries with Prostate Cancer	5
Percent of Beneficiaries with Colorectal Cancer	5
Percent of Beneficiaries with Lung Cancer	2

[4] Pacala, J.T., Sullivan, G.M. eds. *Geriatrics Review Syllabus: A Core Curriculum in Geriatric Medicine.* 7th ed. New York: American Geriatrics Society; 2010.

TABLE 3—CHRONIC CONDITIONS OF THOSE BENEFICIARIES WITH ''DEBILITY'' OR ''ADULT FAILURE TO THRIVE'' REPORTED AS PRINCIPAL HOSPICE DIAGNOSIS BUT WITH NO SECONDARY DIAGNOSES REPORTED, FY 2012—Continued

	Percent
Percent of Beneficiaries with Endometrial Cancer	1

Source: FY 2012 hospice claims data from Chronic Conditions Warehouse (CCW), accessed on June 27, 2013. N = 184,924 hospice beneficiaries with principal diagnosis of ''debility'' or ''adult failure to thrive'' with no reported secondary diagnoses on the hospice claim.

Comment: Several commenters stated that ''Debility'' is an allowable principal diagnosis under *ICD–9–CM Coding Guidelines* if there is no established or confirmed definitive diagnosis.

Response: While the ICD–9–CM Coding Guidelines state ''codes that describe symptoms, signs, as opposed to diagnoses, are acceptable for reporting purposes when a related definitive diagnosis has not been established (confirmed) by the provider,'' we believe that in encompassing the true nature of the holistic hospice philosophy, these ill-defined diagnoses are not appropriate as the principal diagnosis on the hospice claim where an individual has typically had multiple health care encounters that have eventually led to their election of hospice services and physician certification as being terminally ill. In the FY 2014 Hospice Wage Index and Payment Rate Update proposed rule (78 FR 27831), we clarified that if any or all of these multiple primary conditions (as characterized under ''debility'' and ''adult failure to thrive'') have been or are being treated, or if medications have been prescribed for the patient to treat or manage any or all of these multiple primary conditions, we believe that these conditions meet the criteria of being established and/or confirmed by the beneficiary's health care provider and, thus, ''debility'' or ''adult failure to thrive'' would not be appropriate as the principal hospice diagnosis per ICD–9–CM Coding Guidelines. For those beneficiaries who have not had multiple health care encounters prior to hospice election, it is that much more important that certifying physicians make a thoughtful evaluation of all of the conditions contributing to an individual's terminal prognosis. The physician is responsible for making sure that the individual electing hospice care is fully aware of all treatment options available in order for that individual to make the most informed treatment decisions.

Comment: Several commenters noted that hospice eligibility is based on the prognosis and not the diagnosis, and some expressed concern as to why CMS is so focused on the diagnosis.

Response: To address the comments regarding the focus on diagnosis rather than prognosis, eligibility for hospice services under the Medicare Hospice Benefit has always been based on the prognosis of the individual, not diagnosis, since the implementation of the Medicare Hospice Benefit in 1983. As stated in the proposed rule on August 22, 1983, ''The regulations would specify, consistent with the requirements of sections 1812 and 1814(a)(8) of the Act, that to be eligible for Medicare coverage of hospice care, an individual must be entitled to Medicare Part A, and must be certified as terminally ill'' (48 FR 38147). These criteria have not changed, and we believe that all eligible individuals will continue to have access to the Medicare Hospice Benefit. However, certifications and recertifications of hospice eligibility are statutory requirements for coverage and payment. The content of the certifications and recertifications must conform to the following requirements at § 418.22(b), Content of certification. These requirements include, but are not limited to the following:

- The certification must specify that the individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course.
- Clinical information and other documentation that support the medical prognosis must be in the medical record with the written certification.
- The physician must include a brief narrative explanation of the clinical findings that supports a life expectancy of 6 months or less as part of the certification and recertification forms or as an addendum to these forms. On hospice claims however, we are not seeing the level of completeness of diagnosis reporting as is required for the certification and recertifications. As stated in the proposed rule, data analysis of preliminary hospice claims data from the first quarter of FY 2013 (October 1, 2012 through December 31, 2012) showed that over 72 percent of providers only report one diagnosis on the hospice claim. Further, analysis of third quarter FY 2013 data (April 1, 2013 through June 30, 2013 as of July 1, 2013) showed that 69 percent of providers still only report one diagnosis on the hospice claim. The hospice claims processing manual (IOM Publication #100–04) states that principal and other diagnosis codes are to be reported on the hospice claims form per *ICD–9–CM Coding Guidelines.*

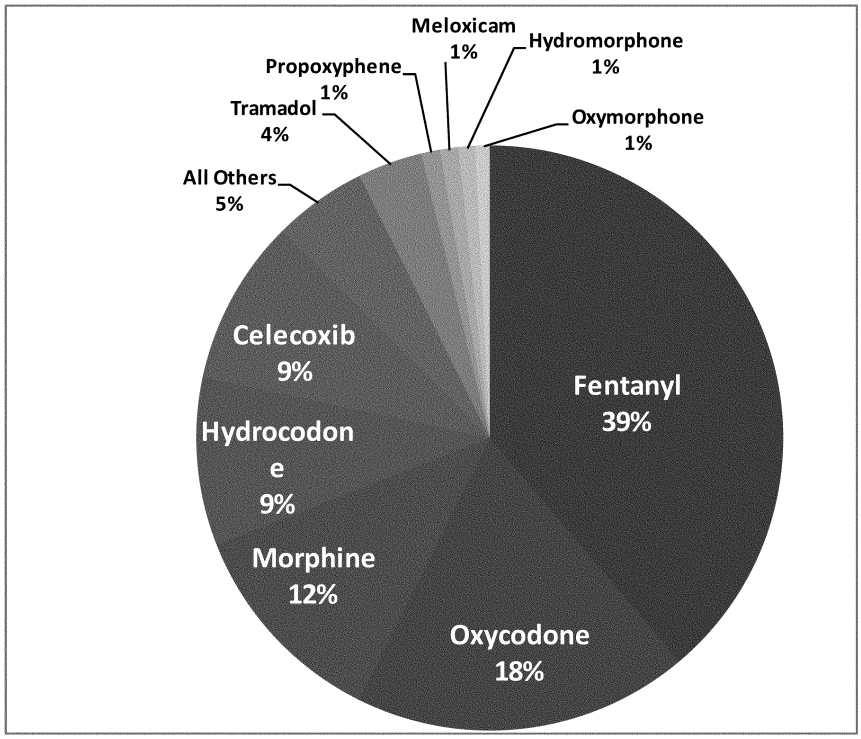
Comment: Some commenters felt that the only reason for the focus on diagnosis is for CMS to ''save money'' while shifting costs to the elderly and that the per diem reimbursement is being unbundled with these coding clarifications.

Response: The goal of any clarification of longstanding, existing policies such as those relating to ICD–9–CM Coding Guidelines is to more fully describe Medicare beneficiaries who are receiving hospice care. We are also accountable for maintaining the integrity and fiscal viability of the Medicare Trust Funds. Diagnosis information on claims is also important as we move forward with hospice payment reform. Section 3132(a) of the Affordable Care Act for hospice payment reform requires that payment reforms occur no earlier than October 1, 2013, and that the revisions to the payments implemented result in the same estimated amount of aggregate expenditures for hospice care in the fiscal year that the revisions are implemented as would have been made for such care in such fiscal year if such revisions had not been implemented. That means any monies saved from any implemented reform model must go back into the hospice benefit. The goal of hospice payment reform is to ensure appropriate distribution of Medicare Trust Funds by better aligning payments with resource use, to pay more accurately.

However, there has been some concern, as noted by the Office of the Inspector General, that some hospices are not providing the full range of required hospice services, most notably drugs, through their per diem reimbursement to Medicare hospice beneficiaries (OIG Report A–06–10–00059, June, 2012). Data analysis conducted by our hospice payment reform contractor, Abt Associates, identified that some hospice-related drugs for Medicare hospice beneficiaries are being submitted through Part D prescription programs instead of being covered under the Medicare Hospice Benefit as required by the statute. In 2010, 773,168 Medicare hospice

beneficiaries were enrolled in Part D. Of these individuals, almost 15 percent received over 334,000 analgesic prescriptions through Part D during hospice enrollment totaling $13,000,430. See Figure (1) below.

Figure (1): Analgesics Billed To Part D While Enrolled in Hospice



Source: FY 2010 Hospice beneficiaries matched with FY 2010 Part D claims from the Chronic Conditions Warehouse (CCW). Accessed on April 22, 2013.

This total covered only *one* drug class. During 2010, Medicare hospice beneficiaries received 5,878,425 prescriptions of all classes totaling $351,750,202. These drug classes encompassed other hospice-related drugs including medications for nausea, shortness of breath, anxiety, constipation, diarrhea, depression, as well as disease-specific medications for the reported principal hospice diagnosis. We continue to conduct ongoing analysis regarding the claims for Medicare hospice beneficiaries to ensure that hospice providers are covering the required services, drugs, supplies, and DME as required by our regulations at 42 CFR 418.200, 418.202, and 418.204.

The hospice reimbursement structure has been a bundled per diem rate since the implementation of the Medicare Hospice Benefit. It is not our intent to ''unbundle'' any of the services required to be provided by hospices. However, as shown in the above figure, it is evident that many drugs used for hospice pain management are being ''unbundled'' from the hospice per diem rate, and this is a concerning trend that we do not support.

Therefore, we continue to support the ICD–9–CM Coding Guidelines and stand by the ICD–9–CM coding clarifications in the proposed rule. These coding guidelines are longstanding policies that we have reiterated in past rules and notices. No new proposals are being made; rather we are ensuring that these existing policies are being adhered to. As such, ''debility'' and ''adult failure to thrive'' are not allowable as reportable principal diagnoses on the hospice claims. However, we recognize that this may be a paradigm shift for some hospices in the way they have coded in the past. Therefore, in recognizing the process and systems changes that need to be put in place, claims received with these codes in the principal diagnosis field will be returned to the provider for more definitive coding of the principal diagnosis and additional diagnoses, effective for claims dated on or after October 1, 2014. This will not affect claims submitted before October 1, 2014. ''Debility'' and ''adult failure to thrive'' may be reported on the hospice claims as additional diagnoses in the appropriate claim fields.

Although claims will not be returned to the provider until the start of FY 2015, we remind hospices that they are currently, and have always been, required to code *all* related diagnoses in the additional coding fields on the hospice claim and thus should be doing so now. We will continue to monitor and analyze hospice claims data and may make further clarifications in the future if necessary. In addition to the principal diagnosis field, the paper UC–04 claim form has up to 17 additional diagnosis fields and the electronic 837I 5010 claim form has up to 24 additional diagnosis fields allowing for adequate space for the coding all conditions related to the beneficiary's terminal prognosis.

Comment: Many comments were also received with specific clinical scenarios regarding beneficiaries with a reported hospice diagnosis of ''debility'' or ''adult failure to thrive.'' These comments went on to list these beneficiaries' comorbidities including COPD, atrial fibrillation, congestive heart failure, and stroke, to name a few.

Other comments included clinical presentations, rather than specific diagnoses, and felt that ''debility'' or ''adult failure to thrive'' were the only appropriate diagnoses that could be assigned. These commenters also report that they were unable to determine the principal terminal diagnosis for these beneficiaries as the individual conditions did not meet criteria for being terminally ill per LCDs. Finally, additional commenters asked about quantifying comorbidities and whether Medicare guidelines for eligibility would be updated to support comorbidities as terminal diagnoses.

Response: As referenced in our regulations at § 418.22(b)(1), to be eligible for Medicare hospice services, the beneficiary's attending physician (if any) and the hospice medical director must certify that the individual is terminally ill, that is, the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course as defined in section 1861(dd)(3)(A) of the Act and set out at in § 418.22. Therefore, eligibility under the Medicare Hospice Benefit is based on the prognosis of the individual and not only a single diagnosis or multiple diagnoses. As generally accepted by the medical community, the term ''terminal illness'' refers to an advanced and progressively deteriorating illness and the illness is diagnosed as incurable. When an individual is terminally ill, many health problems are brought on by underlying condition(s), as bodily systems are interdependent, meaning that there are multiple conditions, and hence diagnoses, contributing to the terminal prognosis. In the proposed rule, we said that the ICD–9–CM Coding Guidelines, referring to the selection of the principal diagnosis, state to list the diagnosis which is ''chiefly responsible for the services provided and to list additional codes that describe any coexisting conditions.'' We clarified that the principal diagnosis listed should be determined by the certifying hospice physician(s) as the diagnosis most contributory to the terminal prognosis. Furthermore, ICD–9–CM Coding Guidelines state that when there are two or more interrelated conditions (such as diseases in the same ICD–9–CM chapter or manifestations characteristically associated with a certain disease) potentially meeting the definition of principal diagnosis, either condition may be sequenced first, unless the circumstances of the admission, the therapy provided, the Tabular List, or the Alphabetic Index indicate otherwise. In the unusual instance when two or more diagnoses equally meet the criteria for principal diagnosis as determined by the circumstances of admission, diagnostic workup and/or therapy provided, and the Alphabetic Index, Tabular List, or other coding guidelines do not provide sequencing direction, any one of the diagnoses may be sequenced first. The ICD–9–CM Coding Guidelines are clear that all conditions contributing to the need for services should be listed.

One commenter provided the following clinical scenario regarding an individual with a hospice claims-reported principal diagnosis of ''debility:''

> ''A patient has dilated cardiomyopathy and arrhythmia and has a functional classification of NYHA Class III as he has symptoms with activity but not at rest. He also has pulmonary fibrosis causing shortness of breath with activity. His PPS has declined to 50 percent in the last 3 months and he now needs to use a walker and the assistance for one person ambulating <10 ft. His weight has declined by 10 percent in the last six months, and he states that his appetite has decreased to eating breakfast and drinking two supplements during the day. He has been hospitalized two times in the past year for pneumonia and was hospitalized last month for arrhythmia requiring medication adjustments. He does not want further hospitalizations.''

In this scenario, there are multiple conditions listed, including dilated cardiomyopathy, arrhythmia and pulmonary fibrosis. Though any of these conditions, individually, may not deem the individual as terminally ill, the progressive nature of these diseases as well as the collective presence of these multiple comorbid conditions will contribute to the terminal prognosis of the individual. We are clarifying that in a scenario such as this, the certifying physician would select the condition he or she feels is most contributory to the terminal prognosis, based on information in the comprehensive assessment, other relevant clinical information supporting all diagnoses, and his or her best clinical judgment. We are clarifying that this principal diagnosis, along with the other related diagnoses, would be included on the hospice claim. The physician's clinical judgment does not negate the fact that there must be a basis for hospice certification. A hospice needs to be certain that the physician's clinical judgment can be supported by clinical information and other documentation that provide a basis for the certification of a life expectancy of six months or less if the illness runs its normal course.

Additionally, the LCDs state that the terminal illness eligibility guidelines provided therein are applicable to all hospice patients regardless of diagnosis. The LCD guidelines are intended to be used to identify any Medicare beneficiary whose current clinical status and anticipated progression of disease is more likely than not to result in a life expectancy of six months or less. LCDs are utilized to determine eligibility for Medicare hospice services and not to determine the appropriate diagnoses to code on hospice claims.

The eligibility requirements for Medicare hospice services were stated above in a previous response. Eligibility under the Medicare Hospice Benefit is based on the prognosis of the individual and these criteria are not specific to or limited by any one condition, multiple conditions or presence of comorbidities. Rather, the certification of terminal illness is based in the unique clinical picture of the individual that is reflected in the comprehensive assessment and other clinical records and documentation that deems the person as having a life expectancy of six months or less, should the illness run its normal course. Therefore, the Medicare Hospice Benefit eligibility requirements will not change as a result of the clarifications in the proposed rule. We believe that the certifying physicians have the best clinical experience, competence and judgment to make the determination that an individual is terminally ill. We continue to require the reporting of all related comorbidities, regardless of the quantity, in the hospice clinical record and on the hospice claims.

Comment: We received several comments regarding whether the reported principal diagnosis on the Certificate of Terminal Illness needs to be changed for current hospice beneficiaries where ''debility'' or ''adult failure to thrive'' was reported as the principal terminal condition.

Response: The regulations at § 418.22(b) state that that the certification include—(1) The certification must specify that the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course; (2) Clinical information and other documentation that support the medical prognosis must accompany the certification and must be filed in the medical record with the written certification as set forth in paragraph (d)(2) of this section. Initially, the clinical information may be provided verbally, and must be documented in the medical record and included as part of the hospice's eligibility assessment; (3) The physician must include a brief narrative explanation of the clinical findings that supports a life expectancy of 6 months or less as part of the

certification and recertification forms, or as an addendum to the certification and recertification forms; (4) The physician or nurse practitioner who performs the face-to-face encounter with the patient described in paragraph § 418.22(a)(4) must attest in writing that he or she had a face-to-face encounter with the patient, including the date of that visit. The attestation of the nurse practitioner or a non-certifying hospice physician shall state that the clinical findings of that visit were provided to the certifying physician for use in determining continued eligibility for hospice care; and (5) All certifications and recertifications must be signed and dated by the physician(s), and must include the benefit period dates to which the certification or recertification applies.

Certifications (of which the narrative is a part) are based on prognosis, not diagnosis as described above in the Code of Federal Regulations. Claims should include a principal diagnosis and all related diagnoses which form the prognosis. Certifications are completed no more than 15 days prior to the start of the benefit period. A new certification is not required simply because a beneficiary's principal diagnosis changes nor do benefit periods or election status change simply because a principal diagnosis changes.

Comment: We received some comments expressing concern that no longer allowing the use of ''debility'' and ''adult failure to thrive'' as principal hospice diagnoses would mean that Medicare hospice beneficiaries would be forced into a Medicare ''cookie cutter'' mold diagnosis. Several commenters stated that this would mean expensive diagnostic testing and/or hospitalizations to determine the terminal condition. Some commenters question what the expectations are for those people who are just ''dying of old age'' and some asked if CMS would rather see ''otherwise healthy but elderly patients experience multiple hospital admissions and nursing home stays.'' Another commenter stated that doctors may feel compelled to ''make-up'' diagnoses to satisfy this coding clarification. One commenter asked if all codes under the classification of ''Symptoms, Signs, and Ill-defined Conditions'' are included in these clarifications.

Response: As stated above, these ICD–9–CM coding clarifications do not preclude the clinical judgment of the certifying physician(s) regarding the hospice eligibility of any given Medicare beneficiary; rather, they are to ensure that all principal and diagnoses related to the terminal prognosis are captured on the Medicare hospice claims to more accurately describe hospice beneficiaries receiving the services, drugs, supplies, and DME hospices are required to cover under the regulations at § 418.200, § 418.202, and § 418.204. A non-specific, ill-defined symptom diagnosis such as ''debility'' and ''adult failure to thrive'' is more of a catch-all diagnosis in that a wide variety of principal and/or comorbid conditions contribute to these syndromes. Given the complexity of a hospice patient, with multiple conditions often contributing to the terminal prognosis, we are stating that all diagnoses contributing to (that is, related to) the terminal prognosis of the individual are to be reported on the hospice claims in order to account for the individual needs of each and every Medicare hospice beneficiary.

In evaluating an individual for hospice eligibility, and especially when evaluating an individual who has the clinical characteristics found under ''debility'' or ''adult failure to thrive'', ''medical history is probably more important than physical examination or laboratory testing as failure to thrive commonly occurs over the course of months and common diagnostic testing has generally been done previously.[5] '' Therefore, it is our belief that an individual who has elected hospice care and has been determined to be terminally ill by a certifying physician has more than likely already been assessed, treated and evaluated by health care providers, not limited to just hospice providers, prior to coming to the decision to elect hospice services and waive the right to Medicare payment for other curative services. Having all related conditions reported on the hospice claim form, and not just a single diagnosis, such as an ill-defined, symptom diagnosis, will ensure that hospices are aware of and provide all of the expert care, including services, drugs, supplies, and DME, that a Medicare hospice beneficiary requires as he or she approaches end-of-life.

In the rare event that no single definitive terminal diagnosis (or diagnoses) can be determined by the certifying physician, whether from lack of clinical documentation or patient refusal for diagnostic work-up, then the expectation would be that all conditions that are present at the time of hospice certification that deem the individual as terminally ill would be reported on the hospice claim. One example provided by a commenter is as follows:

An 85 year old patient with dysphagia, decreased oral intake, malnutrition, weight loss, BMI of 18.6 upon admission, decreasing functional status, progressed from a walker to chair to bed in less than six months, but with no underlying diagnoses. This patient was determined to be terminally ill by the certifying physician and this patient was entered into hospice services.

In this example, while no organ-based diagnosis could be confirmed by the certifying physician, the clinical record reflects that this patient was suffering from malnutrition, dysphagia, and decreased functional status and muscle weakness.

Eligibility for hospice services is not limited by only disease-specific ICD–9–CM codes. There are ICD–9–CM codes for all of the clinical presentations listed above. This clinical scenario has been documented in the comprehensive assessment, and there is a clinical history of this patient's decline. CMS's expectation is to code these clinical presentations on the claim as they are listed in the clinical record. The condition the physician feels is most contributory to the terminal prognosis would be reported first on the hospice claim form, along with all other related conditions. There appears to be some confusion and disconnect from the comments received regarding the coding expectations. The rationale for these clarifications is not to limit or prohibit access to hospice services, and we expect hospice providers to render the hospice care needed for those eligible individuals. We are only clarifying to code this level of specificity on the hospice claim form so we have an accurate clinical picture of those Medicare beneficiaries that are receiving hospice care under their Medicare Hospice Benefit. This expectation for specificity in claims coding is found in every other health care setting for Medicare beneficiaries—inpatient, outpatient, home health, skilled nursing facilities, acute rehabilitation facilities and in long term care hospitals. Hospices are expected to follow the same level of specificity especially given the complexity of the hospice patient population.

We recognize that this may be a great departure from the way some hospice providers have been accustomed to coding on hospice claims. Ongoing analysis of the hospice claims reveals that a majority of hospices are coding a single terminal diagnosis. However, eligibility should always have been based on the terminal prognosis of the patient, and this prognosis would typically involve more than one diagnosis. Specifically, as stated previously, analysis of third quarter FY

[5] Verdery, R. (1997). Clinical Evaluation of Failure to Thrive in Older People. Clinics in Geriatric Medicine. 13(4), 769–778.

2013 data (April 1, 2013 through June 30, 2013 as of July 1, 2013) showed that 69 percent of providers still only report one diagnosis on the hospice claim. Prognosis, as many commenters have noted, is based on a multitude of clinical processes. We expect hospices to code these multiple clinical processes. This may be difficult for some providers to accept as they may not understand how malnutrition, anemia, or depression, for example, could be reported as a principal hospice diagnosis. However, many commenters provided clinical scenarios in which their patients had one or all of these clinical presentations that was contributing to the terminal prognosis of the individual. We expect hospice providers to take a holistic approach to diagnostic coding on the claims form, reporting the principal diagnosis and all related diagnoses.

According to § 418.22(b)(3), Content of certification, ''The physician must include a brief narrative explanation of the clinical findings that supports a life expectancy of six months or less as part of the certification and recertification forms; or as an addendum to the certification and recertification forms.'' Note that ''clinical findings'' are included in the determination of terminal prognosis, and hospice eligibility is not limited by or to a single diagnosis or diagnostic test result(s). Therefore, expensive diagnostic testing or hospitalizations are not a requirement for determining whether an individual meets Medicare hospice eligibility criteria if the individual's clinical circumstances are evident in that the conditions present contribute to the terminal prognosis of the individual. Oftentimes, if an individual has reported a past, resolved problem in their medical history, and that problem could cause the symptom syndromes of ''debility'' or ''adult failure to thrive'', that problem is the most likely one underlying the patient's presentation.[6] The expectation remains that hospice providers, using their best clinical judgment, knowledge, and expertise, will ''paint'' a detailed picture of their patients to more fully describe Medicare hospice patients.

If a Medicare beneficiary is reported to be ''dying of old age'' or ''otherwise healthy, but elderly,'' we believe that characterization of the beneficiary's condition is inconsistent with classifying the individual as terminally ill. Eligibility criteria for the Medicare Hospice Benefit do not include an age requirement, and advanced age alone is inadequate documentation of terminal prognosis.

