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Presidential Documents

Title 3—

The President

Proclamation 9108 of April 30, 2014

Asian American and Pacific Islander Heritage Month, 2014

By the President of the United States of America

A Proclamation

During Asian American and Pacific Islander (AAPI) Heritage Month, we celebrate the accomplishments of Asian Americans, Native Hawaiians, and Pacific Islanders, and we reflect on the many ways they have enriched our Nation. Like America itself, the AAPI community draws strength from the diversity of its many distinct cultures—each with vibrant histories and unique perspectives to bring to our national life. Asian Americans, Native Hawaiians, and Pacific Islanders have helped build, defend, and strengthen our Nation—as farm workers and railroad laborers; as entrepreneurs and scientists; as artists, activists, and leaders of government. They have gone beyond, embodying the soaring aspirations of the American spirit.

This month marks 145 years since the final spike was hammered into the transcontinental railroad, an achievement made possible by Chinese laborers, who did the majority of this backbreaking and dangerous work. This May, they will receive long-overdue recognition as they are inducted into the Labor Hall of Honor. Generations of Asian Americans, Native Hawaiians, and Pacific Islanders have helped make this country what it is today. Yet they have also faced a long history of injustice—from the overthrow of the Kingdom of Hawaii and its devastating impact on the history, language, and culture of Native Hawaiians; to opportunity-limiting laws like the Chinese Exclusion Act of 1882 and the Immigration Act of 1924; to the internment of Japanese Americans during World War II. Even today, South Asian Americans, especially those who are Muslim, Hindu, and Sikh, are targets of suspicion and violence.

With courage, grit, and an abiding belief in American ideals, Asian Americans, Native Hawaiians, and Pacific Islanders have challenged our Nation to be better, and my Administration remains committed to doing its part. Nearly 5 years ago, I re-established the White House Initiative on AAPIs. The Initiative addresses disparities in health care, education, and economic opportunity by ensuring Asian Americans and Pacific Islanders receive equal access to government programs and services.

We are also determined to pass comprehensive immigration reform that would modernize our legal immigration system, create a pathway to earned citizenship for undocumented immigrants, hold employers accountable, and strengthen our border security. These commonsense measures would bring relief to Asian Americans and Pacific Islanders who have experienced this broken system firsthand, and they would allow our country to welcome more highly skilled workers eager to contribute to America's success.

This month, as we recall our hard-fought progress, let us resolve to continue moving forward. Together, let us ensure the laws respect everyone, civil rights apply to everyone, and everyone who works hard and plays by the rules has a chance to get ahead.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2014 as Asian American and Pacific Islander Heritage Month. I call upon all Americans to visit www.WhiteHouse.gov/AAPI to learn more about the history of Asian

Americans and Pacific Islanders, and to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–10446
Filed 5–5–14; 8:45 am]
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Presidential Documents

Proclamation 9109 of April 30, 2014

Jewish American Heritage Month, 2014

By the President of the United States of America

A Proclamation

For thousands of years, the Jewish people have sustained their identity and traditions, persevering in the face of persecution. Through generations of enslavement and years of wandering, through forced segregation and the horrors of the Holocaust, they have maintained their holy covenant and lived according to the Torah. Their pursuit of freedom brought multitudes to our shores, and today our country is the proud home to millions of Jewish Americans. This month, let us honor their tremendous contributions—as scientists and artists, as activists and entrepreneurs. And let all of us find inspiration in a story that speaks to the universal human experience, with all of its suffering and all of its salvation.

This history led many Jewish Americans to find common cause with the Civil Rights Movement. African Americans and Jewish Americans marched side-by-side in Selma and Montgomery. They boarded buses for Freedom Rides together, united in their support of liberty and human dignity. These causes remain just as urgent today. Jewish communities continue to confront anti-Semitism—both around the world and, as tragic events mere weeks ago in Kansas reminded us, here in the United States. Following in the footsteps of Jewish civil rights leaders, we must come together across all faiths, reject ignorance and intolerance, and root out hatred wherever it exists.

In celebrating Jewish American Heritage Month, we also renew our unbreakable bond with the nation of Israel. It is a bond that transcends politics, a partnership built on mutual interests and shared ideals. Our two countries are enriched by diversity and faith, fueled by innovation, and ruled not only by men and women, but also by laws. As