It is normal clinical practice for health care providers to fully inform their patients about their health status. An eligible beneficiary who is considering hospice, and who has not seen a doctor in years, should be fully informed by the potential hospice provider about the conditions contributing to their terminal prognosis and their palliative treatment options for ongoing care.

Often, many other treatable health conditions could be contributing to the clinical characteristics associated with ''debility'' and ''adult failure to thrive.''[7] These conditions may include: Alzheimer's Disease, depression, primary anorexia, diabetes, cancer, chronic lung disease, stroke, chronic urinary tract infections, chronic steroid use, medication reactions, just to name a few. Any eligible individual (or representative) who is electing hospice under the Medicare Hospice Benefit must acknowledge that he or she has been given a full understanding of the palliative rather than the curative nature of hospice care, as it relates to the individual's terminal illness (§ 418.24(b)(2)). Upon electing the Medicare hospice benefit, an eligible patient acknowledges his/her understanding that Medicare will no longer pay for curative treatment for the terminal illness and related conditions, and thus the patient is essentially waiving curative treatment under Medicare, and instead elects to receive palliative care to manage pain or symptoms. It is the hospice provider's responsibility to ensure that the individual is fully informed and acknowledges understanding that he or she is essentially waiving curative treatment and electing only palliative care, so the individual (or representative) can make his or her own informed decision.

The expectation remains that all conditions (hence, diagnoses) that are contributing to (that is, related to) the terminal prognosis of the individual would be reported on the hospice claims to fully represent the individual's clinical status and the hospice interventions that are being provided to address the individual's needs.

We do not endorse ''making up'' a diagnosis in order for hospice claims submission. We believe that beneficiaries' physicians are in the best clinical position to determine those conditions that are contributing to the terminal prognosis of their patients. We expect that they will use responsible decision making to determine the diagnosis contributing most to the terminal prognosis utilizing the information from the clinical records and the comprehensive assessments. While the ICD–9–CM Coding Guidelines for ''Symptoms, Signs and Ill-defined Conditions'' do apply for all codes under this ICD–9–CM classification, we are currently focusing on the two most frequently reported hospice claims diagnoses from this classification, ''debility'' and ''adult failure to thrive.'' However, we will continue to monitor the diagnostic coding patterns on hospice claims for any further issues or clarifications that may be needed in this regard.

Comment: A few commenters suggested, for those cases reported with ''debility'' or ''adult failure to thrive'' as the principal diagnosis, there should be a mandatory medical review rather than these patients not receiving hospice care or to only ''punish'' those that have abused ''debility.'' One commenter suggested that CMS limit the number of patients per hospice with ''debility'' and ''adult failure to thrive'' with a 3 percent cap.

Response: As noted previously, ''debility'' and ''failure to thrive'' comprised 20 percent of the Medicare hospice population in FY 2012. This is a substantial number of individuals that hospice providers are saying have no other diagnoses or conditions that could be determined or confirmed. Conducting mandatory medical reviews on each and every one of these cases would require substantial administrative burden and costs. Rather, we are not stating that individuals with the clinical manifestations of ''debility'' and ''adult failure to thrive'' are ineligible for hospice services under the Medicare Hospice Benefit. Eligibility is determined by the certifying physician and based on the review of the clinical records and comprehensive assessment. These clarifications are to ensure that hospice providers are fully describing their Medicare hospice patients, which should assist them in fully understanding and treating all of the conditions contributing to the terminal prognosis and not just a single terminal diagnosis.

It is our belief that hospice providers would not support having another cap requirement regarding their census populations. We recognize there are many new and ongoing requirements that hospice providers must fulfill in addition to providing high-quality, end-of-life care for Medicare beneficiaries.

[6] Verdery, R. (1997). Clinical Evaluation of Failure to Thrive in Older People. Clinics in Geriatric Medicine. 13(4), 769–778.

[7] Verdery, R. (1997). Clinical Evaluation of Failure to Thrive in Older People. Clinics in Geriatric Medicine. 13 (4), 769–778.

Therefore, it is not our intent, at this time, to implement any new cap requirements or ''punishments'' on hospice providers with these coding clarifications. We expect that hospice providers will continue to assess and evaluate their own organizational policies and processes to ensure that they are able to meet requirements and to continue to meet the needs of their patients.

Comment: One commenter stated, ''The need to document secondary diagnoses is recognized. It was actually commonly done in the pre-electronic record (EMR) days, but got lost by many hospices with limitations in software systems''. One commenter stated that barriers existed with electronic medical record systems that did not allow additional diagnoses to flow to the claim. These commenters went on to say that many of these barriers have been removed and that the majority of hospice providers are either now in compliance with the requirement to include multiple diagnoses or are in the process of implementing procedures and technology in order to be in compliance. One commenter stated that their hospice software vendor has not developed a process to allow for inclusion of related diagnoses on their claims forms. This commenter went on further to say that it would be an obstacle for hospice providers to make software changes to comply with the ICD–9–CM coding clarifications regarding the reporting of related diagnoses. Several commenters stated that the occurrence of reporting a principal diagnosis of ''debility'' or ''adult failure to thrive'' is uncommon.

Response: We appreciate the comment regarding the common hospice practice of including secondary diagnoses in the past. While we understand that software systems may pose some obstacles in reporting more than one diagnosis on the hospice claim, we also believe that this practice of reporting the conditions contributing to (that is, related to) the terminal prognosis is one that has been communicated since the implementation of the hospice benefit. The expectation is for this practice to continue and for hospice providers to be active in ensuring that their processes and systems promote the hospice philosophy of holistic, comprehensive care and the intent of the Medicare Hospice Benefit in supporting that access for the Medicare population.

As mentioned in the proposed rule, there are hospice providers who are reporting more than just the principal diagnosis, so it appears that there are electronic systems currently in place that allow for the inclusion of multiple diagnoses. However, data analysis of hospice claims continues to show that the majority of hospice providers (69 percent of hospice providers, as stated in previous responses) continue to report only one diagnosis on hospice claims. Additionally, software systems are typically designed with end user input so we believe those software systems that only allow one diagnosis were because those hospices communicated to the software vendors that their needs for claims coding were to include only one diagnosis. We expect hospices to articulate to the vendors the requirements of the software that complies with our requirements. Furthermore, we have reiterated in past notices and rules regarding our expectation of the inclusion of the principal hospice diagnosis as well as all related conditions. As mentioned previously, in addition to the principal diagnosis field, the paper UC–04 claim form has up to 17 additional diagnosis fields, and the electronic 837I 5010 claim form has up to 24 additional diagnosis fields allowing for adequate space for the coding all conditions contributing to (that is, related to) the beneficiary's terminal condition. Therefore, we believe that we have provided ample notice and time for hospice providers to evaluate their claims software systems to make the necessary systems adjustments for the inclusion of all related diagnoses. However, we also recognize that this will require some software systems adjustments for several hospice providers, and we are sensitive to those time requirement needs. To address the comments regarding the rare occurrences of the use of ''debility'' or ''adult failure to thrive'' as a principal diagnosis, a review of 2011 and 2012 data from the Chronic Condition Warehouse revealed the following information (See Table 4 and Table 5):

TABLE 4—PERCENTAGE OF HOSPICE PROVIDERS EVER REPORTING ''DEBILITY'' OR ''ADULT FAILURE TO THRIVE'' AS THE PRINCIPAL HOSPICE DIAGNOSIS WITH NO REPORTED SECONDARY DIAGNOSES

Condition	*FY 2011* %	*FY 2012* %
Debility	89.3	88.9
Adult Failure to Thrive	87.3	87.6

Source: FY 2011 and FY 2012 Claims from Chronic Conditions Warehouse (CCW). Accessed on 7/19/13.

TABLE 5—PERCENTAGE OF CLAIMS WITH ''DEBILITY'' OR ''ADULT FAILURE TO THRIVE'' AS REPORTED PRINCIPAL DIAGNOSIS WITH NO REPORTED SECONDARY DIAGNOSES

Condition	*FY 2011* (%)	*FY 2012* (%)
Debility	11.96	12.07
Adult Failure to Thrive	7.55	7.83

Source: FY 2011 and FY 2012 Claims data from Chronic Conditions Warehouse (CCW). Accessed on 7/19/13.

This data indicates that the majority of hospice providers are reporting ''debility'' and ''adult failure to thrive'' as a principal hospice diagnosis, thus this is not a rare occurrence as commenters have stated. Additionally, claims with ''debility'' or ''adult failure to thrive'' as the reported principal hospice diagnosis accounted for almost 20 percent of total hospice claims for both FY 2011 and FY 2012.

Comment: We received several comments regarding hospice claims with a principal diagnosis of ''debility'' or ''adult failure to thrive'' being returned to the provider immediately for more definitive coding. Some expressed that CMS is ''jumping the gun'' by announcing that claims would be returned to the provider before the comment period is over and were concerned that claims would starting returning upon publication of the proposed rule. Several commenters expressed concern regarding the ''denial of claims payment'' for claims received with ''debility'' or ''adult failure to thrive'' reported as the principal diagnosis.

Response: We apologize for any confusion that may have resulted from our statement in the FY 2014 Hospice Wage Index and Payment Rate Update proposed rule regarding claims being returned to providers for more definitive coding. We stated in the proposed rule: ''. . . we would clarify that ''debility'' and ''adult failure to thrive'' would not be used as principal diagnoses of the hospice claim form. When reported as a principal diagnosis, these would be considered questionable encounters for hospice care, and the claims would be returned to the provider, not denied, for a more definitive principal diagnosis.'' We did not specify any time frame for these claims or the effective date of implementation. The intent was not to immediately return claims to the provider upon publication of the proposed rule, and the returned claim is not a denial of the claim, but a request for a more definitive and appropriate

principal diagnosis. ''Debility'' and ''adult failure to thrive'' could be reported on the hospice claim as other, additional, or coexisting diagnoses. We understand that this is a shift from the way some hospice providers have coded in the past and that there needs to be adequate time to ensure that all clinical and electronic processes are in place and functioning as not to create unnecessary administrative burden in an accelerated time frame.

Comment: There were several comments questioning what is considered related or unrelated to the terminal condition. One commenter stated that it is difficult to determine if a diagnosis is related to the terminal condition with an example given stating that renal failure may or may not be related to congestive heart failure. Another commenter, a hospice physician, provided a clinical scenario for a beneficiary with chronic obstructive pulmonary disease (COPD) as the principal diagnosis, but who also had coronary artery disease (CAD) and Parkinson's disease which the hospice considered unrelated comorbid conditions. The patient would only receive hospice services for care related to the lung disease (COPD). Another commenter expressed concern that including all of the related diagnoses on the hospice claim would mean that hospices would have additional costs incurred in covering all of the medications for the reported diagnoses.

Response: It is our goal to maintain the integrity of hospice philosophy and the Medicare Hospice Benefit. The intent of the Medicare Hospice Benefit is to provide all-inclusive care for pain relief and symptom management for the terminal prognosis and related conditions, and offer the opportunity to die with dignity in the comfort of one's home rather than in an institutional setting. It is often not a single diagnosis that represents the terminal prognosis of the patient, but the combined effect of several conditions that makes the patient's prognosis terminal. In § 418.54(c), the hospice Conditions of Participation stipulate that the comprehensive hospice assessment must identify the patient's physical, psychosocial, emotional, and spiritual needs related to the terminal illness and related conditions which must be addressed in order to promote the hospice patient's well-being, comfort, and dignity throughout the dying process. The comprehensive assessment must take into consideration the following factors: The nature and condition causing admission (including the presence or lack of objective data and subjective complaints); complications and risk factors that affect care planning; functional status; imminence of death; and severity of symptoms (§ 418.54(c)). The Medicare Hospice Benefit requires the hospice to cover all palliative care related to the terminal illness and related conditions. The hospice plan of care is established based on the review of the clinical records and the comprehensive hospice assessments in order to ensure that all care needs at the end-of-life are addressed. Section 1861(dd)(1) of the Act establishes the services that are to be rendered by a Medicare certified hospice program. These covered services include: Nursing care; physical therapy; occupational therapy; speech-language pathology therapy; medical social services; home health aide services (now called hospice aide services); physician services; homemaker services; medical supplies (including drugs and biologics); medical appliances; counseling services (including dietary counseling); short-term inpatient care (including both respite care and procedures necessary for pain control and acute or chronic symptom management) in a hospital, nursing facility, or hospice inpatient facility; continuous home care during periods of crisis and only as necessary to maintain the terminally ill individual at home; and any other item or service which is specified in the plan of care and for which payment may otherwise be made under Medicare, in accordance with Title XVIII of the Act.

We recognize that there are conditions that are unrelated to the terminal condition of the individual. This is why there are the ongoing assessment requirements of the hospice beneficiaries and the collaboration with the hospice IDG—to ensure that the ongoing and changing needs of the hospice beneficiary are assessed and changes to the plan of care are made. However, in referring to the holistic intent of hospice philosophy and care, we wrote in the August 22, 1983 proposed rule, ''. . . we recognize that there are many illnesses which may occur when an individual is terminally ill which are brought on by the underlying condition of the patient'' (48 FR 38147). In reviewing the many clinical scenarios provided by commenters and their interpretations of what they consider related versus unrelated, it is apparent that the majority refer to a ''related condition'' as one that is related only to the reported single, principal terminal diagnosis and not to the terminal prognosis. However, within those same comments, it was stated numerous times that hospice eligibility is related to the prognosis of the individual. One example provided from a hospice physician regarding a Medicare hospice beneficiary who had a reported principal terminal diagnosis of chronic obstructive pulmonary disease (COPD). This individual also had documented coronary artery disease (CAD) and Parkinson's disease. The provider stated that the CAD and the Parkinson's disease are unrelated to the COPD and that the patient would only receive hospice services for the COPD. This scenario and accompanying statement does not appear to encompass hospice philosophy of holistic care. Therefore, we are restating what we communicated in the December 16, 1983 Hospice final rule regarding what is related versus unrelated to the terminal illness: ''. . . [W]e believe that the unique physical condition of each terminally ill individual makes it necessary for these decisions to be made on a case-by-case basis. As stated in the December 16, 1983 Hospice final rule, . . . ''hospices are required to provide virtually all the care that is needed by terminally ill patients.'' (48 FR 56010). Therefore, unless there is clear evidence that a condition is unrelated to the terminal prognosis, all services would be considered related. It is also the responsibility of the hospice physician to document why a patient's medical need(s) would be unrelated to the terminal prognosis. We continue to reiterate that this determination of what is related versus unrelated to the terminal prognosis remains within the clinical expertise and judgment of the hospice medical director in collaboration with the IDG.

Comment: Two commenters stated that the reference to the 1983 final rule preamble language quoted above, is casting aside language found in the § 418.402, ''Individual liability for services that are not covered hospice care''. These comments went on to say that § 418.402 ''identified items as unrelated and not the responsibility of the hospice for 'services received for the treatment of an illness or injury not related to the individual's terminal condition'.''

Response: The referenced § 418.402, ''Individual liability for services that are not considered hospice care'' states, ''Medicare payment to the hospice discharges an individual's liability for payment for all services, other than the hospice coinsurance amounts described in § 418.400. . .'' This section goes on to state what payment liabilities a hospice beneficiary would be responsible for (not the hospice provider per the commenters) including ''. . . Medicare deductibles and

coinsurance payments and for the difference between the reasonable and actual charge on unassigned claims on other covered services that are not considered hospice care.'' Examples of non-hospice services are provided in this section including ''. . . Medicare services received for the treatment of an illness or injury not related to the individual's terminal condition.'' We have previously acknowledged that there are those rare circumstances in which a service may not be related to the patient's terminal prognosis and that this determination is to be done on a case-by-case basis by the hospice physician with input from the IDG. However, § 418.402 refers to the liability limitations for the hospice beneficiary and does not refer to the liability to the hospice provider. To infer that this section is a confirmation of the liability limitations to the hospice provider would be incorrect.

Comment: Several commenters stated that the hospice physician, along with input from the IDG, have a process in place to help determine related versus unrelated conditions and results in the holistic and comprehensive care their patients need. Other commenters explained that the software system utilized by their hospice agency marks conditions either as ''active'' (meaning, related) or ''historical'' (meaning, unrelated). If a condition went from a historical state to an active state during the course of a hospice episode, then that condition was then considered related and treated accordingly under the hospice plan of care. Another commenter said that while some conditions are unrelated to the terminal condition, the clinical manifestations of these unrelated conditions are as such that they contribute to the individual's symptom burden, and the hospice provider still provides symptom management for these seemingly unrelated conditions to meet the patient's needs.

Response: We applaud these hospices in providing a patient-centered approach and embracing the holistic hospice philosophy. These are all examples of hospice providers coming up with innovative ways to manage the needs of the hospice beneficiaries. These are reflections of the true intent of hospice philosophy that have been incorporated into the Medicare Hospice Benefit. We encourage all hospice providers to assess their operational processes and clinical and claims systems to be innovative in meeting the challenges of providing end-of-life care for the Medicare hospice beneficiaries as health care, in general, transitions to accountability and value-based models of care.

Comment: One commenter stated that these diagnostic clarifications are a change in coverage policy and CMS must use a National Coverage Decision process to change coverage policy rather than through the preamble discussion of the proposed rule.

Response: We continue to state that these coding clarifications are for hospice claims reporting only and are not a question of hospice eligibility or access to coverage. Eligibility to access the Medicare Hospice Benefit remains the same since the implementation of the benefit in 1983. To restate, eligibility for the Medicare Hospice Benefit is based on the individual being entitled to Part A of Medicare and being certified as terminally ill in accordance with § 418.22. These eligibility requirements for coverage have not changed and are not changing in this rule. We expect hospice providers will not discharge, from hospice services, those beneficiaries who meet eligibility requirements but for whom they cannot determine a single, principal hospice diagnosis. If a Medicare beneficiary meets the eligibility requirements as stated in § 418.20 and as referenced above, that Medicare beneficiary will have access to hospice services under the Medicare Hospice Benefit. The intent of these coding clarifications is to request more clarity and detail on the hospice claims to reflect a complete picture of the Medicare hospice population and the hospice services rendered and not to make any changes in coverage or eligibility policies. Therefore, we reject the comment that CMS must use the National Coverage Decision process.

Comment: We received a few suggestions to help further clarification regarding diagnostic coding in the hospice setting. One commenter suggested that CMS work with the National Hospice and Palliative Care Organization (NHPCO) to develop guidelines regarding diagnostic coding for hospices. Another commenter suggested that CMS needs to guide standardization of the hospice industry. The American Academy of Hospice and Palliative Medicine (AAHPM) suggested collaboration with CMS to convene a Palliative Medicine and Hospice Coding and Documentation Learning Network to have ongoing dialogue regarding coding issues and suggestions for the hospice industry.

Response: We appreciate the numerous thoughtful and insightful suggestions that have been provided in response to the diagnostic clarifications. CMS strives to involve all stakeholders in the collaborative process as health care navigates through the 21st century and health care reform provisions. We continue to have ongoing discussions with the industry, including the national hospice organizations, to remain aware of the issues that affect the hospice providers and impact Medicare beneficiaries. We believe that this communication and collaboration will reflect in our ongoing advocacy for the Medicare hospice beneficiaries to ensure accountability, responsibility and quality end-of-life care. We will continue to provide outcomes of these communications via Medicare Learning Network (MLN) articles and through our Open Door Forums to ensure that all Medicare stakeholders are kept informed of progress in maintaining the integrity of the Medicare Hospice Benefit.

Final Decision: We will require these coding changes beginning on October 1, 2014. On or after October 1, 2014, any claims with ''debility'' or ''adult failure to thrive'' in the principal diagnosis field will be returned to the provider for more definitive principal diagnosis coding. Claims submitted prior to October 1, 2014 with ''debility'' or ''adult failure to thrive'' in the principle diagnosis field on the claim will not be returned to the provider, but we expect that hospice providers will code the principal hospice diagnosis according to the ICD–9–CM Coding Guidelines and the clarifications made herein. This should provide more than ample time for hospice providers to meet with clinical staff and their software vendors to ensure that these coding needs are addressed and processes put into place to ensure continuity of care and systems. These returned claims, based on the principal diagnoses of ''debility'' or ''adult failure to thrive,'' are not a denial of payment because of questionable eligibility; rather, these claims are being returned for additional clarity. Once resubmitted with diagnostic codes following the *ICD–10–CM Coding Guidelines,* these claims will be processed and paid accordingly. However, we expect hospice providers to transition immediately to more thoughtful coding practices in advance of this effective date.

3. Use of ''Mental, Behavioral and Neurodevelopmental Disorders'' ICD–9–CM Codes

In the proposed rule we discussed the use of hospice claims-reported principal hospice diagnoses that fall under the ICD–9–CM classification, ''Mental, Behavioral and Neurodevelopmental Disorders.'' There are several codes that fall under this classification that

encompass multiple dementia diagnoses that are frequently reported principal hospice diagnoses on hospice claims, but are not appropriate principal diagnoses per *ICD–9–CM Coding Guidelines.* There are, however, other ICD–9–CM dementia codes, such as those for Alzheimer's disease and others, that fall under the ICD–9–CM classification, ''Diseases of the Nervous System and Sense Organs'' which are acceptable as principal diagnoses per ICD–9–CM coding guidelines.

Comment: One commenter expressed concern that ''Lewy Body Dementia,'' ''Fronto-temporal Dementia'' and ''Vascular Dementia'' are no longer allowed as principal hospice diagnoses. Another commenter questioned what would be the recommendation if the hospice provider is unable to determine the cause of the dementia either from a lack of medical records or specific diagnostic work-up. One commenter asked if the LCD for ''Alzheimer's Disease and Related Disorders'' would be applicable to use for coding guidance.

Response: In the FY 2014 Hospice wage index and payment rate update proposed rule (78 FR 27823), we did not state the specific dementia conditions and their corresponding ICD–9–CM codes that fall under various coding and sequencing conventions in the *ICD–9–CM Coding Guidelines.* There are many codes for dementia conditions, including the neurological causes as well as the clinical mental and behavioral manifestations of the underlying condition. These dementia conditions and ICD–9–CM codes are too numerous to list within the context of the proposed and final rules but are found in the ICD–9–CM Official Guidelines for Coding and Reporting manual. However, we clarified that dementia codes can be found under two classifications in the ICD–9–CM Official Guidelines for Coding and Reporting, ''Mental, Behavioral and Neurodevelopmental Disorders'' and ''Diseases of the Nervous System and Sense Organs.'' Per ICD–9–CM Coding Guidelines, several, but not all, of these ICD–9–CM dementia codes are considered manifestation codes, especially those dementia codes classified under ''Mental, Behavioral and Neurodevelopmental Disorders''. In accordance with the 2012 ICD–9–CM Coding Guidelines, ''certain conditions have both an underlying etiology and multiple body system manifestations due to the underlying etiology. For such conditions, the ICD–9–CM has a coding convention that requires the underlying condition be sequenced first followed by the manifestation. Wherever such a combination exists, there is a ''use additional code'' note at the etiology code, and a ''code first'' note at the manifestation code. These instructional notes indicate the proper sequencing order of the codes, etiology followed by manifestation.'' In most cases, these manifestation codes will have in the code title, ''in diseases classified elsewhere'' or ''in conditions classified elsewhere.'' Codes with this in the title are a component of the etiology/manifestation convention. The codes with the phrase ''in diseases classified elsewhere'' or ''in conditions classified elsewhere'' in the title indicate that they are manifestation codes. ''In diseases classified elsewhere'' or ''in conditions classified elsewhere'' codes are never permitted to be used as first listed or principal diagnosis codes and they must be listed following the underlying condition. However, there are manifestation codes that do not have ''in diseases classified elsewhere'' or ''in conditions classified elsewhere'' in their title. For such codes a ''use additional code'' note would still be present, and the rules for coding sequencing still apply. We noted that several dementia codes which are not allowable as principal diagnoses per ICD–9–CM coding guidelines are under the classification of ''Mental, Behavioral and Neurodevelopmental Disorders.'' According to the ICD–9–CM Coding Guidelines for ''Mental, Behavioral and Neurodevelopmental Disorders'', dementias that fall under this category are ''most commonly a secondary manifestation of an underlying causal condition.''

Two of the most frequently reported dementia codes on hospice claims fall under this manifestation/etiology convention: ''dementia in conditions classified elsewhere with behavioral disturbance'' and ''dementia in conditions classified elsewhere without behavioral disturbance''. Per ICD–9–CM Coding Guidelines, these codes are not acceptable as a reported principal diagnosis, and the underlying physical condition must be coded first. These codes can be used as additional or other diagnoses on the hospice claim. Additionally, two other frequently reported dementia codes on hospice claims have underlying disease-specific sequencing conventions: ''senile dementia, uncomplicated'' and ''other persistent mental disorders due to conditions classified elsewhere''. There are ICD–9–CM Coding Guidelines specific to each of these codes and these codes cannot be used as the principal diagnosis but can be reported as additional or other diagnoses on the hospice claim. Instructional notes regarding the sequencing convention for each of these codes can be found under each of these codes in the Tabular List within the ICD–9–CM Official Guidelines for Coding and Reporting. Therefore, it is imperative that hospice providers understand and follow ICD–9–CM Coding Guidelines and sequencing rules for all diagnoses and especially those noted above. We encourage hospice providers to pay particular attention to dementia coding as there are dementia codes found in more than one ICD–9–CM classification chapter, and there are multiple coding guidelines associated with these dementia conditions.

The clarification of these coding guidelines is not to determine eligibility for hospice services, but rather, these guidelines are to assist with the proper coding sequences for the hospice claims. Eligibility for Medicare hospice services continues to be based on the *prognosis* of the individual based on the clinical judgment of the certifying physician that the individual has a life expectancy of 6 months or less if the terminal condition runs its normal course. CMS does not make any recommendations as to what specific diagnoses to select from the ICD–9–CM Official Guidelines for Coding and Reporting for an individual beneficiary as these selections are to be determined by the certifying physician(s) based on the clinical record review and the comprehensive assessment. There are dementia diagnoses, including Alzheimer's Disease, Lewy-Body Dementia, fronto-temporal dementia, and senile degeneration of the brain, to name a few, that are allowable as principal diagnoses per ICD–9–CM Coding Guidelines and are located under the classification of ''Diseases of the Nervous System and Sense Organs'' in the ICD–9–CM Official Guidelines for Coding and Reporting manual.

Some of the ICD–9–CM dementia diagnoses take into account that some dementia conditions may be unspecified in the event that a definitive diagnostic work-up was not or could not be performed. However, based on the present and historical clinical presentation of the individual, there are unspecified dementia diagnoses and corresponding ICD–9–CM codes that are acceptable as a principal diagnosis per ICD–9–CM Coding Guidelines. Most of these codes can be found under the classification, ''Diseases of the Nervous System and Sense Organs.'' However, the expectation remains that the certifying physician will select the appropriate diagnoses and codes that determine the terminal prognosis of the

individual and that are most contributory to the terminal decline.

4. Guidance on Coding of Principal and Other, Additional, and/or Co-existing Diagnoses

In the FY 2014 Hospice Wage Index and Payment Rate Update proposed rule, we stated based on the ICD–9–CM Coding Guidelines, that the circumstances of an inpatient admission always govern the selection of principal diagnosis (78 FR 27833). The principal diagnosis is defined in the Uniform Hospital Discharge Data Set (UHDDS) as ''that condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care.'' In analyzing frequently reported principal hospice diagnoses, data analysis revealed differences between reported principal hospice diagnoses and reported principal hospital diagnoses in patients who elected hospice within 3 days of discharge from the hospital. In addition, in the proposed rule we stated that our expectation is for hospice providers to report all coexisting or additional diagnosis related to the terminal prognosis and related conditions.

Comment: Several commenters said that these statements could be interpreted to mean that the principal hospice diagnosis must always mirror the hospital diagnosis and while this is often the case, there are sometimes specific clinical scenarios in which this would not necessarily occur. The commenters requested further clarification so that hospice providers do not feel compelled to violate their own coding judgment just to replicate the inpatient hospital diagnoses based on ''mandates'' from CMS.

Response: In our statements regarding the guidelines governing the selection of the principal hospice diagnosis, they were made to provide additional guidance on the selection of the principal diagnosis for hospice providers based on the ICD–9–CM Coding Guidelines. We recognize that the principal hospice diagnosis may not mirror the inpatient hospital diagnosis in certain circumstances. The scenario below, provided by a commenter, is an example:

> A patient was admitted to the hospital with a diagnosis of pneumonia. Upon diagnostic work-up, it was discovered that the patient had stage 4 lung cancer. The patient opted not to pursue curative treatment and was discharged to home with hospice services in place. The principal hospice diagnosis selected for this patient was lung cancer.

This would be an appropriate principal hospice diagnosis, though it was not the same as the primary hospital diagnosis. However, in the FY 2014 hospice wage index and payment rate update proposed rule, we presented data analysis where the principal hospital diagnosis was a cancer diagnosis, but the hospice diagnosis was not. It would be expected that, in a cancer diagnosis, in which the individual received inpatient medical care for that diagnosis and was discharged home with hospice election within three days, that the principal hospice diagnosis would be the inpatient hospital diagnosis of cancer. However, to clarify, we are not requiring that the principal hospice diagnosis always must be the exactly the same as the inpatient hospital diagnosis. We continue to reiterate that the certifying physician, using his or her expert clinical judgment and supporting documentation from the clinical records and the comprehensive assessment(s), will determine the most appropriate principal diagnosis, along with other, additional related diagnoses, that are contributing to the terminal prognosis of the individual. Our purpose in providing these statements in the proposed rule was to remind providers of the ICD–9–CM Coding Guidelines which state, to list first the diagnosis shown in the medical record to be chiefly responsible for the services provided and to list additional codes that describe any coexisting conditions.

Comment: One commenter questioned what the expectation is for the number of other, additional diagnoses that should be reported on the hospice claim. This commenter stated that it was not the hospice's standard to report diagnoses not related to the terminal prognosis on the hospice claim. Another commenter stated that hospice providers historically were ''cautioned for potential enticement by covering too many diagnoses.'' A few commenters expressed concern about how CMS may use additional information of the secondary and tertiary diagnoses for complex patients.

Response: We do not require hospice's to report a specific number of diagnoses on the hospice claims. However, ICD–9–CM Coding Guidelines are specific in its instructions to providers to ''code all documented conditions at the time of the encounter/visit, and require or affect patient care treatment or management.'' Therefore, we expect that hospice providers will adhere to these guidelines in reporting the appropriate diagnoses to more fully describe the Medicare hospice beneficiaries receiving care and services needed to palliate and manage their terminal conditions, based on the information from the comprehensive assessment and individualized hospice plan of care. Our regulations at § 418.200, hospices must provide all services reasonable and necessary for the palliation and management of the terminal illness and related conditions. As noted, we require hospices to provide virtually all the care that is needed by terminally ill patients. Therefore, unless there is clear evidence that a condition is unrelated to the terminal prognosis, all services would be considered related. It is also the responsibility of the hospice physician to document why a patient's medical need(s) would be unrelated to the terminal prognosis. We expect that hospice providers will use their best clinical judgment in determining which diagnoses and conditions are related to the terminal prognosis of the individual receiving hospice care and will report those diagnoses and conditions accordingly on the hospice claims.

In response to the comment regarding the diagnosis not being available at the time of referral, we understand that a diagnosis may not be provided at the time of hospice referral given the sometimes acute nature of a hospice referral. However, upon the hospice physician's review of the comprehensive assessment along with the other clinical records, the expectation is that a diagnosis for hospice claims coding should be determined based on this review along with the hospice physician's best clinical judgment as to the condition most contributory to the terminal prognosis.

Furthermore, the expectation is to provide the diagnostic codes on the claim to reflect the individual's clinical status regardless of the number of diagnoses to do so. There are an ample number of diagnosis fields on the hospice claims for reporting. Because the hospice reimbursement is a bundled per diem rate, there is no enticement for reporting too many. The goal of requesting all of the related diagnoses on the hospice claim is to have a more accurate picture of the Medicare hospice beneficiary population. This accurate picture of the Medicare hospice population will also help to ensure that any payment reform model that is considered is done so in a responsible and thoughtful manner to protect the viability, integrity, and intent of the Medicare Hospice Benefit and the care philosophy of the hospice industry.

5. Transition to ICD–10–CM

In the FY 2014 Hospice Wage Index and Payment Rate Update proposed rule we reminded hospice providers of the upcoming transition from ICD–9–CM to ICD–10–CM on October 1, 2014. We

provided additional information regarding the transition to ICD–10–CM that is available through the CMS Web site at: *http://www.cms.gov/Medicare/Coding/ICD10/index.html?redirect=/icd10;* and ICD–10–CM coding guidelines can be found on the CDC's Web site at *www.cdc.gov/nchs/data/icd10/10cmguidelines2012.pdf.*

Comment: We received multiple comments asking to suspend the enforcement of the clarifications of ICD–9–CM Coding Guidelines until the implementation of ICD–10–CM. It was stated that the preparation for the transition to ICD–10–CM was burdensome enough for hospice providers.

Response: The transition to ICD–10–CM has been discussed in previous hospice rules and notices, and the transition deadline for ICD–10–CM has already been pushed back until its current October 1, 2014 implementation date to allow for providers to have adequate time to prepare their administrative processes and systems. Additionally, in our regulations at 45 CFR 162.1002, the Secretary adopted the ICD–9–CM code set, including The Official ICD–9–CM Guidelines for Coding and Reporting. The CMS' Hospice Claims Processing manual (Pub 100–04, chapter 11) requires that hospice claims include other diagnoses ''as required by ICD–9–CM Coding Guidelines''. Furthermore, these ICD–9–CM Coding Guidelines have been existing and longstanding policies that should be adhered to by all providers.

Other health care providers in both the inpatient and outpatient settings are required to follow these coding guidelines, and enforcement of these policies has been part of their payment systems for years. The expectation for hospice providers to follow those same guidelines is imperative to ensure continuity and quality of care throughout a Medicare beneficiary's health care continuum. Therefore, we stand by our clarifications regarding the ICD–9–CM Coding Guidelines and ICD–10–CM Coding Guidelines. However, in response to the comments received regarding the additional time needed to implement these coding clarification changes within their software systems, we will require these coding changes beginning on October 1, 2014, when all hospice claims submitted on or after October 1, 2014 will be subject to having claims returned if presented for payment with incorrect codes.

B. The Hospice Quality Reporting Program

1. Background and Statutory Authority

Section 3004 of the Affordable Care Act amended the Act to authorize a quality reporting program for hospices. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY. Depending on the amount of the annual update for a particular year, a reduction of 2 percentage points could result in the annual market basket update being less than 0.0 percent for a FY and may result in payment rates that are less than payment rates for the preceding FY. Any reduction based on failure to comply with the reporting requirements, as required by section 1814(i)(5)(B) of the Act, would apply only for the particular FY involved. Any such reduction will not be cumulative and will not be taken into account in computing the payment amount for subsequent FYs.

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. The data must be submitted in a form, manner, and at a time specified by the Secretary. Any measures selected by the Secretary must have been endorsed by the consensus-based entity which holds a contract regarding performance measurement with the Secretary under section 1890(a) of the Act. This contract is currently held by the NQF. However, section 1814(i)(5)(D)(ii) of the Act provides that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the consensus-based entity, the Secretary may specify measures that are not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus-based organization identified by the Secretary. Section 1814(i)(5)(D)(iii) of the Act requires that the Secretary publish selected measures applicable with respect to FY 2014 no later than October 1, 2012.

2. Quality Measures for Hospice Quality Reporting Program and Data Submission Requirements for Payment Year FY 2014

The successful development of a Hospice Quality Reporting Program (HQRP) that promotes the delivery of high quality healthcare services is our paramount concern. We seek to adopt measures for the HQRP that promote efficient and safer care. Our measure selection activities for the HQRP takes into consideration input we receive from the Measure Applications Partnership (MAP), convened by the National Quality Forum (NQF), as part of a pre-rulemaking process that we have established and are required to follow under section 1890A of the Act. The MAP is a public-private partnership comprised of multi-stakeholder groups convened by the NQF for the primary purpose of providing input to CMS on the selection of certain categories of quality and efficiency measures, as required by section 1890A(a)(3) of the Act. By February 1st of each year, the NQF must provide that input to CMS. Input from the MAP is located at: (*http://www.qualityforum.org/Setting_Priorities/Partnership/Measure_Applications_Partnership.aspx*). For more details about the pre-rulemaking process, see the FY 2013 IPPS/LTCH PPS final rule (77 FR at 53376 (August 31, 2012)).

We also take into account national priorities, such as those established by the National Priorities Partnership at (*http://www.qualityforum.org/npp/*), the HHS Strategic Plan *http://www.hhs.gov/secretary/about/priorities/priorities.html*), and the National Strategy for Quality Improvement in Healthcare located at (*http://www.healthcare.gov/news/reports/nationalqualitystrategy032011.pdf*). To the extent practicable, we have sought to adopt measures that have been endorsed by the national consensus organization, recommended by multi-stakeholder organizations, and developed with the input of providers, purchasers/payers, and other stakeholders.

As stated in the August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47302, 47320), to meet the quality reporting requirements for hospices for the FY 2014 payment determination as set forth in section 1814(i)(5) of the Act, we finalized the requirement that hospices report two measures:

- An NQF-endorsed measure that is related to pain management, NQF #0209. The data collection period for this measure was October 1, 2012 through December 31, 2012, and the data submission deadline was April 1, 2013. The data for this measure are collected at the patient level, but are reported to CMS in the aggregate for all patients cared for within the reporting period, regardless of payer.
- A structural measure that is not endorsed by NQF: Participation in a Quality Assessment and Performance Improvement (QAPI) program that

includes at least three quality indicators related to patient care. The data collection period for this measure was October 1, 2012 through December 31, 2012, and the data submission deadline was January 31, 2013. Hospices are not asked to report their level of performance on these patient care related indicators, but simply to indicate that a QAPI program with patient care related indicators has been implemented.

Hospices failing to report quality data before the specified deadline in 2013, will have their market basket update reduced by 2 percentage points in FY 2014. Hospice programs will be evaluated for purposes of the quality reporting program based on whether or not they submit data, and not based on their performance level on required measures.

For the FY 2014 payment determination, hospices were asked to provide identifying information, and then complete a web based data entry for the required measures. For hospices that could not complete the web based data entry, a downloadable data entry form was made available upon request. Electronic data submission will be required for the FY 2015 payment determination and beyond; there will be no other data submission method available.

3. Quality Measures for Hospice Quality Reporting Program and Data Submission Requirements for Payment Year FY 2015 and Beyond

In the November 8, 2012 CY 2013 Home Health Prospective Payment System Rate Update final rule (77 FR 67068, 67133), to meet the quality reporting requirements for hospices for the FY 2015 payment determination and each subsequent year, as set forth in section 1814(i)(5) of the Act, we finalized the requirement that hospices report two measures:

- The NQF-endorsed measure that is related to pain management, NQF #0209
- The structural measure: Participation in a Quality Assessment and Performance Improvement (QAPI) Program that includes at least three quality indicators related to patient care. We did not extend the requirement that hospices complete a check list of their patient care indicators and indicate the data sources they used for their quality indicators.

In the proposed rule for FY2014 (78 FR 27823), we proposed that the structural measure related to QAPI indicators and the NQF #0209 pain measure would not be required for the hospice quality reporting program beyond data submission for the FY 2015 payment determination. The original intent of the structural measure was for hospices to submit information about number, type, and data source of quality indicators used as a part of their QAPI Program. Data gathered as part of the structural measure were used to ascertain the breadth and context of existing hospice QAPI programs to inform future measure development activities including the data collection approach for the first year of required reporting (the reporting period which could result in payment reductions in FY 2014). To date, hospices have reported two cycles worth of structural measure data to CMS:

- Voluntary reporting period (submitted to CMS by January 31, 2012)—For the voluntary reporting period hospices submitted free text data describing each quality indicator in their QAPI programs; data regarding number and data source of quality indicators were also submitted.
- FY 2014 (submitted to CMS by January 31, 2013)—For the FY 2014 cycle, hospices submitted data about the topic areas of care addressed by quality indicators in their QAPI Programs, using a drop-down menu checklist rather than free text, in order to reduce burden. Data regarding number and data source of quality indicators were also submitted. CMS has analyzed data from both reporting periods. Findings from the voluntary reporting period showed that hospices use quality indicators that address a wide range of patient care related topics and that there is great variation in how hospices collect and use ''standardized'' quality indicators. The majority of reported indicators addressed patient safety and physical symptom management. Likewise, findings from analysis of the FY 2014 structural measure data reiterated findings from the voluntary reporting period.

Other topics addressed included management of psychosocial aspects of care, bereavement and grief, communication, and care coordination. Overall, findings from both data collections of the structural measure have provided adequate information on hospice's patient care-related indicators making further reporting on the structural measure unnecessary.

Comment: We received several comments in favor of the proposal to remove the structural measure requirement beyond data submission for the FY 2015 payment determination. There were no comments in opposition to removing the structural measure requirement after FY 2015. One commenter indicated that CMS should make clear that it was only removing the structural measure requirement, not the QAPI program requirement from the Conditions of Participation.

Response: The results of the voluntary reporting period and the analysis of the FY 2014 structural measure data provided adequate information about hospices' patient care-related quality indicators. We are finalizing the proposal to remove the structural measure requirement beyond data submission for the FY 2015 payment determination. We are reiterating that the requirements regarding QAPI in the Conditions of Participation remain intact.

As stated above, in the proposed rule, we proposed that the NQF #0209 pain measure not be required for the hospice quality reporting program beyond data submission for the FY2015 payment determination. We determined that the NQF #0209 measure as it is currently collected and reported by hospices is not suitable for long term use as part of the Hospice Quality Reporting Program (HQRP). In making this decision, we considered findings from the Voluntary Reporting Period and the Hospice Item Set pilot. Since the publication of the proposed rule, we examined data from the first year of reporting on the measure (impacting FY 2014 APU determination). In addition, we considered stakeholder input including comments submitted during rulemaking, expert input from a Technical Expert Panel (TEP), and provider questions and comments submitted to the hospice quality help desk during the 2012/2013 data collection and reporting period. There are two central concerns with the NQF #0209 measure. First, the measure does not easily correspond with the clinical processes for pain management, resulting in variance in what hospices collect, aggregate, and report. This concern could potentially be addressed by extensive and ongoing provider training or standardizing data collection. However, even with extensive training and the use of a standardized item set during the pilot test, the data showed continued variance in implementation of the measure. Second, there is a high rate of patient exclusion due to patient ineligibility for the measure and patients' denying pain at the initial assessment. This high rate of patient exclusion from the measure results in a small denominator and creates validity concerns. These concerns cannot be addressed by training or standardizing data collection. We recognize the value of measuring hospices' ability to achieve patient comfort and the desire to include a patient outcome measure such

as the NQF #0209 in the HQRP. By removing the requirement that hospices submit the NQF #0209 measure, pain comfort will not be measured as part of the HQRP. However, we plan to require that hospices collect data on two other measures that address care for pain. The standardized item set that CMS has developed contains data elements to collect 7 quality measures endorsed by NQF for hospice. Among these are two process measures related to pain: the NQF #1634, Pain Screening, and NQF #1637, Pain Assessment. However, while these measures provide insight about screening and assessment of patients, they do not offer information about patient-reported comfort related to pain.

In the proposed rule, an alternative proposal was made to retain NQF #0209 until a more suitable outcome measure was available for use in the HQRP, to maintain a focus on achieving patient comfort. We also recognize the importance of adherence to standardized data collection specifications when producing measures for public reporting. We intend to work toward the HQRP's future inclusion of an improved pain outcome measure. We solicited comment on the removal of the checklist and data source questions from the structural measure, and the removal of the NQF #0209 measure. We also solicited comment on the alternative proposal of maintaining NQF #0209 until another pain outcome measure is available.

Comment: A large majority of comments received agreed with the proposal to remove the NQF #0209 pain measure from the HQRP because of the concerns with the measure as described above. Commenters stated that the measure is difficult to implement and does not correspond with clinical processes for pain management. One commenter suggested that there is not an issue with the data collection not corresponding to hospice clinical practice, but rather a learning curve phenomenon. Commenters also agreed that high rates of patient exclusion from the measure lead to validity issues. The majority of commenters were also against the alternate proposal to retain the NQF #0209 until an alternate pain outcome measure is developed, citing that continuing to collect it would be an unnecessary burden on providers. Some also commented that discontinuing data collection for the NQF #0209 pain measure after the CY 2013 data collection period would permit hospices more time to focus on preparing for the implementation of the Hospice Item Set (HIS) and other requirements. A few commenters indicated that the NQF #0209 should be retained. Commenters in favor of retaining the measure stated that, though flawed, the measure has merit because it is an outcome measure. They also felt it has merit because it incorporates patient preferences for pain management and is meaningful to consumers. Commenters also stated that hospices invested a lot of time and energy to establish their data collection and submission processes for this measure. One commenter thought CMS should evaluate additional quarters of data submissions by hospices to fully evaluate the measure's validity before deciding whether to eliminate its use from the HQRP.

Response: Since the release of the proposed rule, we have analyzed the NQF #0209 pain measure data from the FY 2014 hospice reporting cycle. Results from the analysis support our central concerns with the NQF #0209 pain measure as stated above. Due to exclusions, a very small percentage of patients admitted to hospice would be represented by this quality measure, suggesting validity issues with the measure. FY 2014 data analysis shows that data errors affected approximately one-third of all hospices' data submissions despite the use of warning and error messages in the data submission system. In addition, the data showed that approximately 30 percent of the patients who were asked the initial comfort question ended up in the measure denominator (the denominator is set by patients who said ''yes'' to the initial comfort question). The data also showed that approximately 54 percent of hospices had 10 or fewer admissions during the data collection period (Q4 2012), indicating a denominator size problem that would affect the potential use of the measure for public reporting purposes in the future. We will post a document summarizing the findings related to the NQF #0209 measure on the cms.gov Web site at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/index.html.* The document includes findings from the Voluntary Reporting Period, the Hospice Item Set Pilot Test, and the FY 2014 national reporting of the NQF #0209 data. These three sources of information along with stakeholder comments during the public comment period were considered in finalizing the proposal to discontinue the requirement that hospices report the NQF #0209 measure beyond FY 2015. We understand that hospices may choose to use the NQF #0209 as part of their ongoing quality improvement efforts. However, we believe that continuing to require hospices to report the NQF #0209 measure beyond FY 2015 is inappropriate and burdensome. We agree that outcome measures are essential to the HQRP. We are committed to developing an improved pain outcome measure and we will work toward the HQRP's future inclusion of an improved pain outcome measure. Although we appreciate the value of including an outcome measure as part of the HQRP, based on the majority of comments received and FY 2014 NQF #0209 data analysis findings, we are finalizing the proposal to discontinue use of the NQF #0209 pain measure after FY 2015 reporting. We will not finalize the alternate proposal to retain the NQF #0209 until another pain outcome measure is available.

4. Quality Measures for Hospice Quality Reporting Program for Payment Year FY 2016 and Beyond

As stated in the November 8, 2012 CY 2013 Home Health Prospective Payment System Rate Update final rule (77 FR 67068, 67133), we considered an expansion of the required measures to include additional measures endorsed by NQF. We also stated that to support the standardized collection and calculation of quality measures, collection of the needed data elements will require a standardized data collection instrument. We have developed and tested a hospice patient-level item set to be used by all hospices to collect and submit standardized data items about each patient admitted to hospice. We contracted with RTI International to support the development of the Hospice Item Set (HIS) for use as part of the HQRP. In developing the HIS, RTI focused on the NQF endorsed measures that had evidence of use and/or testing with hospice providers. Most of these measures were initially developed during the PEACE (Prepare, Embrace, Attend, Communicate, and Empower) Project, which was funded by CMS to develop and test an initial set of quality measures for use in hospice and palliative care. The PEACE project, which ended in 2008, resulted in the identification of recommended quality measure and data collection tools that hospice providers could use in their Quality Assessment and Performance Improvement (QAPI) programs to assess quality of care and target areas for improvement. Additional information on the PEACE project can be found at *http://www.thecarolinascenter.org/default.aspx?pageid=24.*

Most of the measures endorsed by NQF are already widely in use by

hospices nationwide as part of their internal Quality Reporting and Performance Improvement (QAPI) programs. Data we received from hospices during the Voluntary Reporting Period in 2011 showed that hospices had implemented and were using the PEACE measures. Some of the PEACE measures were endorsed by NQF in February, 2012, and are listed below with their NQF endorsement numbers. The HIS standardizes the collection of the data elements that are needed to calculate seven of the NQF endorsed measures. The HIS was pilot tested during the early summer of 2012. The primary objective of the pilot was to explore data collection methods and the feasibility of implementing a patient-level item set for possible future use as part of the HQRP.

In developing the standardized HIS, we considered comments offered in response to the July 13, 2012 CY 2013 Home Health Prospective Payment System Rate Update proposed rule (77 FR 41548, 41573). We have included data items that support the following NQF endorsed measures for hospice:

- NQF #1617 Patients Treated with an Opioid who are Given a Bowel Regimen
- NQF #1634 Pain Screening
- NQF #1637 Pain Assessment
- NQF #1638 Dyspnea Treatment
- NQF #1639 Dyspnea Screening
- NQF #1641 Treatment Preferences
- NQF #1647 Beliefs/Values Addressed (if desired by the patient) (modified)

To achieve a comprehensive set of hospice quality measures available for widespread use for quality improvement and informed decision making, and to carry out our commitment to develop a quality reporting program for hospices that uses standardized methods to collect data needed to calculate quality measures, we proposed the implementation of the HIS in July 2014. We believe that to support the standardized collection and calculation of any or all of the hospice quality measures listed above, it is necessary to use a standardized data collection mechanism. The HIS was developed specifically for this data collection purpose. The HIS Paperwork Reduction Act (PRA) package is posted on the PRA area of the CMS.gov Web site at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/index.html*.

We proposed that hospices begin the use and submission of the HIS in July 2014. To meet the quality reporting requirements for hospices for the FY 2016 payment determination and each subsequent year, we proposed regular and ongoing electronic submission of the HIS data for each patient admitted to hospice on or after July 1, 2014, regardless of payer. Hospices will be required to complete and submit an admission HIS and a discharge HIS for each patient. Hospices failing to report quality data via the HIS in 2014 will have their market basket update reduced by 2 percentage points in FY 2016. Hospice programs will be evaluated for purposes of the quality reporting program based on whether or not they submit data, not on their performance level on required measures.

Comment: We received comments that were supportive of the implementation of the Hospice Item Set (HIS). Commenters agreed with the need for a standardized item set to collect patient level information that could be used to calculate the quality measures endorsed by the National Quality Forum (NQF) for hospice. However, commenters were concerned that the proposed July 1, 2014 date for starting submission of the HIS was too soon, and didn't allow for adequate time to prepare processes and systems for data collection, staff training, and other organizational preparations for implementation, particularly in the context of the other proposals in the rule such as the implementation of the hospice experience of care instrument. Commenters noted that vendors would have less than 12 months to create software for providers to use to submit the HIS data. Commenters were concerned that there were too many changes coming in too short a time.

Response: We appreciate the general support of standardized data collection and the Hospice Item Set (HIS). We are aware of the effort hospices and vendors will have to make to prepare for implementation of the HIS. The HIS pilot showed that implementing the HIS is feasible, and that hospices are most likely already collecting the information needed to complete the HIS data items. A draft version of the HIS technical data specifications was posted on the CMS Web site on May 24, 2013. Based on other provider settings (for example, Home Health Agencies and Nursing Homes), it is our experience that when there are changes to the draft version of data specification the changes are minor and few, if any, compared to the final version of the technical data specifications. Thus, vendors have been provided with more than adequate time (greater than 12 months) to develop products for their clients. We expect vendors to begin reviewing the draft technical data specifications as soon as they are posted. We encourage vendors to submit questions and comments to the HIS technical email box: *HospiceTechnicalIssues@cms.hhs.gov*. On July 16, 2013, CMS held a call specific for software developers and vendors regarding the HIS technical data specifications. We will hold additional vendor calls as needed to ensure that software vendors have the appropriate information to develop their own products for HIS. Software vendors should not be waiting for final technical data specifications to be posted to begin development of their own products. Therefore, we believe that vendors have been provided with adequate time and resources to meet the July 1, 2014 implementation date of the HIS.

CMS will provide free software for the HIS. We will make a beta version of the software available in May 2014 and the final version in June 2014. Providing a beta version for hospice agencies to download in May will allow their staff to become familiar with the functionality of the tool. We will provide training on the CMS HIS software and the submission process. We anticipate the training to occur in the spring of 2014. Furthermore, in cases where a hospice has purchased vendor software and the product is not available by July 1, 2014, the hospice may download the CMS software and submit records to the Quality Improvement and Evaluation System (QIES) Assessment and Submission Processing (ASAP) system as required. Thus, hospices will be able to comply with the July 1, 2014 implementation date of the HIS. We are finalizing implementation of the HIS on July 1, 2014.

Comment: Several commenters expressed concern over the ''100 percent submission requirement'' of the HIS and stated that exceptions for natural disasters and other extenuating circumstances should be allowed. In addition, a few commenters expressed concern that a hospice would be penalized if even one submission was missed, and that there needs to be a receipt process that would provide proof of data submission.

Response: Submission of the HIS on all patients admitted to hospice, regardless of payer, is expected. As is common in other quality reporting programs, we will propose to make accommodations in the case of natural disaster or other extenuating circumstances in next year's rulemaking. In addition, the data submission system will include validation and receipt processes that will serve as evidence of submission.

Comment: Some commenters indicated that they support the implementation of the HIS and the endorsed measures that can be calculated from the items on the HIS. However, while overall supportive of the measures and the HIS, they also indicated concern about the length of stay exclusion in the endorsed measures that will be calculated from the HIS. Commenters were also concerned that there were no outcome measures that will be calculated from the HIS. We also received a few comments indicating concern over other measure specifications (for example, additional exclusions for measures).

Response: To comply with the requirements of the Affordable Care Act, CMS seeks to implement meaningful quality measures with demonstrated scientific acceptability that have been endorsed by an endorsing body, currently the NQF. Thus, we are somewhat, but not completely constrained by the availability of endorsed hospice quality measures. In addition, in selecting and implementing measures, we are constrained by the measures specifications of the endorsed measures. All of the measures that will be implemented are endorsed with a 7-day length of stay exclusion as part of the measure specifications. Section 1841(i)(5)(D) of the Act requires us to be deferential to measures approved by an endorsing body such as the NQF. However, we agree that the length of stay exclusion in particular is of concern because it effectively excludes an important segment of hospice patients from the measures. We plan to analyze HIS data to continue to assess the scientific acceptability of the measures and are willing to work with measure developers and stewards to make modifications to measures where needed. In addition, we support the development of additional hospice quality measures, particularly outcome measures, and will seek opportunities to use outcome measures as they are developed and validated.

Comment: We received a few comments indicating concern over the potential burden of the HIS on patients and families.

Response: The HIS is a set of data elements that can be used to calculate 7 NQF endorsed quality measures. The HIS is not a patient assessment and it will not be administered to the patient and/or family or caregivers during the initial assessment visit. The HIS is not intended to replace a hospice's current initial patient assessment. The HIS pilot demonstrated that hospices use a variety of patient assessment forms during the initial patient assessment; all hospices were able to crosswalk items from their patient assessment forms to the HIS data elements, and complete the HIS items. Therefore, the HIS did not add items to the hospice's customary patient initial assessment, and did not present an additional burden to the patient and/or family or caregivers.

Comment: A few commenters suggested removing the discharge HIS, indicating that the items on the discharge HIS are only administrative, and provide no additional value in terms of the quality measures while adding burden of completion to the hospice. Other commenters indicated that they were pleased to see the proposal of an admission and discharge HIS.

Response: The discharge HIS is needed to provide an end date for the episode of care, and to establish the length of stay exclusion for patients whose hospice stay was less than 7 days. The discharge HIS items are minimal, but necessary for accurate records in the CMS data system and potentially for the providers' use with their own QAPI activities. Vendor software would pre-populate the majority of these items and the hospice would only code a few of the items on the discharge HIS; burden on hospices would be reduced as a result.

Comment: A few commenters voiced concerns about potential ceiling effects with the NQF quality measures stating that measures may ''top out.'' Two commenters stated that NQF #1634 Pain Screening should not be considered for use in the quality reporting program, citing concerns about ceiling effects with the measure.

Response: We recognize the commenters' concerns about the appropriateness of use of quality measures that have ''topped out,'' demonstrating ceiling effects. Ceiling effects on quality measures would indicate that there is little room for improvement on the particular quality measures across providers, rendering the measures of little use in measuring quality. There is currently no national data available to determine whether any of the proposed measures demonstrate ceiling effects. We will analyze data submitted to determine validity and reliability of measures, and part of this analysis will include analyzing for ceiling effects. We will determine appropriateness of measures for retention in the quality reporting program based on these analyses. We appreciate commenters' concerns about NQF #1634 Pain Screening. However, NQF #1634 Pain Screening and NQF #1637 Pain Assessment are paired measures meaning NQF #1634 is necessary to generate the denominator for NQF #1637.

Comment: Two comments stated that items for the NQF #1641 and #1647 should appear on the discharge HIS to meet measure specifications.

Response: The NQF #1641 measure endorsement form does not specify a time window for the measure numerator. The commenters are correct that the NQF #1647 measure endorsement form does specify that the numerator criteria can be met any time during the period the patient is enrolled in the hospice program. We have consulted NQF about our proposal to capture the data on the admission HIS, and have received guidance that by limiting the time window in this way, we are proposing to use a ''modification of the NQF #1647'' measure. We have opted to include the relevant items for both the NQF #1641 and the NQF #1647 on the Admission HIS, even though the measure specifications for the NQF #1647 permit the numerator condition to be met at any time during the hospice episode of care. For multiple reasons, CMS has opted to include the NQF #1647 measure items as part of the Admission HIS, reflecting the initial period of time the patient is in hospice care. Addressing patients' values/beliefs and preferences for treatment by providing an opportunity for patients and families to discuss their preferences during the comprehensive assessment period is an important step in ensuring the delivery of hospice care that is patient and family-centered. Including the NQF #1647 measure items as part of the Admission HIS also aligns with the Conditions of Participation for hospices at § 418.54(c), which state that the comprehensive assessment ''must identify the physical, psychosocial, emotional and spiritual needs related to the terminal illness that must be addressed in order to promote the hospice patient's well-being, comfort, and dignity throughout the dying process. . . .'' We recognize that the discussion can take place at any time in the course of a patient's hospice care but believe the patient should be offered the opportunity to address these concerns in the early days of care when they are more likely to be able to do so. We consider it best practice. We have chosen this approach also because it allows the gathering of the data for the measure closer to ''real time'' in terms of usual hospice assessment and workflow and because this approach will likely improve accuracy and reduce burden to the provider. If these items were on the discharge HIS, hospices would have to review the entire episode of care documentation to find the

information needed to complete the relevant items on the HIS. We worked with the measure developer to ensure that the intent of the measure is still met with the HIS admission data collection. We will monitor the performance over time to inform future evaluation for maintenance of the measure's endorsement. We will proceed with the collection of the NQF #1641 measure and the modified NQF #1647 measure as part of the Admission HIS.

Comment: We received a few comments regarding what should count towards the numerator for NQF #1641 (Treatment Preferences). Commenters suggested that review of advance directives count in the numerator for these items.

Response: Discussion of patient preferences is important to ensure that care is individualized, patient and family centered, and consistent with patient and/or family preferences. The intent of the NQF #1641 measure is to ensure that hospices engage patients and families in opportunities to discuss their treatment preferences. Hospices meet the #1641 numerator requirements by asking the patient and/or family about their preferences and documenting that a discussion of preferences occurred, or by documenting that the patient and/or family did not wish to discuss their preferences. The measure endorsement forms clearly state that the measure is meant to capture evidence of communication and discussion. Prior to implementation of the HIS, we will provide hospices with guidance and training materials, including a detailed user guide.

Comment: We received a comment that NQF #1641 (Treatment Preferences) does not mention cardiopulmonary resuscitation (CPR) or hospitalization.

Response: The measure specifications as endorsed by NQF do not clearly define what constitutes preferences for life-sustaining treatment. As such, we included data items F2000 (CPR Preference) and F2200 (Hospitalization Preference) in the HIS to provide clarification and improve usability. These specifics are important to measure maintenance and development and does not stray from the measure specifications. We will provide guidance and training materials, including a detailed user guide for hospices prior to implementation of the HIS.

Comment: For NQF #1647, one commenter questioned which hospice staff would be eligible to ask the patient about concerns related to beliefs and values to satisfy the numerator for the measure. This commenter questions if a social worker or bereavement staff member could collect the data or if it had to be a chaplain.

Response: The measure specifications for NQF #1647 require documentation of a discussion between the patient and/or family and a member of the interdisciplinary team or clergy or pastoral worker, or documentation that the patient/family declined to discuss. We will provide guidance and training materials, including a detailed user guide, to hospices prior to implementation of the HIS.

Comment: We received comments providing input about specific items on the HIS. Commenters offered suggestions on items in Sections A, F, I, J, N, and Z of the HIS.

Response: We appreciate the comments received about specific items in the HIS. The items in Section A are a subset of those that appear and are standardized across data submission vehicles in multiple CMS quality reporting programs; they are needed for adequate record identification in CMS systems. Items in Sections F, I, J, and N are all necessary to establish the numerator and/or denominator; meet other measure specifications for the 7 NQF endorsed measures that can be calculated from the HIS; or for purposes of future potential risk adjustment to the measures.

Comment: We received several comments regarding who the hospice must speak with about items in Section F (Preferences) to meet the numerator condition for the corresponding measures. A few commenters noted that not all patients have caregivers.

Response: For items F2000, F2100, and F2200, the hospice must ask the patient or the patient's representative if the patient is unable to self-report. The responsible party may or may not be a family member or caregiver. We will provide guidance and training materials, including a detailed user guide to hospices prior to implementation of the HIS.

Comment: We received several comments regarding Section I (Active Diagnoses) and item I0010 (Principal Diagnosis) that appears in this section. Some commenters felt the item did not include enough diagnoses to be useful and that principal diagnoses was not relevant to the measures. One commenter suggested that we obtain this data from claims or Program for Evaluating Payment Patterns Electronic Report (PEPPER) reports.

Response: Disease processes and conditions impact service delivery. Cancer and dementia/Alzheimer's Disease are two of the most common principal diagnoses among hospice patients. We believe that this item is important for measure maintenance and development. The HIS applies to all payers, which is why CMS is not relying on claims or other available data sources. To limit the burden on hospice providers we chose to limit the diagnostic categories.

Comment: We received comments that J0900 (Pain Screening) and J0910 (Comprehensive Pain Assessment) went beyond the measures specifications for NQF #1634 and NQF #1637. Some commenters did not understand the purpose of J0900D (the patient's pain severity rating); others argued that J0900D should be removed from the item set because it incorrectly implies that a clinician's opinion of pain severity is an acceptable datum. Others questioned the inclusion of J0910C (Comprehensive Pain Assessment included).

Response: The NQF # 1634 and 1637 are ''paired measures''. The NQF #1634 forms the denominator for the NQF #1637 measure. The measure specifications for NQF #1634 require that patients must be screened for the presence or absence of pain (and if present, a rating of its severity) using a standardized tool. The measure specifications do not require hospices to use one particular tool or clinical approach, in recognition of prior stakeholder input that indicated it is important to allow clinicians to select and use the appropriate screening tool on a case-by-case basis. The HIS is not a patient assessment; it is an item set designed to collect data elements that can be used to calculate NQF endorsed measures, including NQF #1634 and #1637. As a result, item J0900D is needed to establish whether or not the standardized screening tool selected and used by the clinician indicated that the patient had pain. Details of how to code item J0900D will be provided in the User Guide. CMS has involved the measure steward in developing that User Guide. J0900 D is also needed because it forms the denominator for NQF #1637, pain comprehensive assessment. The measure specifications for NQF #1637 indicate that a comprehensive clinical assessment should include 5 of the following 7 characteristics of pain: location, severity, character, duration, frequency, what relieves or worsens the pain, and the effect on function or quality of life. J0910C provides a checklist of these 7 items and forms the numerator for NQF #1637.

Comment: We received several comments regarding J0900 (Pain Screening) and J0910 (Pain Assessment). Some commenters expressed that we

should provide more clarity on acceptable pain screening tools and determining patient pain severity. Regarding J0910C (Comprehensive Pain Assessment included), one commenter indicated that finding the elements of the comprehensive pain assessment in the medical record would be tedious.

Response: The measure specifications for NQF #1634 (Pain Screening) require that patients must be screened for the presence or absence of pain (and if present, a rating of its severity) using a standardized tool. The HIS is not a patient assessment, and we do not want to be overly prescriptive in which standardized pain screening tools hospices use or how patient pain is rated. Thus, the items listed in J0900C (Type of standardized pain screening tool used) are not specific screening tools in and of themselves. Instead they are tools that may be utilized for the assessment of pain severity. Item J0910C (Comprehensive pain assessment included) helps form the numerator for NQF #1637 (Pain Assessment) and must be retained. We will provide guidance and training materials, including a detailed user guide to hospices prior to implementation of the HIS.

Comment: We received comments on J2030 (Screening for Shortness of Breath) and J2040 (Treatment for Shortness of Breath). One commenter suggested that the respiratory screening should require evaluation of shortness of breath upon exertion. Another commenter questioned the purpose of J2040C (Type(s) of treatment for shortness of breath initiated).

Response: The measure specifications for NQF #1639 (Dyspnea Screening) do not require that the respiratory screening include evaluation upon exertion. J2040C helps form the numerator for NQF #1639. We believe that this item will improve usability by indicating the treatments/types of treatment that may be considered treatment for shortness of breath for purposes of the measure numerator condition. The HIS is not a patient assessment, and we do not want to be overly prescriptive in which screening tools hospices use, particularly for shortness of breath where there is no accepted standardized screening or assessment tool. We will provide guidance and training materials, including a detailed user guide to hospices prior to implementation of the HIS.

Comment: One commenter wanted to know when N0520 (Bowel Regimen) required a response.

Response: As noted on the draft HIS, providers will respond to the bowel items if a scheduled opioid and/or a PRN opioid is initiated or continued.

Comment: We received several comments related to Section Z (Record Administration), particularly item Z0400 (Signature(s) of Person(s) Completing the Record). Commenters were unclear on the purpose of this section and how Z0400 should be completed.

Response: The items in Section Z appear in and are standardized across data submission vehicles in multiple CMS quality reporting programs. This section allows providers to verify, internally, the individuals responsible for completing the HIS (that is the abstracters, not those completing the patient assessment). In accordance with processes used in other care settings, it is suggested that the signature page of Section Z be retained by the hospice in accordance with the hospice's policies and procedures related to patient information and clinical records.

Comment: Several commenters inquired about future guidance and training on the HIS.

Response: We will provide guidance and training materials, including a detailed user guide, to hospices prior to implementation of the HIS. We plan to provide Hospices with further information and details about use of the HIS. We will provide this information through venues such as postings on the Hospice Quality Reporting Program Web page, Open Door Forums, announcements in the CMS E-News, provider training, and National Provider calls. Electronic data submission will be required for HIS submission in CY 2014 and beyond; there will be no other data submission method available. We will make available submission software for the HIS to hospices at no cost. We will also provide reports to individual hospices on their performance on the measures calculated from data submitted via the HIS. The specifics of the reporting system and precisely when specific measures will be made available have not yet been determined. We will report to providers on the following measures on a schedule to be determined:

- NQF #1617 Patients Treated with an Opioid who are Given a Bowel Regimen
- NQF #1634 Pain Screening
- NQF #1637 Pain Assessment
- NQF #1638 Dyspnea Treatment
- NQF #1639 Dyspnea Screening
- NQF #1641 Treatment Preferences
- NQF #1647 Beliefs/Values Addressed (if desired by the patient)

TABLE 6—SUMMARY TABLES

Data collection	Data submission	APU Impact	Measure name
Finalized in the CY 2013 HH PPS Final Rule			
1/1/2013–12/31/2013	4/1/2014	FY 2015 (10/1/2014)	Structural/QAPI measure NQF #0209.
Finalized in this Final Rule			
7/1/2014–12/31/2014	Rolling	FY 2016 (10/1/2015)	Hospice and Palliative Care—Pain Screening, NQF #1634.
7/1/2014–12/31/2014	Rolling	FY 2016 (10/1/2015)	Hospice and Palliative Care—Pain Assessment, NQF #1637.
7/1/2014–12/31/2014	Rolling	FY 2016 (10/1/2015)	Hospice and Palliative Care—Dyspnea Screening, NQF #1639.
7/1/2014–12/31/2014	Rolling	FY 2016 (10/1/2015)	Hospice and Palliative Care—Dyspnea Treatment, NQF #1638.
7/1/2014–12/31/2014	Rolling	FY 2016 (10/1/2015)	Patients Treated with an Opioid who are Given a Bowel Regimen, NQF #1617.
7/1/2014–12/31/2014	Rolling	FY 2016 (10/1/2015)	Hospice and Palliative Care—Treatment Preferences, NQF #1641.
7/1/2014–12/31/2014	Rolling	FY 2016 (10/1/2015)	Beliefs/Values Addressed (if desired by patient), modified NQF #1647.

As stated in the August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47302, 47320), we finalized that all hospice quality reporting periods subsequent to that for Payment Year FY 2014 will be based on a CY instead of a calendar quarter and for FY 2015 and beyond, the data submission deadline will be April 1st of each year. The implementation of the HIS in July 2014 will negate the CY data collection requirement and the April 1st data submission deadline. We will provide details on data collection and submission timing prior to implementation of the HIS.

5. Public Availability of Data Submitted

Under section 1814(i)(5)(E) of the Act, the Secretary is required to establish procedures for making any quality data submitted by hospices available to the public. The procedures ensure that a hospice will have the opportunity to review the data regarding the hospice's respective program before it is made public. In addition, under section 1814(i)(5)(E) of the Act, the Secretary is authorized to report quality measures that relate to services furnished by a hospice on the CMS Web site. We recognize that public reporting of quality data is a vital component of a robust quality reporting program and are fully committed to developing the necessary systems for public reporting of hospice quality data. We also recognize it is essential that the data made available to the public be meaningful and that comparing performance between hospices requires that measures be constructed from data collected in a standardized and uniform manner. The development and implementation of a standardized data set for hospices must precede public reporting of hospice quality measures. Once hospices have implemented the standardized data collection approach, we will have the data needed to establish the scientific soundness of the quality measures that can be calculated using the standardized data collection. It is critical to establish the reliability and validity of the measures prior to public reporting in order to demonstrate the ability of the measures to distinguish the quality of services provided. To establish reliability and validity of the quality measures, at least four quarters of data will need to be analyzed. Typically the first two quarters of data reflect the learning curve of the providers as they adopt a standardized data collection; these data are not used to establish reliability and validity. This means that the data from Q3 and Q4 CY 2014 will not be used for assessing validity and reliability of the quality measures. Data collected by hospices during Q 1, 2 and 3 CY 2015 will be analyzed starting in CY 2015. Decisions about whether to report some or all of the quality measures publicly will be based on the findings of analysis of the CY 2015 data. In addition, as noted, the Affordable Care Act requires that reporting be made public on a CMS Web site and that providers have an opportunity to review their data prior to public reporting. We will develop the infrastructure for public reporting, and provide hospices an opportunity to review their data. In light of all the steps required prior to data being publicly reported, we anticipate that public reporting will not be implemented in FY 2016. Public reporting may occur during the FY 2018 APU year, allowing ample time for data analysis, review of measures' appropriateness for use for public reporting, and allowing hospices the required time to review their own data prior to public reporting. We will announce the timeline for public reporting of data in future rulemaking. We welcome public comment on what we should consider when developing future proposals related to public reporting.

Comment: We received a few comments regarding what should be considered in developing future proposals related to public reporting of hospice quality data. Commenters were in favor of public reporting, and indicated that they felt it was time to make this information available to consumers. Commenters also indicated that they appreciate the opportunity to review their data prior to the initiation of public reporting, and CMS's efforts to ensure that public reporting would not occur before adequate data analysis had taken place to establish the suitability of the measures for public reporting purposes. A few commenters suggested that outcome measures and measures from the family experiences of hospice care survey would be more meaningful for public reporting than the measures from the HIS. Several commenters had concerns about which of the NQF measures proposed would be appropriate for public reporting. Commenters noted that all of the NQF measures proposed were process measures and it may ''take effort'' for the public to understand the relationship of process measures to quality of care. One commenter stated that a comprehensive explanation of this relationship should be provided to the public.

Response: We appreciate and recognize commenters' concerns about appropriateness of quality measures for public reporting. As stated in the proposed rule, we will analyze data for validity and reliability of quality measures and review measures' appropriateness for public reporting prior to determining which measures will be publicly reported. Moreover, we appreciate the suggestion to provide a comprehensive explanation of relationships between quality measures selected for public reporting and quality of care. We will consider this suggestion when developing processes, procedures and future proposals for public reporting. We also recognize the importance of outcome data, both for quality measurement and for public reporting. We also reiterate that we are committed to seeking opportunities to use outcome measures—both as part of the quality reporting program and for public report—as they are developed and become endorsed by NQF.

6. The CMS Hospice Experience of Care Survey for the FY 2017 Payment Determination and That of Subsequent Fiscal Years

Background

In the CY 2013 Home Health Prospective Payment System Rate Update final rule (77 FR 67135), we stated that were considering the use of a patient/family experience of care survey in addition to other hospice quality of care (clinical) measures. We have developed a draft Hospice Experience of Care Survey questionnaire drawing heavily on questionnaires in the public domain such as the Family Evaluation of Hospice Care (FEHC). We are testing the draft survey in a national field test in fall 2013. The Hospice Experience of Care Survey will treat the dying patient and his or her informal caregivers (family members or friends) as the unit of care.

Before the development of this survey, there was no official national standard experience of care survey that included standard survey administration protocols. The Hospice Experience of Care Survey will include detailed survey administration protocols which will allow for comparisons across hospices. The survey will focus on topics that are important to hospice users and for which informal caregivers are the best source for gathering this information. In addition, the ''About You'' section of the instrument includes demographic characteristics of the patients and their caregivers which can be used to feed into case mix adjustments of the publicly reported data.

Description of the Survey

The Hospice Experience of Care Survey will seek information from informal caregivers of patients who died while enrolled in hospices. We plan to field the questionnaires after the patient's death. Fielding timelines will be established to give the respondent some recovery time (two to three months), while simultaneously not delaying so long that the respondent is likely to forget details of the hospice experience. Caregivers will be presented with a set of standardized questions about their own experiences and the experiences of the patient in hospice care. During national implementation of this survey, hospices will be required to offer the survey, but individual caregivers will respond only if they voluntarily chose to do so.

The Hospice Experience of Care Survey captures such topics as hospice provider communications with patients and family members, hospice provider care, and patient and family member characteristics. The survey will allow the informal caregiver (family member or friend) to provide an overall rating of the hospice care their patient received, and will ask if they will recommend ''this hospice'' to others.

The Hospice Experience of Care Survey is following the principles used in the development of the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) surveys. Therefore, we are—

- Obtaining input from consumers and stakeholders regarding how hospice patients perceive hospice care and what elements in hospice programs are of greatest importance to patients and informal caregivers.
- Drafting a version of the hospice questionnaire that will be cognitively tested with a small number of respondents in both English and Spanish. This type of testing will allow us to assess how respondents interpret and respond to individual questionnaire items.
- Providing a field test of the Hospice Experience of Care Survey instrument after the development of an initial questionnaire is completed. This field test will allow us to review survey implementation procedures and use statistical analysis of the survey results to select the final set of questions. In addition, it will allow us to select variables which may be used in the case mix adjustment of survey results for public reporting.

The Hospice Experience of Care Survey, as well as the CAHPS® family of surveys, focuses on patient perspectives on the experience of care, rather than on patient satisfaction. CAHPS® data complements other data, including clinical measures. CAHPS® surveys are specifically intended to focus on issues where the patient (or in this case the caregiver) is the best source of information. We intend the Hospice Experience of Care Survey to have a similar focus. Once the survey is final, we will submit it for CAHPS® endorsement and National Quality Forum endorsement.

We plan to move forward with a model of survey administration in which we will approve and train survey vendors to administer the survey on behalf of hospices. This will be very similar to the models that we use for Hospital CAHPS® (HCAHPS) and Home Health CAHPS® (HHCAHPS). Hospices will be required to contract with an approved survey vendor and to provide the sampling frame to the approved vendor on a monthly basis.

Participation Requirements for the Survey Begin in CY 2015 for the FY 2017 Payment

We proposed that we would begin required implementation of the survey in January 2015 in the FY 2014 Hospice Wage Index and Payment Rate Update; Hospice Quality Reporting Requirements; and Updates on Payment Reform proposed rule (78 FR 27823, published May 10, 2013). We are finalizing the proposed timeline due to the importance of the caregiver's voice. Beginning in first quarter of CY 2015, hospices will be required to conduct a dry run of the survey for at least one month in January 2015, February 2015, or March 2015. Beginning in April 2015, all hospices will be required to participate in the survey on an ongoing basis. The one ''dry run month,'' plus the nine months of April 2015 to December 2015 participation, will be required to meet the pay for reporting requirement of the Hospice Quality Reporting Program for the FY 2017 annual payment update.

Approved Hospice Experience of Care Survey vendors will submit data on the hospice's behalf to the CMS hospice patient experience of care survey data center. The deadlines for data submission have not yet been finalized. For the ''dry run'' the survey vendor would follow all the national implementation procedures, but the data would not be publicly reported. The dry run would provide hospices and their vendors with the opportunity to work together under ''test'' circumstances. We will allow exemptions for very small hospices. Hospices that have fewer than 50 unduplicated or unique deceased patients in the period from January 1, 2014 through December 31, 2014 will be exempt from the Hospice Experience of Care Survey data collection and reporting requirements for the FY 2017 payment determination. The hospices would be required to submit their patient counts for the period of January 1, 2014 through December 31, 2014 to CMS. The due date for the participation exemption form will be stated in next year's rule. To qualify for the small size exemption, hospices will need to submit to CMS their patient counts annually for each future APU period.

As part of the national implementation, we will develop technical specifications for vendors to follow and will issue a detailed survey guidelines manual prior to the dry run months.

In addition, there will be a Web site devoted specifically to the Hospice Experience of Care Survey. It will include information and updates regarding survey implementation and technical assistance. Hospices interested in viewing similar model Web sites are encouraged to visit the HCAHPS Web site at *www.hcahpsonline.org* or the HHCAHPS Web site at *https://homehealthcahps.org.* On these Web sites, viewers can see and download the detailed manuals about the surveys (the *Quality Assurance Guidelines* for Hospital CAHPS® and the *Protocols and Guidelines Manual* for Home Health Care CAHPS®), as well as obtain information about the surveys' histories, data submission information, and survey updates.

Consistent with our other implemented surveys, we will provide an email address and toll-free telephone number for technical assistance.

The Affordable Care Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to the FY. Any such reduction would not be cumulative and would not be taken into account in computing the payment amount for subsequent FYs. In the November 8, 2012 CY 2013 Home Health Prospective Payment System final rule (77 FR 67068), it was stated that all hospice quality reporting periods subsequent to that for Payment Year 2014 would be based on a CY rather than on a FY. We are finalizing adding the Hospice Experience of Care Survey to the Hospice Quality Reporting Program requirements for the FY 2017 payment determination. To meet the FY 2017 requirements, hospices would participate in a dry run for at least 1

month of the first quarter of CY 2015 (January 2015, February 2015, March 2015) and hospices must collect the survey data on a monthly basis for the months of April 1, 2015 through December 31, 2015 in order to qualify for the full APU.

The following is a summary of the comments we received regarding the Hospice Experience of Care Survey proposal.

Comment: We received a number of comments that the timeline for implementation of the Hospice Experience of Care Survey placed it too close in proximity to the implementation of the HIS items and that there should be a gap of at least 12 months between the HIS implementation and the survey implementation dates.

Response: We carefully reviewed the comments asking for a delay in the timing of the national implementation of the Hospice Experience of Care Survey. However, we concluded that obtaining data from caregivers is so important that we cannot delay. As proposed we will begin with a dry run in the first quarter of 2015. Continuous data collection will begin April, 1, 2015 for the 2017 APU.

Comment: We received comments that there are financial and administrative burdens on hospices participation in the Hospice Experience of Care Survey. Commenters also stated that the financial burden of participation would outweigh the 2 percent reduction in the annual payment update that would be given to non-participating hospices. We also received comments stating that this would require more staffing and the development of a process to handle the implementation of the survey and comments that this is a burden to small hospices. We received a comment asking if hospices can self-administer the survey to save costs in implementing the hospice survey. In addition, we received a comment that the Family Evaluation of Hospice Care (FEHC) survey does not pose a financial burden to hospices because the FEHC survey is a benefit of National Hospice and Palliative Care Organization (NHPCO) membership.

Response: We appreciate the comments concerning that the proposed survey is a financial burden to participating hospices. We are using the same survey implementation model that we use for other CAHPS® surveys where providers pay approved survey vendors to conduct the data collection on their behalf and CMS pays for the survey vendor training, technical support and assistance for hospices and their approved survey vendors, oversight of the approved survey vendors, the public reporting of the data, and the data analysis of the hospice survey data. Before national implementation begins in 2015, hospices are strongly encouraged to shop around for the best cost value for them before contracting with an approved survey vendor to conduct the Hospice Experience of Care Survey on their behalf. Hospices cannot self-administer the survey because we need to eliminate any potential bias in the administration of the survey. We do not believe that the annual burden to hospices will exceed the annual burden and costs that we see in the implementation of HHCAHPS. Basically, once national implementation starts, hospices will need to choose a vendor and contract with them, and then they will be responsible on a monthly basis to produce a file of all the caregivers (the persons on the records for the hospice patients) for hospice patients who died in the past month. We are not surveying people who have living hospice patients. We cannot fully comment on whether the survey costs to the individual hospice providers will outweigh the costs of the loss of 2 percent of the APU. However, most survey costs will be much less than the loss of the 2 percent reduction in the APU. Small hospices serving 50 or fewer patients in an annual period will complete (annually) a Participation Exemption Request Form so that they will not incur survey costs. The CMS hospice survey will require the approved survey vendors to implement the survey in accordance to a uniform set of protocols and guidelines to assure consistency in the survey administration, in the implementation of other CMS CAHPS® surveys, such as HCAHPS, and HHCAHPS.

Comment: We received comments that the draft hospice experience of care survey instrument is too long and ''daunting'' to read and respond to.

Response: This is a survey that is going to be used in a national field test in fall 2013. There are more questions in this test survey than we intend to keep in the final survey. We anticipate that we will eliminate questions that do not contribute to the composites measuring key areas of the hospice care experience. We do anticipate keeping all of the demographic questions, because they will be used to adjust the results for differences in the mix of patients across hospices and for analysis of disparities of care. It is important that the data are adjusted to ensure accurate comparisons across hospices. We actually anticipate that the final survey instrument will be significantly shorter than the FEHC, which has 54 items, and a shorter instrument will translate into lower vendor costs for the participating hospices. To give an example of this, the field test version of the HHCAHPS survey had 54 items and the final approved version of the survey that we use today, has 34 items.

Comment: We received a comment expressing the preference that NHPCO be allowed to be a survey vendor for the Hospice Experience of Care Survey.

Response: We will be using survey vendor eligibility criteria that are very similar or identical to our other CAHPS® surveys, and if NHPCO meets the stated survey vendor eligibility criteria then we welcome NHPCO to complete the survey vendor application for the hospice experience of care survey.

Comment: We received comments that we are administering the survey too close to the death of the patient.

Response: We thank you for this comment. We are sensitive that a survey about this issue will be difficult for the families and friends of their loved ones who have passed, especially in the first year following the deaths. We anticipate administering the survey about two or three months following the deaths of the hospice patients. We are hesitant about waiting too long following the deaths because the survey respondents may forget the details of the hospice experiences if the survey is administered too long following the deaths.

Comment: We received several comments supporting CMS for developing a new survey instrument that is independent of existing hospice survey instruments, and that has the uniform survey implementation guidelines of the CAHPS® surveys.

Response: We appreciate this support of the CMS survey instrument. We are following the CAHPS® guidelines and we will apply for CAHPS® endorsement as well as the endorsement of the National Quality Forum. Commenters supporting us noted that the final survey instrument will be shorter and that we will allow flexibilities in the implementation of the survey that will allow hospices to add their own questions, but that the core questions will be used for valid comparisons across hospices because we will define the protocols and guidelines for the implementation of the survey to create an equal implementation process for the survey.

Comment: We received a comment that we cannot regulate payment based on what the living family members think of hospice care because it is not possible to make everyone happy and

asking about this experience post death seems odd and could result in a larger percentage of negative responses.

Response: We appreciate this viewpoint. However, the survey itself does not focus on the death. It focuses on the hospice care and the details about the experience of care with the hospice. The survey's purpose is to provide useful information to other caregivers and families who are in the position of comparing hospices for the care of their loved ones.

Comment: We received a comment that there are many family and friends at the time of the death but that they may not be present after the death when the survey goes out. We also received a comment that some hospices will send out multiple surveys to family members who had perceived good experiences, and conversely, will not send out surveys to family members who are mentally ill, or were not involved in the hospice patient's care, even if they were listed as the closest relative. We received a comment that the results may be skewed by the family member's degree of contact with the patient and hospice team.

Response: We appreciate these sensitive comments concerning who will be the survey respondent. We propose to have a uniform standard for the designation of the survey respondent. We propose that the survey respondent will be the person who is listed in the hospice record as the primary caregiver or primary contact person for the hospice patient.

Comment: We received a comment that surveys should not be sent more than two times to families as there is a need not to be too intrusive.

Response: For the field test, we will have one survey mode, called the mixed mode that includes both a mail survey and telephone follow-up for non-respondents. If the survey respondent does not return the mailed questionnaire, then the survey respondent is called and asked to complete the telephone survey instrument. For national implementation of the survey, we will have three modes: Mail only, telephone only, and mixed. For the mail only mode, only two surveys are mailed to the sampled person. For the telephone only mode, there will be up to five call attempts to reach the sampled respondent, but once the sampled respondent answers the telephone and speaks with the telephone surveyor, the respondent will only be asked to complete the survey once.

Comment: We received comments that rural hospices will be at a disadvantage paying for the Hospice Experience of Care Survey, and that there should not be a 2 percent reduction since hospices save money for Medicare.

Response: We are requiring the survey for all hospices, to meet the goals of transparency for hospices regardless of their location. We believe that the burden to rural and urban hospices is equal, and we reiterate that small hospices serving 50 or fewer in a given year will be exempt from survey participation if they complete the survey's Participation Exemption Request form for each APU.

Comment: We received a comment asking if CMS would require the survey to be available in other languages, such as Spanish.

Response: Vendors will be required to offer the survey in English and Spanish. Hospices will be able to administer the survey in additional languages if needed for their patient populations; however, they must use the CMS official translations. We plan to make additional translations of the survey available as needed. If you would like to request a specific translation, please email CMS at *hospicesurvey@cms.hhs.gov.*

Comment: We received a comment stating that it is not clear whether hospices are given the full credit for survey participation regardless of the survey results.

Response: We stated in the proposed rule that survey participation is required for the full APU; the data results are not part of the requirements for the APU. The survey requirement is part of the Hospice Quality Reporting Program; this is not a pay for performance program.

Comment: We received a comment stating that their vendor for the FEHC notifies them immediately about negative comments that are received about their hospice. This commenter noted that there is no information in the proposed rule that describes how the comment section of the proposed survey will be used, or available to the hospice paying for survey service.

Response: Hospices will still be able to have this arrangement with their respective vendors in the CMS Hospice Experience of Care Survey.

Comment: We received a comment asking if hospices will be responsible for a certain response rate for the Hospice Experience of Care Survey.

Response: No, hospices will not be responsible for a certain response rate for the Hospice Experience of Care Survey. However, all approved survey vendors must follow the survey administration protocols to implement the survey.

Comment: We received a comment of support for the FEHC survey and questions about why CMS is mandating the new survey in place of the FEHC. We also received a comment that CMS should allow the FEHC to be substituted for the CMS Hospice Survey.

Response: We respect the work that went into the FEHC; however, we cannot allow the FEHC to substitute for the CMS survey. To be useful to the public, Hospice Survey data must be comparable across hospices. Two different surveys would create inconsistencies among hospices that would not allow for direct comparisons. In addition, the FEHC was designed by and for a private entity. CMS must ensure that no private entity has a preferred relationship with the agency. The CMS survey was developed under the standards of the CAHPS® surveys and will be implemented with the rigorous guidelines of the CAHPS® surveys.

Comment: A commenter stated that the dry run should be 3 months, instead of 1 month.

Response: The requirement for the dry run is 1 month, but hospices are allowed to do 2 or 3 months, in the period of January through March 2015.

Comment: We received a comment that consideration needs to be given to the diverse audiences responding to the survey. Issues related to primary language, socioeconomic status, culture, and health literacy, may impact the completion of the survey and the responses to the survey questions.

Response: We agree with this commenter and will adjust the survey results for respondent mix. We will also be offering multiple translations and different modes of survey administration so hospices can choose what meets their needs the best.

Comment: We received a comment that consideration needs to be given to the smaller agency where one negative survey can skew the data results for that agency.

Response: For other CAHPS® surveys, we have received comments about the comparability of the data for small providers with large providers. In the practice of statistics, it is established that the sample size in absolute numbers is more important than the proportion of the population surveyed. Surveying a sample of 300 will produce the same level of precision whether the sample large or small. The larger the sample, the less the variability is a provider's ratings over time. We will be proposing the required sample sizes for all hospices in next year's proposed rule. Small agencies will need to conduct census sampling if they do not qualify for the size exemption.

Comment: We received a comment that CMS needs to know what its ultimate goal is of the surveys without losing sight of the goal itself.

Response: The goals of the Hospice Experience of Care Survey are the same as the goals of our other CAHPS® surveys: (1) To produce comparable data on the caregiver's or loved one's' perspectives on care that allow objective and meaningful comparisons between hospices on domains that are important to consumers; (2) to create incentives for hospices to improve their quality of care through public reporting of survey results; and (3) to enhance public accountability in health care by increasing the transparency of the quality of the care provided in return for the public investments. CMS is serious about these three goals for all of our perspectives of care/CAHPS® surveys, and we intend to never lose sight of their importance.

Comment: We received a comment that the first portion of the survey is nearly identical to HHCAHPS, while the latter portion seems more representative of hospices. This commenter stated that questions regarding goals of care or the patient's plan of care were absent, two areas of particular importance for hospices. This commenter also noted that questions regarding after-hour response to needs were absent, an area known to create much anxiety for patients and families.

Response: We reviewed both surveys side-by-side and disagree with this commenter about the similarity to HHCAHPS. We have some similar questions, but this is because in focus groups and later testing these issues were all raised by our testing participants. Also, we have many questions about care. We also have questions about after-hour response to needs. They are: ''While your family member was in hospice care, did you need to contact the hospice team during evenings weekends or holidays for questions or help with your family member's care?, and ''How often did you get the help you needed from the hospice team during evenings, weekends, or holidays?

Comment: We received a comment about transitioning from the current FEHC program to the CMS Hospice Survey.

Response: We do not have any relationship to the FEHC program. Hospices can continue to continue to use the FEHC. However, the FEHC cannot be substituted for the CMS Hospice Experience of Care Survey. Hospices can conduct both surveys under specific conditions that will be detailed in the CMS Hospice Survey Guidelines Manual, which has not been written.

Comment: We received a comment that the survey should meet the quality needs of individual hospices.

Response: We hope that the survey will serve the quality needs of all hospices. However, hospices may have unique quality needs and hospices will be permitted to add their own additional questions to the standardized survey.

Comment: We received comments that the caregiver of record is not always the best person to receive the survey.

Response: We are aware the caregiver of record may not be the best person to receive the survey. However, because the hospice is likely to have contact information for this person, they are the best person for us to contact.

Comment: We received comments expressing the concern that collecting demographic information from respondents could reduce response, especially from minority populations. In addition, commenters said that asking for this information could raise privacy and confidentiality concerns. We received a comment suggesting CMS redesign the Hospice Experience of Care Survey so that there were no survey questions about demographic characteristics. The commenter has received feedback that no one likes to answer those kinds of questions.

Response: We ask for demographic information on surveys for two purposes: First, to allow us to make case mix adjustments so that hospices' survey responses can be compared fairly. We have not determined how case mix adjustments will be calculated for this survey, and therefore, need demographic variable to test different case mix adjustment variables. Second, we also need demographic information to allow for research on health care disparities between groups of people, including minorities. All sampling data, which will include these items, will be treated as private and confidential. The approved survey vendors who conduct these surveys will be responsible for maintaining the security, privacy and confidentiality of sampling information and survey results in accordance with HIPAA requirements. Above all, the completion of the survey is voluntary for all persons who receive the survey in the mail, or who are telephoned and are asked to complete the survey on the telephone. Any person who receives the survey, or who is telephoned and is asked to complete the survey, is free not to complete the survey.

Comment: We received a comment that the survey data should be adjusted for length of hospice stay and for the care setting.

Response: We will use the data from the field test to determine if the administrative data (such as length of stay and hospice setting) has an impact on the survey data results.

Comment: We received comments that CMS should not exempt very small rural hospices from the requirements.

Response: Besides the burden to these hospices, there is the issue of privacy to the respondents. In very small settings, it could be apparent who the survey respondents are. Also, there are sampling and reliability issues because the sample and the data could be very small.

Comment: We received comments stating that it is going to be very difficult for survey respondents to complete the survey if their loved ones changed hospice settings.

Response: At the beginning of the survey, respondents are instructed to reply to the questionnaire as pertaining to the last setting of hospice care.

Comment: We received comments suggesting that CMS add questions to the survey. The suggested topics for added items include questions specifically relevant to veterans as well as questions about care planning, care goals, and volunteers.

Response: One of the concerns often expressed to us is that the CMS Hospice Experience of Care Survey is too long. We intend to shorten the survey after the field test. In this context, we are reluctant to add still more questions to the core survey instrument. However, we know that it can be important for providers to ask questions that are not on the approved core survey instrument. Hospices will be permitted to add their own questions to the survey, following the required core set of questions.

Comment: We had one comment that suggested the follow-up schedule for the field test of the Hospice Experience of Care Survey was too aggressive and would make family members or friends of the deceased feel harassed.

Response: Our follow-up plan for the field test is very typical for professional mixed-mode surveys. We plan to mail a survey to the sample members. Sample members who have not responded within three weeks will receive follow-up telephone calls. We will make up to a maximum of five telephone calls, at different days and times, in an effort to reach the sample member. If we have not reached the sample member after five attempts, calls will be curtailed. If the sample member is reached but refuses to complete the survey, no more calls will be made. We will not

repeatedly call the sample member and ask for a response.

Summary of Final Rule Changes for the Hospice Experience of Care Survey

As a result of these comments, we are finalizing the requirements as proposed. Hospices must participate in and report data from a dry run for at least 1 month in the first quarter of CY 2015 (January 2015, February 2015, or March 2015) with continuous monthly data collection beginning in April 1, 2015 and continuing through December 31, 2015.

7. Notice Pertaining to Reconsiderations Following APU Determinations

At the conclusion of any given quality data reporting period, we will review the data received from each hospice during that reporting period to determine if the hospice has met the reporting requirements. Hospices that are found to be non-compliant with the reporting requirements set forth for that reporting cycle could receive a reduction in the amount of 2 percentage points to their annual payment update for the upcoming payment year.

We are aware that there may be situations when a hospice has evidence to dispute a finding of non-compliance. We further understand that there may be times when a provider may be prevented from submitting quality data due to the occurrence of extraordinary circumstances beyond their control (for example, natural disasters). It is our goal not to penalize hospice providers in these circumstances or to unduly increase their burden during these times.

Other CMS Quality Reporting Programs, such as Home Health Quality Reporting and Inpatient Quality Reporting, include an opportunity for providers to request a reconsideration pertaining to their APU determinations. We are aware of the potential need for providers to request reconsideration and that we will be making APU determinations for FY 2014 in the coming months. Therefore, to be consistent with other established quality reporting programs, we used the proposed rule to notify providers of our intent to provide a process that would allow hospices to request reconsiderations pertaining to their FY 2014 and subsequent years' payment determinations.

Specifically, as part of the reconsideration process for hospices beginning with the FY 2014 payment determinations, hospices found to be non-compliant with the reporting requirements during a given reporting cycle would be notified of that finding. The purpose of this notification is to put hospices on notice of the following: (1) That they have been identified as being non-compliant with section 3004 of the Affordable Care Act for the reporting cycle in question; (2) that they would be scheduled to receive a reduction in the amount of 2 percentage points to the annual payment update to the applicable fiscal year; (3) that they may file a request for reconsideration if they believe that the finding of non-compliance is erroneous, or that if they were non-compliant, they have a valid and justifiable excuse for this non-compliance; and, (4) that they must follow a defined process on how to file a request for reconsideration, which would be described in the notification.

Upon the conclusion of our review of each request for reconsideration, we would render a decision. We could reverse our initial finding of non-compliance if: (1) The hospice provides proof of full compliance with the all requirements during the reporting period; or (2) the hospice was not able to comply with requirements during the reporting period, and it provides adequate proof of a valid or justifiable excuse for this non-compliance. We would uphold our initial finding of non-compliance if the hospice could not show any justification for non-compliance.

C. FY 2014 Hospice Wage Index and Rates Update

1. Hospice Wage Index

The hospice wage index is used to adjust payment rates for hospice agencies under the Medicare program to reflect local differences in area wage levels based on the location where services are furnished. The hospice wage index utilizes the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments and our regulations at § 418.306(c) require each labor market to be established using the most current hospital wage data available, including any changes by the Office of Management and Budget (OMB) to the Metropolitan Statistical Areas (MSAs) definitions. We have consistently used the pre-floor, pre-reclassified hospital wage index when deriving the hospice wage index. In our August 4, 2005 FY 2006 Hospice Wage Index final rule (70 FR 45130), we began adopting the revised labor market area definitions as discussed in the OMB Bulletin No. 03–04 (June 6, 2003). That bulletin announced revised definitions for MSAs and the creation of Core-Based Statistical Areas (CBSAs). The bulletin is available online at *http://www.whitehouse.gov/omb/bulletins/b03-04.html.* In the FY 2006 Hospice Wage Index final rule (70 FR 45139), we implemented a 1-year transition policy using a 50/50 blend of the CBSA-based wage index values and the MSA-based wage index values for FY 2006. The one-year transition policy ended on September 30, 2006. For the FY 2007 hospice wage index and beyond, we have used CBSAs exclusively to calculate wage index values. OMB has published subsequent bulletins regarding CBSA changes. The OMB bulletins are available at *http://www.whitehouse.gov/omb/bulletins/index.html.*

When adopting OMB's new labor market designations in FY 2006, we identified some geographic areas where there were no hospitals, and thus, no hospital wage index data, which to base the calculation of the hospice wage index. We also adopted the policy that, for urban labor markets without a hospital from which hospital wage index data could be derived, all of the CBSAs within the state would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas in our August 6, 2009 FY 2010 Hospice Wage Index final rule (74 FR 39386). In FY 2014, the only CBSA without a hospital from which hospital wage data could be derived is 25980, Hinesville-Fort Stewart, Georgia.

In our August 31, 2007 FY 2008 Hospice Wage Index final rule (72 FR 50214), we implemented a new methodology to update the hospice wage index for rural areas without a hospital, and thus no hospital wage data. In cases where there was a rural area without rural hospital wage data, we used the average pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs to represent a reasonable proxy for the rural area. In our August 31, 2007 FY 2008 Hospice Wage Index final rule, we noted that we interpret the term ''contiguous'' to mean sharing a border (72 FR 50217). Currently, the only rural area without a hospital from which hospital wage data could be derived is Puerto Rico. However, our policy of imputing a rural pre-floor, pre-reclassified hospital wage index based on the pre-floor, pre-reclassified hospital wage index (or indices) of CBSAs contiguous to a rural area without a hospital from which hospital wage data could be derived does not recognize the unique circumstances of Puerto Rico. While we have not identified an alternative methodology for imputing a pre-floor, pre-reclassified hospital wage index for rural Puerto Rico, we will continue to

evaluate the feasibility of using existing hospital wage data and, possibly, wage data from other sources. For FY 2008 through FY 2013, we have used the most recent pre-floor, pre-reclassified hospital wage index available for Puerto Rico, which is 0.4047. In this final rule, for FY 2014, we will continue to use the most recent pre-floor, pre-reclassified hospital wage index value available for Puerto Rico, which is 0.4047.

For the FY 2014 Hospice Wage Index and Payment Rate Update proposed rule (78 FR 27840), we proposed to use the 2013 pre-floor, pre-reclassified hospital wage index to derive the applicable wage index values for the FY 2014 hospice wage index. We proposed to continue to use the pre-floor, pre-reclassified hospital wage data as a basis to determine the hospice wage index values because hospitals and hospices both compete in the same labor markets, and therefore, experience similar wage-related costs. We believe the use of the pre-floor, pre-reclassified hospital wage index data as a basis for the hospice wage index results in the appropriate adjustment to the labor portion of the costs. The FY 2014 hospice wage index values presented in this final rule were computed consistent with our pre-floor, pre-reclassified hospital wage index policy (that is, our historical policy of not taking into account Inpatient Prospective Payment System (IPPS) geographic reclassifications in determining payments for hospice). The 2013 pre-floor, pre-reclassified hospital wage index does not reflect OMB's new area delineations, based on the 2010 Census, as outlined in OMB Bulletin 13–01, released on February 28, 2013. Moreover, the final FY 2014 pre-floor, pre-reclassified hospital wage index does not contain OMB's new area delineations because those changes were not published until the IPPS proposed rule was in advanced stages of development (78 FR 27552). CMS intends to propose changes to the FY 2015 hospital wage index based on the newest CBSA changes in the FY 2015 IPPS proposed rule. Therefore, if CMS incorporates OMB's new area delineations, based on the 2010 Census, in the FY 2015 hospital wage index, those changes would also be reflected in the FY 2016 hospice wage index.

We received nine comments on our proposal to use the 2013 pre-floor, pre-reclassified hospital wage index to derive the applicable wage index values for the FY 2014 hospice wage index, which are summarized below.

Comment: Some commenters commented that is difficult to have the hospice wage index dependent on the hospital wage index due to the lack of data sometimes submitted by the hospital on their cost report data and the added responsibility for the hospice to monitor the hospital wage index. Some commented that the phase out of the BNAF will leave the hospice industry with an exceptionally imprecise and un-validated wage index with large geographic variations that cannot be defended by local wage pressures. Some commenters stated that CMS should actively seek the Congressional authority for granting hospices wage index parity with hospitals until an appropriate alternative wage index approach for hospices and other post-acute providers can be developed. One commenter asked CMS to re-evaluate the CBSA for Montgomery County, Maryland as it is considered a rural area at paid at a lower rate than all the surrounding counties.

Response: The pre-floor, pre-reclassified hospital wage index was adopted in 1998 as the wage index from which the hospice wage index is derived by a committee of CMS (then Health Care Financing Administration) and industry representatives as part of a negotiated rulemaking effort. The Negotiated Rulemaking Committee considered several wage index options: (1) Continuing with Bureau of Labor Statistics data; (2) using updated hospital wage data; (3) using hospice specific data; and (4) using data from the physician payment system. The Committee determined that the pre-floor, pre-reclassified hospital wage index was the best option for hospice. Each hospice's labor market area is based on definitions of CBSAs issued by the Office of Management and Budget (OMB), not CMS. We note that section 3137(b) of the Affordable Care Act requires CMS to submit to Congress a report that includes a plan to reform the hospital wage index system. The report to Congress outlines the recent history of analysis and proposed reform to the Medicare wage index system. This report was submitted by the Secretary on April 11, 2012. The report can be found at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Wage-Index-Reform.html.* The latest information on hospital wage index reform is discussed in the ''Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates;'' final rule, published August 31, 2012 in the **Federal Register** (77 FR 53660–53664). We continue to believe that the pre-floor, pre-reclassified hospital wage index, which is updated yearly and is used by many other CMS payment systems, is the most appropriate method available to account for geographic variances in labor costs for hospices. Regarding about the commenters concerns regarding the CBSA classification of Montgomery County, Maryland, it is important to note that the cities and counties which make up CBSAs are not determined by CMS, but instead are established by the Office of Management and Budget (OMB) and have been adopted by Medicare through notice and comment rule making. In our August 4, 2005 FY 2006 Hospice Wage Index final rule (70 FR 45130), we began adopting the revised labor market area definitions as discussed in the OMB Bulletin No. 03–04 (June 6, 2003). In addition, in the FY 2006 Hospice Wage Index final rule (70 FR 45130), we implemented a 1-year transition policy using a 50/50 blend of the CBSA-based wage index values and the MSA-based wage index values for FY 2006. The one-year transition policy ended on September 30, 2006. For FY 2007 and beyond, we have used CBSAs exclusively to calculate wage index values. Moreover, we also note that under the hospice payment system, payments are wage-adjusted based on the location of the beneficiary.

Final Decision: After carefully considering all of the comments that we received on our proposal to use the 2013 pre-floor, pre-reclassified hospital wage index to derive the applicable wage index values for the FY 2014 hospice wage index, we are finalizing the proposal as discussed in the FY 2014 Hospice Wage Index and Payment Rate Update proposed rule.

2. FY 2014 Hospice Wage Index With an Additional 15 Percent Reduced Budget Neutrality Adjustment Factor (BNAF)

This final rule will update the hospice wage index values for FY 2014 using 2013 pre-floor, pre-reclassified hospital wage index. As described in the August 8, 1997 Hospice Wage Index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are then subject to either a budget neutrality adjustment or application of the hospice floor to compute the hospice wage index used to determine payments to hospices. Pre-floor, pre-reclassified hospital wage index values below 0.8 are adjusted by either: (1) The hospice budget neutrality adjustment factor (BNAF); or (2) the hospice floor subject to a maximum wage index value of 0.8; whichever results in the greater value.

The BNAF is calculated by computing estimated payments using the most recent, completed year of hospice claims data. The units (days or hours) from those claims are multiplied by the updated hospice payment rates to calculate estimated payments. For the FY 2014 Hospice Wage Index final rule, that means estimating payments for FY 2014 using units (days or hours) from FY 2012 hospice claims data, and applying the FY 2014 hospice payment rates. The FY 2014 hospice wage index values are then applied to the labor portion of the payments. The procedure is repeated using the same units from the claims data and the same payment rates, but using the 1983 Bureau of Labor Statistics (BLS)-based wage index instead of the updated raw pre-floor, pre-reclassified hospital wage index (note that both wage indices include their respective floor adjustments). The total payments are then compared, and the adjustment required to make total payments equal is computed; that adjustment factor is the BNAF.

The August 6, 2009 FY 2010 Hospice Wage Index final rule (74 FR 39384) finalized a provision to phase out the BNAF over 7 years, with a 10 percent reduction in the BNAF in FY 2010, and an additional 15 percent reduction in each of the next 6 years, with complete phase out in FY 2016. Once the BNAF is completely phased out, the hospice floor adjustment would simply consist of increasing any wage index value less than 0.8 by 15 percent, subject to a maximum wage index value of 0.8. Therefore, in accordance with the FY 2010 Hospice Wage final rule (74 FR 39384), the BNAF for FY 2014 will be reduced by an additional 15 percent for a total BNAF reduction of 70 percent (10 percent from FY 2010, an additional 15 percent from FY 2011, an additional 15 percent for FY 2012, an additional 15 percent for FY 2013 and an additional 15 percent in FY 2014).

The unreduced BNAF for FY 2014 is 0.061538 (or 6.1538 percent). A 70 percent reduction to the BNAF is computed to be 0.018461 (or 1.8461 percent). For FY 2014, this is mathematically equivalent to taking 30 percent of the unreduced BNAF value, or multiplying 0.061538 by 0.30, which equals 0.018461 (1.8461 percent). The BNAF of 1.8461 percent reflects a 70 percent reduction in the BNAF. The 70 percent reduced BNAF (1.8461 percent) was applied to the pre-floor, pre-reclassified hospital wage index values of 0.8 or greater. The 10 percent reduced BNAF for FY 2010 was 0.055598, based on a full BNAF of 0.061775; the additional 15 percent reduced BNAF FY 2011 (for a cumulative reduction of 25 percent) was 0.045422, based on a full BNAF of 0.060562; the additional 15 percent reduced BNAF for FY 2012 (for a cumulative reduction of 40 percent) was 0.035156, based on a full BNAF of 0.058593; the additional 15 percent reduced BNAF for FY 2013 (for a cumulative reduction of 55 percent) was 0.027197, based on a full BNAF of 0.060438; and the additional 15 percent reduced BNAF for FY 2014 (for a cumulative reduction of 70 percent) is 0.018461, based on a full BNAF of 0.061538.

Hospital wage index values which are less than 0.8 are subject to the hospice floor calculation. For example, if in FY 2013, County A had a pre-floor, pre-reclassified hospital wage index (raw wage index) value of 0.3994, we would perform the following calculations using the budget-neutrality factor (which for this example is an unreduced BNAF of 0.061538, less 70 percent, or 0.018461) and the hospice floor to determine County A's hospice wage index: Pre-floor, pre-reclassified hospital wage index value below 0.8 multiplied by 1+ 70 percent reduced BNAF: ($0.3994 \times 1.018461 = 0.4068$); Pre-floor, pre-reclassified hospital wage index value below 0.8 multiplied by 1 + hospice floor: ($0.3994 \times 1.15 = 0.4593$). Based on these calculations, County A's hospice wage index would be 0.4593.

An Addendum A and Addendum B, with the FY 2014 wage index values for rural and urban areas, will not be published in the **Federal Register**. The FY 2014 wage index values for rural areas and urban areas are available via the internet at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html.* The FY 2014 hospice wage index set forth in this final rule includes the BNAF reduction and will be effective October 1, 2013 through September 30, 2014.

We received nine comments which referenced the BNAF reduction, and are summarized below.

Comment: Several commenters continued to voice opposition to the BNAF reduction and were concerned about the impact of the elimination of BNAF phase-out.

Response: The BNAF phase-out has already been finalized for the remaining years of the phase-out, as described in the FY 2010 Hospice Wage Index final rule (74 FR 39384). However, we are sensitive to the issues raised by commenters, especially the possible effects of the BNAF reduction. Our analysis reveals an overall growth in number of hospices since the start of the phase-out. We also note that the FY 2014 hospice wage index includes a hospice floor calculation which benefits many rural providers. However, we will continue to monitor for unintended consequences associated with the BNAF phase-out.

3. Hospice Payment Update Percentage

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the market basket index, minus 1 percentage point. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs must be the market basket percentage for that FY. The Act requires us to use the inpatient hospital market basket to determine the hospice payment rate update. In addition, section 3401(g) of the Affordable Care Act mandates that, starting with FY 2013 (and in subsequent FYs), the hospice payment update percentage will be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act which is 0.5 percentage point for FY 2014. In addition, section 3401(g) of the Affordable Care Act also mandates that in FY 2013 through FY 2019, the hospice payment update percentage will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act). In FY 2014 Hospice Wage Index and Payment Rate Update proposed rule (78 FR 27841), we proposed 1.8 percent hospice payment update percentage which was based on a 2.5 percent estimated inpatient hospital market basket update for FY 2014 reduced by a 0.4 percentage point productivity adjustment and by 0.3 percentage point as mandated by the Affordable Care Act. The final hospice payment update percentage for FY 2014 is 1.7 percent and is based on the final inpatient hospital market basket update for FY 2014 of 2.5 percent reduced by a 0.5 percentage point productivity adjustment and by 0.3 percentage point as mandated by the Affordable Care Act. A detailed description of how the inpatient hospital market basket is derived is described in the FY 2014 IPPS Final Rule. Due to the requirements at 1886(b)(3)(B)(xi)(II) and 1814(i)(1)(C)(v) of the Act, the inpatient hospital market basket update for FY 2014 of 2.5 percent must be reduced by a productivity adjustment as mandated by Affordable Care Act (0.5 percentage point for FY 2014). The inpatient

hospital market basket for FY 2014 is reduced further by a 0.3 percentage point, as mandated by the Affordable Care Act. In effect, the final hospice payment update percentage for FY 2014 is 1.7 percent.

The labor portion of the hospice payment rates are as follows: for Routine Home Care, 68.71 percent; for Continuous Home Care, 68.71 percent; for General Inpatient Care, 64.01 percent; and for Respite Care, 54.13 percent. The non-labor portion of the payment rates is as follows: for Routine Home Care, 31.29 percent; for Continuous Home Care, 31.29 percent; for General Inpatient Care, 35.99 percent; and for Respite Care, 45.87 percent.

4. Final FY 2014 Hospice Payment Rates

Historically, the hospice rate update has been published through a separate administrative instruction issued annually in the summer to provide adequate time to implement system change requirements; however, starting in this FY 2014 rule and for subsequent FYs, we proposed in the FY 2014 Hospice Wage Index and Payment Rate Update proposed rule to use rulemaking as the means to finalize hospice payment rates. This change was proposed to be consistent with the rate update process in other Medicare benefits, and would provide rate information to hospices as quickly as, or earlier than, when rates are published in an administrative instruction.

There are four payment categories that are distinguished by the location and intensity of the services provided. The base payments are adjusted for geographic differences in wages by multiplying the labor share, which varies by category, of each base rate by the applicable hospice wage index. A hospice is paid the routine home care rate for each day the beneficiary is enrolled in hospice, unless the hospice provides continuous home care, inpatient respite care, or general inpatient care. Continuous home care is provided during a period of patient crisis to maintain the patient at home, inpatient respite care is short-term care to allow the usual caregiver to rest, and general inpatient care is to treat symptoms that cannot be managed in another setting.

The final FY 2014 payment rates will be the FY 2013 payment rates, increased by 1.7 percent, which is the final hospice payment update percentage for FY 2014 as discussed in section IV.C.3 above. The final FY 2014 hospice payment rates will be effective for care and services furnished on or after October 1, 2013, through September 30, 2014.

TABLE 7—FINAL FY 2014 HOSPICE PAYMENT RATES UPDATED BY THE FINAL HOSPICE PAYMENT UPDATE PERCENTAGE

Code	Description	FY 2013 Payment rates	Multiply by the FY 2014 final hospice payment update of 1.7 percent	FY 2014 final payment rate
651	Routine Home Care	$153.45	× 1.017	$156.06
652	Continuous Home Care Full Rate = 24 hours of care = 37.95 hourly rate	895.56	× 1.017	910.78
655	Inpatient Respite Care	158.72	× 1.017	161.42
656	General Inpatient Care	682.59	× 1.017	694.19

The Congress required in sections 1814(i)(5)(A) through (C) of the Act that hospices begin submitting quality data, based on measures to be specified by the Secretary. Beginning in FY 2014, hospices which fail to report quality data will have their market basket update reduced by 2 percentage points. In the August 4, 2011 FY 2012 Hospice Wage Index final rule (76 FR 47320 through 47324), we implemented a Hospice Quality Reporting Program (HQRP) as required by section 3004 of the Affordable Care Act. Hospices were required to begin collecting quality data in October 2012, and submit that quality data in 2013. Hospices failing to report quality data in 2013 will have their market basket update reduced by 2 percentage points in FY 2014.

TABLE 8—FINAL FY 2014 HOSPICE PAYMENT RATES UPDATED BY THE FINAL HOSPICE PAYMENT UPDATE PERCENTAGE FOR HOSPICES THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

Code	Description	FY 2013 Payment rates	Multiply by the FY 2014 hospice payment update percentage of 1.7 percent minus 2 percentage points (−0.2)	FY 2014 Payment rate
651	Routine Home care	$153.45	× 0.997	$152.99
652	Continuous Home Care Full Rate = 24 hours of care = 37.20 hourly rate	895.56	× 0.997	892.87
655	Inpatient Respite Care	158.72	× 0.997	158.24
656	General Inpatient Care	682.59	× 0.997	680.54

A Change Request with the finalized FY 2014 hospice payment rates, a finalized FY 2014 hospice wage index, the FY 2014 PRICER, and the hospice cap amount for the cap year ending October 31, 2013 will continue to be issued in the summer.

We received two comments on our proposal to use rulemaking as the means to finalize hospice payment rates, which are summarized below.

Comment: Commenters were supportive of CMS' proposal to use rulemaking as the means to finalize hospice payment rates followed by a change request with the finalized hospice payment rates, a finalized

hospice wage index, the PRICER for FY 2014.

Response: We thank you for your support. We will finalize hospice payment rates as stated in the FY 2014 Hospice Wage Index and Payment Rate Update proposed rule (78 FR 27841).

Comment: We also received several additional comments that expressed concern that hospice industry is being over regulated, while reimbursement is decreasing and examples given include the face-to-face regulation, data collection efforts, and quality initiatives. Several commenters are concerned that these regulations not only increase financial burden for hospice industry but also pull hospices away from patient care and keep hospice providers in the office to perform administrative duty to comply with regulations. Some commenters described a shortage of staff in some areas of the country, especially small hospices and in rural areas, and stated that the staff travel hours in rural areas to examine the patient, which is a burden itself because of travel distance. Several commenters stated that reimbursement is decreasing because of the continuing rate cuts resulting from the elimination of the budget neutrality adjustment factor, the cuts resulting from the productivity adjustment factor, and further rate reduction resulting from sequestration. A commenter stated that the proposed hospice payment update of 1.8 percent for 2014, coupled with other cuts is devastating.

Response: We appreciate comments regarding sequestration cut, but it is outside the scope of this rule. As stated in FY 2013 Hospice Wage Index notice (77 FR 44245), section 3401(g) of the Affordable Care Act mandates that starting with FY 2013 (and in subsequent FYs), the market basket percentage update under the hospice payment system as described in section 1814(i)(1)(C)(ii)(VII) or section 1814(i)(1)(C)(iii) of the Act will be annually reduced by changes in economy-wide productivity as set out at section 1886(b)(3)(B)(xi)(II) of the Act. We do not have authority to change the application of economy-wide productivity adjustment as it is required by the statute. We are sensitive to concerns about hospices being overregulated and concerns expressed from rural hospices that the additional time and distance required to visit a rural patient adds significantly to their costs. We do not have the authority to change the hospice rates beyond the limits set out in the statute, but will consider the costs of rural providers in the context of broader hospice payment system reform. We will continue to monitor the impact of our regulations for any unintended consequences. As described in the Regulatory Impact Analysis (Section, VI), we note that the overall impact of this final rule is an estimated net increase in Federal payments to hospices of $160 million, or 1.0 percent, for FY 2014.

Final Decision: As stated in the FY 2014 Hospice Wage Index and Payment Rate Update proposed rule, we proposed to finalize hospice payment rates through rulemaking and we are finalizing this policy as proposed. A change request with the finalized FY 2014 hospice payment rates, a finalized FY 2014 hospice wage index, the FY 2014 PRICER, and the hospice cap year ending October 31, 2013 will continue to be issued in the summer.

D. Update on Hospice Payment Reform and Data Collection

In 2010, the Congress amended section 1814(i)(6) of the Act with section 3132(a) of the Affordable Care Act. The amendment authorized the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and for other purposes. The types of data and information described in the Act would capture resource utilization and other measures of cost, which can be collected on claims, cost reports, and possibly other mechanisms determined to be appropriate. The data collected may be used to revise the methodology for determining the payment rates for routine home care, and other services included in hospice care, no earlier than October 1, 2013 as described in section 1814(i)(6)(D) of the Act. In addition, we are required to consult with hospice programs and the Medicare Payment Advisory Commission (MedPAC) regarding additional data collection and payment revision options.

The proposed rule contained three subsections which updated the public or discussed different aspects of hospice payment reform; there were no proposals in any of these three subsections.

1. Update on Reform Options

Our hospice contractor, Abt Associates, continues to conduct research and analyses, to identify potential data collection needs, and to research and develop hospice payment model options. To date, we completed an environmental scan; a draft analytic plan; and convened technical advisory panel meetings under the initial contract with Abt in 2010. We are continuing with these efforts under a contract awarded in September 2011. In June 2012, we convened stakeholder meetings where research findings were presented on potential payment system vulnerabilities; utilization of the Medicare Hospice Benefit, including general inpatient care use during the period the beneficiary is enrolled in hospice care; analysis of hospice cost reports; and the effects of the face-to-face encounter requirement. These and other findings are described in the Abt Hospice Study Technical Report, which is available on the CMS Hospice Center Web page, at *http://www.cms.gov/Center/Provider-Type/Hospice-Center.html*.

Additionally, we continue to conduct analyses of various payment reform model options under consideration. These models include a U-shaped model of resource use, which MedPAC recommended that we adopt, as originally described in Chapter 6 of its March, 2009 report entitled ''Report to the Congress: Medicare Payment Policy'' (available online at: *http://www.medpac.gov/chapters/Mar09_Ch06.pdf*). The report noted that the constancy of the per diem payment over the course of a hospice stay is misaligned with a hospice's costs during the stay. A hospice's costs typically follow a U-shaped curve, with higher costs at the beginning and end of a stay, and lower costs in the middle of the stay. This cost curve reflects hospices' higher service intensity at the time of the patient's admission and the time surrounding the patient's death (MedPAC, page 358). Payment under a U-shaped model would be higher at the beginning and end of a hospice stay and lower in the middle portion of the stay.

Analysis conducted by Abt Associates found that very short hospice stays have a flatter curve than the U-shaped curve seen for longer stays and that average hospice costs are much higher. These short stays are less U-shaped because there is not a lower-cost middle period between the time of admission and the time of death. As such, we are also considering a tiered approach, with payment tiers based on the length of stay. For example, payment for stays of 5 days or less, which occurred for about 25 percent of hospice beneficiaries in 2011, could be made under a per diem system that accounts for the higher hospice costs, with no variation in the rate based on length of stay as would occur under a U-shaped model. Payment for longer stays, where costs follow more of a U-shape, could be made under a tier based on the U-shaped payment model, where the per diem amount fluctuates depending upon whether the days billed are at the beginning, middle, or end of the stay.

Another option is to analyze whether a short-stay add-on payment, similar to the home health Low Utilization Payment Amount (LUPA) add-on, would improve payment accuracy if we retain the current per diem system. The LUPA add-on is made for home health patients who require four or fewer visits during the 60-day episode. These home health episodes are paid based on the visits actually furnished during the episode. For LUPA episodes that occur as the only episode or the first episode in a sequence of adjacent home health episodes for a given beneficiary, an increased payment is made to account for the front-loading of costs (see *http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/HomeHlthProspaymt.pdf* for more information).

Finally, as we collect more accurate diagnosis data, including data on related conditions, we will also evaluate whether case-mix should play a role in determining payments.

a. Rebasing the Routine Home Care (RHC) Rate

In the proposed rule, we updated our review of the hospice RHC rate, but did not include any proposals to rebase the rate. Rebasing the RHC rate involves using the existing components that make up the rate, and recalculating based on more current data. RHC is the basic level of care under the Hospice benefit, where a beneficiary receives hospice care, but remains at home. With this level of care, hospice providers are reimbursed per day regardless of the volume or intensity of services provided to a beneficiary on any given day. It is anticipated that there would be days when a beneficiary does not require any services, as well as days when a beneficiary requires several visits from the hospice provider.

When the hospice benefit was created in 1983, the RHC base payment rate was set using nine different components of cost from a relatively small set of hospices (n = 26) that were participating in a CMS hospice demonstration, as described in the December 16, 1983 Hospice final rule (48 FR 56008). The nine cost components were: nursing care ($16.25); home health aide ($12.74); social services/therapy ($3.23); home respite ($1.46); interdisciplinary group ($2.78); drugs ($1.18); supplies ($4.49); equipment ($1.13); and outpatient hospital therapies ($2.99). The sum of all the components' costs equaled the base payment rate for RHC as stated in that 1983 hospice final rule. The original RHC rate was set at $46.25. In addition to RHC, we also established three other levels of care for hospice care from data obtained from the Medicare hospice demonstration project: Continuous Home Care (CHC), Inpatient Respite Care (IRC) and General Inpatient Care (GIP).

It is CMS' intent to ensure that reimbursement rates under the Hospice benefit align as closely as possible with the average costs hospices incur when efficiently providing covered services to beneficiaries. As we continue to gather and analyze more data for payment reform, we have found evidence of a potential misalignment between the current RHC payment rate and the cost of providing RHC. One potential option to address this misalignment could be to rebase the hospice RHC rate, though we did not propose to do so in the proposed rule, so that the cost categories established in the rate reflect the changes in the utilization of hospice services provided for palliation and management of terminally ill patients. However, we are still evaluating data and did not propose any changes to address the misalignment.

At this time, we do not have the data to support rebasing six of the nine cost components described in the 1983 final rule. Information on the utilization of drugs, supplies, and equipment is not available from hospice claims data, and the corresponding information that is available from cost reports, such as outpatient hospital therapies, is not sufficiently detailed to allow for rebasing. One approach to consider in more closely aligning RHC payments with costs is to rebase the three clinical service components (nursing, home health aide, social services/therapy) that currently comprise 69.7 percent of the RHC rate by calculating the average cost per day, weighted by the number of RHC days, for each of the three components using FY 2011 cost report data matched to FY 2011 claims data. As part of rebasing the RHC rate we would then inflate the 1983 cost per day for each of the six remaining components by a factor of 3.1704, which corresponds to the market basket increases between 1983 and 2011.[8] We note that our cost report analysis thus far found that drug costs over the years have declined, and the other non-labor components are plateauing. A detailed methodology for rebasing the clinical service components of the RHC rate can be found in the Abt Hospice Study Technical Report which was published shortly after displaying the proposed rule, at *http://www.cms.gov/Center/Provider-Type/Hospice-Center.html*.

Using the methodology described above, the rebased amount for FY 2011 would be $130.54 as described in Table 9 below.

TABLE 9—COMPARISON OF RHC RATE COST COMPONENTS FROM 1983 TO FY 2011

RHC components	1983 Final rule cost per day	Inflation factor	FY 2011 Cost per day
Nursing Care	$16.25	N/A	$56.54
Home Health Aide	12.74	N/A	19.24
Social Services/Therapy	3.23	N/A	10.29
Home respite	1.46	× 3.1704	4.63
Interdisciplinary group	2.78	× 3.1704	8.81
Drugs	1.18	× 3.1704	3.74
Supplies	4.49	× 3.1704	14.23
Equipment	1.13	× 3.1704	3.58
Outpatient Hospital Therapies	2.99	× 3.1704	9.48
Total	46.25	.....	130.54

Source: 1983 Final Rule and FY 2011 hospice cost report and claims data.

[8] The original RHC rate in 1983 was $46.25. The FY 2011 rate for RHC was $146.63. $146.63/46.25 = 3.1704.

Note(s): The costs per day for the clinical services components (nursing care, home health aide and social services/therapy) were calculated based on the cost per minute for each discipline using cost report data multiplied by the RHC minutes for each discipline per RHC day from claims data to compute the cost of a discipline per RHC day. The average cost per day across all hospices in our sample was weighted by the number of RHC days. Of the 2,717 FY 2011 hospice cost reports for freestanding and facility-based hospices that were matched to FY 2011 claims data, we excluded: (1) Cost reports with period less than 10 months or greater than 14 months; (2) cost reports with missing information or negative reported values for total costs or payments; (3) providers in the highest and lowest percentile (1% and 99%) in costs per days across all levels of care; (4) the top and bottom 5% of provider margin; and (5) providers were excluded if the log payment to cost ratio was greater than the 90th or less than the 10th percentile of this value across all providers plus or minus 1.5 times the range between the 10th and 90th percentiles of this log ratio. The number of hospices remaining in our sample was 2,140 representing 73.1 percent of RHC days in 2011.

For example, if we were to apply the rebased amounts for the clinical services components of RHC to FY 2014, we would inflate the FY 2011 rebased amount to FY 2013 levels. We first inflated the FY 2011 rebased rate by full hospital market basket of 3.0 percent for FY 2012. The FY 2012 rebased rate would be $134.46 ($130.54 × 1.03 = $134.46). We then inflated the FY 2012 rebased rate by full hospital market basket of 2.6 percent for FY 2013. The FY 2013 rebased rate would be $137.96 ($134.46 × 1.026 = $137.96). Finally, we inflated the rebased FY 2013 rate ($137.96) by applying the proposed hospice payment update percentage of 1.8 percent to calculate a FY 2014 rebased RHC rate. Therefore, the FY 2014 rebased rate would be $140.44, a 10.1 percent reduction in the FY 2014 proposed RHC payment rate of $156.21, or an estimated reduction in payments to hospices of $1.6 billion in FY 2014. Rebasing the clinical service components of the RHC payment is one of several approaches to hospice payment reform that CMS could consider for revising the RHC payment rate. As outlined in the Affordable Care Act, hospice payment reform must be done in a budget neutral manner. As rebasing is considered part of hospice payment reform, any savings achieved through the reduction of the RHC rate would need to be redistributed in a budget neutral manner.

b. Site of Service Adjustment for Hospice Patients in Nursing Facilities.

As part of future hospice payment reform, we are considering an OIG recommendation to reduce payments to Medicare hospices for beneficiaries in nursing facilities who are receiving hospice care. The OIG's July 2011 report entitled ''Medicare Hospices that Focus on Nursing Facility Residents,'' (available at *https://oig.hhs.gov/oei/reports/oei-02-10-00070.pdf*) studied hospice patients in nursing facilities. This report noted the growth of hospice services provided to beneficiaries in nursing facilities, and discussed hospices that have a high percentage of their beneficiaries in nursing facilities. The OIG's report noted that the current payment structure provides incentives for hospices to seek out beneficiaries in nursing facilities, as these beneficiaries often receive longer but less complex care. The OIG noted that unlike private homes, nursing facilities are staffed with professional caregivers and are often paid by third-party payers, such as Medicaid. These facilities are required to provide personal care services, which are similar to hospice aide services that are paid for under the hospice benefit. To lessen this incentive, the OIG recommended that we reduce Medicare payments for hospice care provided in nursing facilities.

In addition, the March 2012 Medicare Payment Advisory Commission (MedPAC) report entitled ''Report to Congress: Medicare Payment Policy'' noted that hospices with a higher share of their patients in nursing facilities have margins as high as 13.8 percent (pages 302 and 303). MedPAC attributed these higher margins to possible efficiencies in the nursing home setting (multiple patients in a single setting, reduced driving time and mileage), and to reduced workload due to an overlap in aide services and supplies provided by the nursing facility.

In response to both MedPAC's and OIG's concerns about possible duplication of aide services provided both by the hospice and the nursing facility, in the proposed rule we discussed an analysis of the number and length of aide visits per day using 2011 hospice claims data. Table 10 below describes the number and length of aide visits for RHC beneficiaries at home (including patients in an assisted living facility) compared to RHC beneficiaries in a long term care nursing facility (NF) or skilled nursing facility (SNF).

TABLE 10—HOSPICE ROUTINE HOME CARE AIDE SERVICES, CY 2011

	Sites of service		Difference	
	Home Q5001/2	NF/SNF Q5003/4	NF/SNR–Home	%
Number of beneficiaries	769,640	302,004	(467,636)	
Total days	58,637,171	22,946,972	(35,690,199)	
Total visits	16,625,635	8,501,366	(8,124,269)	
Total minutes	1,223,254,095	584,825,520	(638,428,575)	
Visits per beneficiary	21.6	28.1	6.5	30.3
Minutes per visit	73.6	68.8	(4.8)	6.5
Total visits/day	0.28	0.37	0.09	30.7
Total minutes/day	20.86	25.49	4.62	22.2

Source: Abt Associates Hospice Claims Data File, CY 2011.

Table 10 demonstrates that hospice patients in a NF/SNF receive more visits than patients at home, though the length of those visits is shorter. Average minutes per day shows that RHC patients in a NF/SNF had hospice aide services of longer duration (25.49 minutes) than RHC patients at home (20.86 minutes). The Medicare Conditions of Participation (CoPs) require that hospices provide services at the same level and to the same extent as those services would be provided if the NF/SNF resident were in his or her home. Hospices provide aide services to beneficiaries at home depending on the beneficiaries' needs. It seems reasonable to expect that a beneficiary who has a paid caregiver (that is, a NF/SNF aide) does not need as many services from the hospice aide, because those services are being provided by the paid caregiver. As described in the June 5, 2008 Hospice Conditions of Participation final rule (73

FR 32095), ''[h]ospice care is meant to supplement the care provided by the patient's caregiver.'' Given the presence of the paid caregiver in the NF/SNF, we would expect that on average, there would be fewer hospice aide services provided to hospice patients in a NF/SNF than to hospice patients at home.

It is not clear why hospice patients in nursing facilities are receiving more minutes per day of aide services than hospice patients at home. We used regression analysis to control for age, gender, diagnosis, length of stay, and provider characteristics (ownership status, base, size, age of hospice, geographic location) when analyzing the visit data. However, we still found that significantly more aide services were provided to NF/SNF patients than to patients at home, even after controlling for patient and provider characteristics.

The June 5, 2008 Hospice Conditions of Participation final rule (73 FR 32088) preamble details the requirements related to aide services provided to hospice patients residing in a nursing facility. These requirements can also be found at § 418.112(c)(4) through (5). The CoPs require a written agreement between the hospice and NF/SNF, which specifies that the NF/SNF should continue to provide the aide services that are provided prior to the hospice election, to meet the patient's needs at that same level of care as if the patient were at home. These services include providing 24 hour room and board care, meeting the patient's personal care needs, and to the degree permitted by State law, administering medications or therapies. There should be no reduction of NF/SNF aide services to a patient in anticipation of a future hospice election, or once the patient (or his/her representative) elects the hospice benefit. As such, hospice patients in nursing facilities should have much, if not most, of their need for aide services provided by the facility's aide. As stated previously, we would expect that, on average, the hospice aide would be providing fewer services to nursing facility patients than to patients at home.

Table 10 suggests that the hospice aide may be replacing the facility aide, rather than supplementing or augmenting the care of the facility aide. Or, as the OIG and MedPAC identified, there could be an overlap in aide services when a hospice beneficiary is in a NF/SNF. It would not be appropriate for the Medicare Hospice Benefit to subsidize the nursing home benefit by providing aide services that the facility aide should provide. Section 1862(a)(1)(C) of the Social Security Act (the Act) forbids payment for any items or services which are not reasonable and necessary for the palliation and management of the terminal illness. Services which are not needed, or which are duplicative of those to be provided by the facility aide, would not be reasonable and necessary.

In the proposed rule, we did not propose to make a site of service adjustment to reduce payments for RHC patients in a nursing facility. Any reform option considering reduced payments for RHC care provided to hospice patients in a NF or SNF should not result in a reduction in the services that hospice patients in NFs or SNFs receive, but would instead be a shifting of who provides those aide services; some of the services currently provided by the hospice aide would be provided by the facility aide as expected. As such, we do not expect that the quality of care to hospice patients in a NF/SNF would be diminished. If such a policy were to be finalized and implemented, it would be made in a budget neutral manner as required by the Affordable Care Act. In addition, we would monitor for any unintended consequences.

2. Reform Research Findings

The proposed rule also included a discussion of a number of analyses we conducted to better understand hospice utilization and trends, to identify vulnerabilities in the payment system, and to develop and test models that would more accurately match hospice resource use with Medicare payments. We posted the Abt Hospice Study Technical Report on hospice payment reform on our hospice center Web page, located at: *http://www.cms.gov/Center/Provider-Type/Hospice-Center.html.* The report summarizes research findings related to resource use and payment system vulnerabilities.

The report also includes a discussion of hospice cost report analyses. Overall, the total cost per election period has not significantly increased from 2007 to 2010, in real dollars. Inpatient costs constitute about 14 percent of hospice costs across freestanding hospice providers that reported inpatient costs. About one-third of providers reported no inpatient costs. It appeared that some providers with no inpatient costs were substituting continuous home care (CHC) for GIP, based on analysis of the proportion of CHC days. Visiting services (for example, direct labor costs for nurses, aides, social workers, counselors, and therapists) account for about two-thirds of hospice costs, and have trended upward from 2004 to 2010. Nursing care, hospice aides, and medical social services comprise 90 percent of visiting service costs.

Other hospice service costs include non-labor costs such as drugs, durable medical equipment (DME), supplies, imaging, patient transportation, and outpatient services. These types of services represent about 20 to 25 percent of total hospice costs. Drugs, DME, and supplies account for 90 percent of these other hospice services costs. Drug costs have trended downward over time, while medical supply costs have remained steady. Finally, in examining non-reimbursable costs, we found that 26 percent of providers in 2010 showed no bereavement costs on their cost report, even though bereavement services are required by statute; it is unclear if bereavement services were not provided or if bereavement costs were not correctly reported.

The report also describes an analysis of GIP utilization. In 2010 through 2011, a quarter of all hospice beneficiaries had at least one GIP stay, with a quarter of those stays associated with cancer diagnoses. While most GIP stays were 2 days long, the average GIP length of stay was 5.66 days, reflecting a small number of extremely long GIP stays. Sixty-five percent of GIP stays were provided in a hospice inpatient unit. Almost 80 percent of hospices provided at least one GIP day in 2010 through 2011. Hospices that provided GIP tended to be older and larger.

The Abt Hospice Study Technical Report also provides descriptive statistics for all beneficiaries and for 3 major sites of routine home care services. It includes visit data findings, including visits per day, visits per beneficiary, minutes per day, and minutes per beneficiary for key disciplines reported on hospice claims. Additionally, there are several figures which depict the U-shaped curve for key personnel by length of stay. The curves show that resource use tends to follow a U-shaped curve, but one which is higher at the beginning rather than at the end of the hospice stay. There was little evidence that strong differences in the U-shape exist across most subgroups (for example, freestanding vs. provider-based, ownership status, patient diagnosis).

For more detailed information on these findings, and a description of the methods used, see the Abt Hospice Study Technical Report, which is posted on the hospice center Web page (*http://www.cms.gov/Center/Provider-Type/Hospice-Center.html*). We have also posted a review of pertinent hospice literature as of December 2012 on the hospice center Web page. This should be considered an evolving document, as Abt Associates updates

the review periodically. We encourage interested stakeholders to review this update on our progress. We will continue to collaborate with other federal experts regarding hospice payment reform research efforts and to update stakeholders on our progress on hospice payment reform.

3. Additional Data Collection

Over the past several years, MedPAC, the Government Accountability Office (GAO), and the HHS Office of Inspector General (OIG) have also recommended that we collect more comprehensive data in order to better understand the utilization of the Medicare Hospice Benefit. In the proposed rule, we noted that in December 2012 we posted a document to our Hospice Center Web page (*http://www.cms.gov/Center/Provider-Type/Hospice-Center.html*) describing additional data collection which we are considering, and noting that cost report revisions are forthcoming. We received 65 comments about the claims data collection items under consideration, which are briefly summarized below.

• *Line item visit data, including length of visit in 15-minute increments, for hospice chaplains and counselors providing care to hospice beneficiaries.* Commenters were supportive, but suggested we include phone calls by chaplains and counselors, and allow reporting of chaplain time spent officiating or attending beneficiary funerals, as this is part of their service to families. A few suggested that we have a separate category for Bereavement Counseling to acknowledge this requirement even if it is not subject to reimbursement. Several suggested we define ''other counselors.''

• *Line item visit data, including length of visits in 15-minute increments, for hospice staff providing care to hospice patients receiving GIP in a hospital or nursing facility, but not for hospice patients receiving GIP in a hospice facility.* Our suggestion to collect GIP visit data did not include visits by non-hospice staff, and was focused on patients in a hospital or nursing facility only. Therefore, GIP visits to hospice patients in hospice inpatient facilities continue to be reported as weekly totals, without including the length of visits. Commenters were generally supportive, provided the visits were for hospice staff only. Several comments noted that this would be no more difficult than what already occurs when recording visits to patients' homes.

• *The National Provider Identifier (NPI) of facilities where hospice patients are receiving care.* Most commenters noted that it would not be difficult to get this information and enter it into their systems. A few commenters noted that sometimes patients are in more than one facility type during a claim period, but that there is only space for one NPI on the claim.

• *Post-mortem visits on the calendar day of death.* Commenters suggested we collect visit data for various timeframes after the time of death, rather than the calendar day of death, since many deaths occur late at night. They suggested we clarify what we mean by time of death (time death actually occurs, or time the death is pronounced). Several commenters suggested we gather post-mortem visit data regardless of level of care or site of service.

• *Any durable medical equipment (DME) provided by the hospice.* Some commenters indicated that this would be difficult to collect and record on claims. Many indicated that DME suppliers bill them monthly, and waiting for the DME invoice would cause a delay in submission of their claims. They also noted that it would take a great deal of lead time to set this up with suppliers and software vendors to track DME at the patient level. A few suggested that we use aggregate data on DME costs from the cost reports instead.

• *Non-routine supplies provided by the hospice.* Most commenters indicated that this would be difficult to collect and record on claims. A number of commenters wrote that their software does not accommodate such reporting, and that it would create an additional burden on clinical staff to track these items. Several mentioned that it would take some lead time to modify existing systems to enable hospices to track and report this information accurately. A few suggested we use aggregate data on non-routine supplies from the cost reports instead.

• *Drugs (injectable, non-injectable, and over-the-counter) provided by the hospice.* Most commenters indicated that this would be difficult to collect and record on claims. Several asked if injectable drugs include infusion pumps, which is considered DME. Several commenters noted that the hospice staff person is not always the person administering drugs, making tracking more complicated; they suggested focusing on the fills, rather than drugs administered. Some wrote that hospices get their drugs from multiple pharmacies, making reporting more difficult due to inconsistencies in pharmacy billing. Others wrote that their data systems are not able to track drugs by patient, and suggested that we use aggregate data from the cost reports instead. Some noted that they purchase some drugs in larger quantities, making reporting at the patient level more complicated. A few noted that this could be done, but said that hospices would need lead time to prepare systems to track and report at the patient level. One suggested that we specify what cost structure drug charges should be based upon, such as average wholesale price plus a percentage.

In summary, commenters were largely supportive of our suggestions to collect additional visit and NPI data on claims. Many suggested collecting data on DME, supplies, and drugs from the cost reports, rather than at the patient level. Several commenters reminded us that their primary focus is patient care, and were concerned about the cost of such data collection. We appreciate the comments submitted, and will consider this input as we move forward towards implementing any new data collection for hospices. We issued Change Request 8358 on Friday, July 26, 2013 detailing the new data collection requirements.

Section 3132(a)(1)(C) of the Affordable Care Act also authorizes us to collect more data on hospice cost reports. The revisions to the hospice cost report and its associated instructions are described in detail in a revision to the information collection request currently approved under OMB control number 0938–0758. As required by the Paperwork Reduction Act, we published the both 60-day and 30-day notices with comment periods in the **Federal Register** on April 29, 2013 (78 FR 25089).

The proposed rule did not solicit comments on our hospice payment reform updates and discussions, but we received 54 comments on this section. We thank the commenters for their input and we will consider the comments received as we move forward with hospice payment reform.

E. Technical and Clarifying Regulations Text Change

We proposed to incorporate the following technical change to correct an erroneous cross reference in our regulations text.

Administrative Appeals (§ 418.311)

A hospice that does not believe its payments have been properly determined may request a review from the intermediary or from the Provider Reimbursement Review Board (PRRB), depending on the amount in controversy. Section 418.311 details the procedures for appealing a payment decision and also refers to 42 CFR part 405, subpart R. The rationale for this appeals process was explained in the

August 22, 1983 Hospice proposed rule (48 FR 38146) and finalized in the December 16, 1983 Hospice final rule (48 FR 56008). Hospices are permitted to appeal computation of the payment limit or the amount due to the hospice to the PRRB if the amount in controversy is $10,000 or more.

We made a technical correction in § 418.311 to correct an erroneous reference to § 405.1874. The published reference to § 405.1874 does not exist and was a typographic error. We are correcting this error by changing the referenced § 405.1874 to § 405.1875—Administrator review. Section 405.1875 allows for the Administrator, at his or her discretion, to immediately review any decision of the Board as described in the August 22, 1983 proposed and December 16, 1983 final rules (48 FR 38159, and 48 FR 56019, respectively).

We received no comments on this proposed technical correction, and are implementing the correction as proposed.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on each of these issues for this section of this document that contains information collection requirements (ICRs).

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. Such data must be submitted in a form and manner, and at a time specified by the Secretary. Under section 1814(i)(5)(D)(iii) of the Act, the Secretary must publish selected measures that will be applicable with respect to FY 2014 not later than October 1, 2012. In implementing the Hospice quality reporting program, we seek to collect measure information with as little burden to the providers as possible and which reflects the full spectrum of quality performance.

We proposed and will implement a Hospice Experience of Care Survey to reflect the patients' families' and friends' perspectives of care in hospices. The 60-day notice for the field test of the survey was published on April 4, 2013 (78 FR 20323) under CMS–10475 (OCN 0938-New). While we set out the requirements and burden estimates for the field study, it is too early to set out the requirements and burden estimates for the national implementation of the survey. We anticipate having the final survey instrument in 2014 and setting out the collection of information requirements and burden estimates in the proposed rule for CY 2015. We will implement the survey in 2015.

In this final rule we are requiring implementation of a hospice patient-level item set to be used by all hospices to collect and submit standardized data on each patient admitted to hospice. This Hospice Item Set will be used to support the standardized collection of the requisite data elements to calculate quality measures. Hospices will be required to complete and submit an admission HIS and a discharge HIS on all patients admitted to hospice starting July 1, 2014 for FY 2016 APU determination. The admission and discharge HIS will collect the standardized data elements needed to calculate 7 NQF endorsed measures for hospice.

Using 2011 Medicare claims data we have estimated that there will be approximately 1,089,719 admissions across all hospices per year and therefore, we expect that there should be 1,089,719 Hospice Item Sets (consisting of one admission and one discharge item set per patient), submitted across all hospices yearly. There were 3,742 certified hospices in the U.S. as of October 1, 2012; we estimate that each individual hospice will submit on average 291 Hospice Item Sets annually or 24 Hospice Items Sets per month.

The Hospice Item Set consists of both an admission and a discharge data collection. As noted above, we estimate that there will be 1,089,719 hospice admissions across all hospices per year. Therefore, we expect there to be 2,179,438 Hospice Item Set submissions, (both admission and discharge data) submitted across all hospices annually or 181,620 across all hospices monthly. We further estimate that there will be 582 Hospice Item Set submissions by each hospice annually or 49 submissions monthly.

For the Admission Hospice Item Set, we estimate that it will take 14 minutes of time by a clinician such as a Registered Nurse at an hourly wage of $33.23 to abstract data for Admission Hospice Item Set. This will cost the hospice approximately $7.75 for each admission assessment.[9] We further estimate that it will take 5 minutes of time by clerical or administrative staff person such as a medical data entry clerk or medical secretary at an hourly wage of $15.59 to upload the Hospice Item Set data into the CMS system. This will cost the hospice approximately $1.30 per assessment.[10] For the Discharge Hospice Item Set, we estimate that it will take 5 minutes of time by a clinician such as a nurse at an hourly wage of $33.23 to abstract data for Discharge Hospice Item Set. This will cost the hospice approximately $2.77. We further estimate that it will take 5 minutes of time by clerical or administrative staff such as a medical data entry clerk or medical secretary at an hourly wage of $15.59 to upload data into the CMS system. This will cost the hospice approximately $1.30.

We estimate that the total nursing time required for completion of both the admission and discharge assessments is 19 minutes at a rate of $33.23 per hour. The annualized cost across all Hospices for the nursing/clinical time required to complete both the admission and discharge Hospice Item sets is estimated to be $11,458,528 and the cost to each individual Hospice is estimated to be $3,062.14. The estimated time burden to hospices for a medical data entry clerk to complete the admission and discharge Hospice Item Set assessments is 10 minutes at a rate of $15.59 per hour. The cost for completion of the both the admission and discharge Hospice Item sets by a medical data entry clerk is estimated to be $2,829,401 across all Hospices and $756.12 to each Hospice.

The total combined time burden for completion of the Admission and Discharge Hospice Data Item Sets is estimated to be 29 minutes. The total annualized cost across all hospices is estimated to be $14,287,929. For each individual hospice, this annualized cost is estimated to be $3,818.26. The estimated cost for each individual Hospice Item Set submission is $13.11.

[9] 14 minutes of time by a Registered Nurse at $33.23/60 minutes per hour = $0.56; $0.56 per one minute × 5 minutes = $7.75.

[10] 5 minutes of time by a Medical Data Entry Clerk at $15.59/60 minutes per hour = $0.265; $0.265 per one minute × 5 minutes = $1.30.

Comment: We received several comments indicating concern about general burden that would be associated with implementing and using the HIS. Commenters stated hospices will have to conduct training among staff to implement and use the HIS, in addition to staff time that will be required to complete and submit the HIS. Commenters also stated that implementing the HIS will require modifications to clinical documentation processes. Some commenters expressed concerns that implementing the HIS will concurrently entail both implementation of a new data collection tool and implementation of new quality measures. No commenters stated that these burdens were great enough to consider not implementing the HIS for use in the HQRP.

Response: We recognize these activities and efforts will be required to implement and use the HIS as part of the quality reporting program. We agree that it is important for Hospices to learn about and understand the new HIS and we plan to provide hospices with training resources to facilitate implementation of the HIS. We further acknowledge that specific training costs were not identified in the proposed rule because calculating the training burden is outside the scope of the information collection requirements.

Comment: A few commenters expressed concern that the estimated 29 minutes to complete and upload the admission and discharge HIS was underestimated. One commenter said that the estimated 14 minutes for a staff member to extract data for the Admission HIS and 5 minutes for the Discharge HIS seemed accurate, another commenter indicated that, based on their experiences with the Home Health OASIS, they felt the HIS would take longer than the estimated time.

Response: Burden estimates for completing the HIS data items were based on the HIS pilot test. The HIS is a set of data elements that can be used to calculate 7 NQF endorsed quality measures. The HIS is not a patient assessment that would be administered to the patient and/or family or caregivers during the initial assessment visits; therefore, it cannot be compared to the OASIS instrument. As the HIS is not a true patient assessment, the estimated burden of 14 and 5 minutes do not include the time a clinician would spend assessing the patient. The time estimates are intended to reflect the time it would take hospice staff to complete and submit the HIS, irrespective of clinical activities to collect initial assessment data. The HIS pilot demonstrated that hospices use varying patient assessment forms during the initial patient assessment; all hospices were able to crosswalk items from their hospice's patient assessment forms to the HIS data elements, and complete the HIS items. Therefore, the HIS did not add new data collection efforts to the hospice's customary patient initial assessment.

VI. Regulatory Impact Analysis

A. Statement of Need

This final rule follows § 418.306(c), which requires annual issuance, in the **Federal Register**, of the hospice wage index based on the most current available CMS hospital wage data. This rule finalizes hospice payment rates for FY 2014. In addition, this final rule provides background on hospice care, clarifies diagnosis coding on hospice claims, updates the public on the status of hospice payment reform, finalizes a technical and clarifying regulatory text change, and finalizes changes to the hospice quality reporting program.

B. Overall Impact

The overall impact of this final rule is an estimated net increase in Federal payments to hospices of $160 million, or 1.0 percent, for FY 2014. This estimated impact on hospices is a result of the final hospice payment update percentage for FY 2014 of 1.7 percent and changes to the FY 2014 hospice wage index, including a reduction to the BNAF by an additional 15 percent, for a total BNAF reduction of 70 percent (10 percent in FY 2010, and 15 percent per year for FY 2011 through FY 2014). A 70 percent reduced BNAF is computed to be 0.018461 (or 1.8461 percent). The BNAF reduction is part of a 7-year BNAF phase-out that was finalized in the August 6, 2009 FY 2010 Hospice Wage Index final rule (74 FR 39384), and is not a policy change.

1. Introduction

We have examined the impacts 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 Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, March 22, 1995; Pub. L. 104–4), and the Congressional Review Act (5 U.S.C. 804(2)).

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. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule has been designated as economically significant under section 3(f)(1)of Executive Order 12866 and thus a major rule under the Congressional Review Act. Accordingly, we have prepared a regulatory impact analysis (RIA) that to the best of our ability presents the costs and benefits of the rulemaking. Also, the rule has been reviewed by OMB.

2. Detailed Economic Analysis

This final rule sets forth updates to the FY 2013 hospice payment rates. The impact analysis of this final rule presents the estimated expenditure effects of policy changes finalized in this rule. Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

Table 11 represents how hospice revenues are likely to be affected by the policy changes finalized in this rule. In column 1 of Table 11, we indicate the number of hospices included in our analysis as of December 31, 2012, which had also filed claims in FY 2012. In column 2, we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Column 3 shows the percentage change in estimated Medicare payments for FY 2014 due to the effects of the updated wage data only, compared with estimated FY 2013 payments. The effect of the updated wage data can vary from region to region depending on the fluctuations in the wage index values of the pre-floor, pre-reclassified hospital wage index. Column 4 shows the percentage change in estimated hospice payments from FY 2013 to FY 2014 due to the combined effects of using the updated wage data and reducing the BNAF by an additional 15 percent. Column 5 shows the percentage change in estimated hospice

payments from FY 2013 to FY 2014 due to the combined effects of using updated wage data, an additional 15 percent BNAF reduction, and the final 1.7 percent hospice payment update percentage. Taking into account the 1.7 percent final hospice payment update percentage (+$280 million), the use of updated wage index data ($ − 20 million), and the additional 15 percent reduction in the BNAF ($ − 100 million), hospice payments will increase by an estimated $160 ($280 million − $20 million − $100 million = $160 million) or 1.0 percent in FY 2014.

The impact of changes in this final rule has been analyzed according to the type of hospice, geographic location, type of ownership, hospice base, and size. Table 11 categorizes hospices by various geographic and hospice characteristics. The first row of data displays the aggregate result of the impact for all Medicare-certified hospices. The second and third rows of the table categorize hospices according to their geographic location (urban and rural). Our analysis indicated that there are 2,594 hospices located in urban areas and 975 hospices located in rural areas. The next two row groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The next grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in FY 2012. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

Column 5 of Table 11 shows the combined effects of the updated wage data, the additional 15 percent BNAF reduction, and the final 1.7 percent hospice payment update percentage on estimated FY 2014 payments as compared to estimated FY 2013 payments. Overall, hospices are anticipated to experience a 1.0 percent increase in payment, with urban hospices anticipated to experience a 1.0 percent increase in payments, and rural hospices anticipated to experience 1.1 percent increase in payments. Urban hospices are anticipated to experience an increase in estimated payments in every region, ranging from 0.3 percent in the Mountain region to 2.2 percent in New England. Rural hospices in every region but one are estimated to see an increase in payments ranging from 0.4 percent in New England to 1.7 percent in the East South Central and Outlying region. The Pacific region is estimated to see a decrease in payments of 1.2 percent, largely due to fluctuations in the updated hospital wage index data used to create the FY 2014 hospice wage index. Hospital wages in the Pacific region declined compared to the previous year, which led to the decrease in the hospital wage index values, and which thus affected the FY 2014 hospice wage index values.

Column 5 of Table 11 also shows an estimated payment increase by hospice base and hospice size. Payments to hospices in FY 2014 are estimated to increase by 1.4 percent for HHA-based hospices, 1.1 percent for hospital-based hospices, 1.0 percent for SNF-based hospices, and by 0.9 percent for freestanding hospices. Payments to small hospices (less than 3,500 RHC days) in FY 2014 are estimated to increase by 0.8 percent, whereas payments to large hospices (more than 20,000 RHC days) in FY 2014 are estimated to increase by 1.0 percent.

TABLE 11—ANTICIPATED IMPACT ON MEDICARE HOSPICE PAYMENTS IN FY 2014 IN UPDATING THE PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX DATA, REDUCING THE BUDGET NEUTRALITY ADJUSTMENT FACTOR (BNAF) BY AN ADDITIONAL 15 PERCENT (FOR A TOTAL BNAF REDUCTION OF 70 PERCENT) AND APPLYING A 1.7 PERCENT HOSPICE PAYMENT UPDATE PERCENTAGE

	Number of hospices	Number of routine home care days in thousands	Percent change in hospice payments due to the wage index update	Percent change in hospice payments due to wage index update, additional 15% reduction in budget neutrality adjustment	Percent change in hospice payments due to wage index update, additional 15% reduction in budget neutrality adjustment and hospice payment percentage update
	(1)	(2)	(3)	(4)	(5)
ALL HOSPICES	3,569	62,945	−0.1	−0.7	1.0
URBAN HOSPICES	2,594	55,101	−0.1	−0.7	1.0
RURAL HOSPICES	975	7,844	−0.2	−0.6	1.1
BY REGION—URBAN:					
NEW ENGLAND	129	1,472	1.1	0.5	2.2
MIDDLE ATLANTIC	249	5,702	0.0	−0.6	1.1
SOUTH ATLANTIC	378	13,173	−0.7	−1.3	0.4
EAST NORTH CENTRAL	338	7,224	0.0	−0.6	1.1
EAST SOUTH CENTRAL	155	3,278	−0.5	−1.0	0.7
WEST NORTH CENTRAL	197	2,494	0.4	−0.2	1.5
WEST SOUTH CENTRAL	517	6,622	−0.4	−1.0	0.7
MOUNTAIN	263	5,698	−0.8	−1.4	0.3
PACIFIC	333	8,141	0.9	0.2	1.9
OUTLYING	35	1,296	0.3	0.3	2.0
BY REGION—RURAL:					
NEW ENGLAND	24	195	−0.7	−1.3	0.4
MIDDLE ATLANTIC	43	439	−0.1	−0.7	1.0
SOUTH ATLANTIC	135	1,918	−0.3	−0.7	1.0

TABLE 11—ANTICIPATED IMPACT ON MEDICARE HOSPICE PAYMENTS IN FY 2014 IN UPDATING THE PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX DATA, REDUCING THE BUDGET NEUTRALITY ADJUSTMENT FACTOR (BNAF) BY AN ADDITIONAL 15 PERCENT (FOR A TOTAL BNAF REDUCTION OF 70 PERCENT) AND APPLYING A 1.7 PERCENT HOSPICE PAYMENT UPDATE PERCENTAGE—Continued

	Number of hospices (1)	Number of routine home care days in thousands (2)	Percent change in hospice payments due to the wage index update (3)	Percent change in hospice payments due to wage index update, additional 15% reduction in budget neutrality adjustment (4)	Percent change in hospice payments due to wage index update, additional 15% reduction in budget neutrality adjustment and hospice payment percentage update (5)
EAST NORTH CENTRAL	138	1,154	0.4	−0.2	1.5
EAST SOUTH CENTRAL	134	1,529	0.1	0.0	1.7
WEST NORTH CENTRAL	182	604	−0.8	−1.2	0.5
WEST SOUTH CENTRAL	176	977	−0.1	−0.2	1.5
MOUNTAIN	95	568	0.4	−0.1	1.6
PACIFIC	47	445	−2.2	−2.8	−1.2
OUTLYING	1	15	0.0	0.0	1.7
BY SIZE/DAYS:					
0–3499 DAYS (small)	841	1,373	−0.3	−0.8	0.8
3500–19,999 DAYS (medium)	1815	17,403	−0.2	−0.7	1.0
20,000+ DAYS (large)	913	44,168	−0.1	−0.7	1.0
TYPE OF OWNERSHIP:					
VOLUNTARY	1080	23,296	0.0	−0.5	1.1
PROPRIETARY	2002	32,992	−0.3	−0.9	0.8
GOVERNMENT	487	6,656	−0.1	−0.7	1.0
HOSPICE BASE:2					
FREESTANDING	2569	50,665	−0.2	−0.8	0.9
HOME HEALTH AGENCY	522	7,728	0.3	−0.3	1.4
HOSPITAL	458	4,430	0.0	−0.6	1.1
SKILLED NURSING FACILITY	20	122	0.0	−0.7	1.0

Source: Provider data as of December 31, 2012 for hospices with claims filed in FY 2012 (Based on the 2012 standard analytic file (SAF).

Note(s): The final 1.7 percent hospice payment update percentage for FY 2014 is based on an estimated 2.5 percent inpatient hospital market basket update, reduced by a 0.5 percentage point productivity adjustment and by 0.3 percentage point; these reductions were mandated by section 3401(g) of ACA.

REGION KEY:

New England = Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; Middle Atlantic = Pennsylvania, New Jersey, New York; South Atlantic = Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia; East North Central = Illinois, Indiana, Michigan, Ohio, Wisconsin; East South Central = Alabama, Kentucky, Mississippi, Tennessee; West North Central = Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; West South Central = Arkansas, Louisiana, Oklahoma, Texas; Mountain = Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming; Pacific = Alaska, California, Hawaii, Oregon, Washington; Outlying = Guam, Puerto Rico, Virgin Islands

3. Cost Allocation of Quality Reporting

This final rule also implements a hospice patient-level data set to be used by all hospices to collect and submit standardized data about each patient admitted to hospice. This Hospice Item Set will be used to support the standardized collection and calculation of quality measures, collection of the requisite data elements. Hospices will be required to complete and submit an admission HIS and a discharge HIS on all patients admitted to hospice starting July 1, 2014 for FY 2016 APU determination. The admission and discharge HIS will collect the standardized data elements needed to calculate 7 NQF endorsed measures for hospice. The total annualized cost across all hospices, starting July 2014, is estimated to be $14,287,929. Furthermore, the structural measure related to QAPI indicators and the NQF #0209 pain measure will no longer be required for the hospice quality reporting program beyond data submission for the FY 2015 payment determination. The original intent of the structural measure was for hospices to submit information about number, type, and data source of quality indicators used as a part of their QAPI Program. Data gathered as part of the structural measure were used to ascertain the breadth and context of existing hospice QAPI programs to inform future measure development activities including the data collection approach for the first year of required reporting (FY 2014). Please refer to section B, the Hospice Quality Reporting Program, for a detailed discussion of these programs.

4. Alternatives Considered

In continuing the reduction to the BNAF by an additional 15 percent, for a total BNAF reduction of 70 percent (10 percent in FY 2010, and 15 percent per year for FY 2011 through FY 2014), and implementing the hospice payment update percentage and the updated wage index, the aggregate impact will be a net increase of $160 million in payments to hospices. In the proposed rule for FY 2014, we did not consider discontinuing the additional 15 percent reduction to the BNAF as the 7-year phase-out of the BNAF was finalized in the FY 2010 Hospice Wage Index final rule (74 FR 39384). However, if we were

to discontinue the reduction to the BNAF by an additional 15 percent, Medicare would pay an estimated $100 million more to hospices in FY 2014. The final 1.7 percent hospice payment update percentage for FY 2014 is based on a final 2.5 percent inpatient hospital market basket update for FY 2014, reduced by a 0.5 percentage point productivity adjustment and by an additional 0.3 percentage point. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs must be the market basket percentage for that FY. The Act requires us to use the inpatient hospital market basket to determine the hospice payment rate update. In addition, section 3401(g) of the Affordable Care Act mandates that, starting with FY 2013 (and in subsequent FYs), the hospice payment update percentage will be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. In addition, section 3401(g) of the Affordable Care Act also mandates that in FY 2013 through FY 2019, the hospice payment update percentage will be reduced by an additional 0.3 percentage point (although for FY 2014 to FY 2019, the potential 0.3 percentage point reduction is subject to suspension under conditions specified in section 1814(i)(1)(C)(v) of the Act). Since the hospice payment update percentage is determined based on statutory requirements, we did not consider not updating hospice payment rates by the payment update percentage.

C. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 12 below, we have prepared an accounting statement showing the classification of the expenditures associated with this final rule. Table 12 provides our best estimate of the increase in FY 2014 Medicare payments under the hospice benefit as a result of the changes presented in this final rule using data for 3,569 hospices in our database. In addition, the table presents the costs to hospice providers for submitting data to the Hospice Item Set starting in July 2014.

TABLE 12—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FY 2013 TO FY 2014

[In $millions]

Category	Transfers
Annualized Monetized Transfers.	$160.
From Whom to Whom	Federal Government to Hospices.
Category	**Costs**
Annualized Monetized Costs for Hospices to Submit Data*.	$14.3.

* All hospices are required to submit data for the Hospice Item Set starting in July of 2014.

D. Conclusion

In conclusion, the overall effect of this final rule is an estimated $160 million increase in Federal Medicare payments to hospices due to the wage index changes (including the additional 15 percent reduction in the BNAF) and the final hospice payment update percentage of 1.7 percent. Furthermore, hospices are estimated to incur total costs of $14.3 million as a result of data submission requirements starting in July 2014. Lastly, the Secretary has determined that this final rule will not have a significant impact on a substantial number of small entities, or have a significant effect relative to section 1102(b) of the Act.

1. Regulatory Flexibility Act Analysis

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that almost all hospices are small entities as that term is used in the RFA. The great majority of hospitals and most other health care providers and suppliers are small entities by meeting the Small Business Administration (SBA) definition of a small business (in the service sector, having revenues of less than $7.0 million to $34.5 million in any 1 year), or being nonprofit organizations. While the SBA does not define a size threshold in terms of annual revenues for hospices, it does define one for home health agencies ($14 million; see *http://www.sba.gov/sites/default/files/files/Size_Standards_Table(1).pdf*). For the purposes of this final rule, because the hospice benefit is a home-based benefit, we are applying the SBA definition of ''small'' for home health agencies to hospices; we will use this definition of ''small'' in determining if this final rule has a significant impact on a substantial number of small entities (for example, hospices). We estimate that 95 percent of hospices have Medicare revenues below $14 million or are nonprofit organizations and therefore are considered small entities.

HHS's practice in interpreting the RFA is to consider effects economically ''significant'' only if they reach a threshold of 3 to 5 percent or more of total revenue or total costs. As noted above, the combined effect of the updated wage data, the additional 15 percent BNAF reduction, and the final FY 2014 hospice payment update percentage of 1.7 percent results in an increase in estimated hospice payments of 1.0 percent for FY 2014. For small and medium hospices (as defined by routine home care days), the estimated effects on revenue when accounting for the updated wage data, the additional 15 percent BNAF reduction, and the final FY 2014 hospice payment update percentage reflect increases in payments of 0.8 percent and 1.0 percent, respectively. Therefore, the Secretary has determined that this final rule will not create a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis 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 located outside of a metropolitan statistical area and has fewer than 100 beds. This final rule only affects hospices. Therefore, the Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

2. Unfunded Mandates Reform Act Analysis

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. In 2013, that threshold is approximately $141 million. This final rule is not anticipated to have an effect on State, local, or tribal governments, in the aggregate, or on the private sector of $141 million or more.

Comment: We received a few comments on Unfunded Mandates Reform Act Analysis section. Commenters disagreed that we did not

meet the statutory threshold of the Unfunded Mandates Reform Act of 1995. A commenter stated that the total costs of additional staff time, professional consulting fees and software necessary to comply fully with the new billing; coding, quality reporting and survey administration tasks will exceed that threshold figure of $141 million.

Response: The hospice benefit covers all care for the terminal prognosis, related conditions, and for the management of pain and symptoms. HIPAA, federal regulations, and the Medicare hospice claims processing manual all require that ICD–9–CM Coding Guidelines be applied to the coding and reporting of diagnoses on hospice claims. In our regulations at 45 CFR 162.1002, the Secretary adopted the ICD–9–CM code set, including The Official ICD–9–CM Guidelines for Coding and Reporting. The CMS' Hospice Claims Processing manual (Pub 100–04, chapter 11) requires that hospice claims include other diagnoses ''as required by ICD–9–CM Coding Guidelines.'' In the proposed rule, we provided guidance from the ICD–9–CM Official Guidelines for Coding and Reporting to highlight coding guidelines for principal and other diagnosis selection, as well as the various coding and sequencing conventions found therein. We are not requiring any new ICD–9–CM coding guidelines in this rule, rather we are reiterating existing policies and reminding providers of the expectations in regards to diagnostic coding on hospice claims. In addition, as indicated in section V of this final rule, we set out the requirements and burden estimates for the Hospice Experience of Care Survey field study and indicated that it is too early to set out the requirements and burden estimates for the national implementation of the survey. We anticipate having the final survey instrument in 2014 and setting out the collection of information requirements and burden estimates in the proposed rule for CY 2015. In addition, we provided a burden estimate for the Hospice Item Set that providers will be required to submit starting FY 2015, with a total annualized cost across all hospices estimated at $14,287,929. Therefore, we do not believe that any clarifications or requirements promulgated in this rule exceed the Unfunded Mandates Reform Act threshold.

VII. Federalism Analysis and Regulations Text

Executive Order 13132 on Federalism (August 4, 1999) establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it will not have substantial direct effects on the rights, roles, and responsibilities of States, local or tribal governments.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 418 as set forth below:

PART 418—HOSPICE CARE

■ 1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 418.311 [Amended]

■ 2. Amend § 418.311 by removing the reference to ''§ 405.1874'' and adding in its place the reference ''§ 405.1875''.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 24, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: July 30, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013–18838 Filed 8–2–13; 4:15 pm]

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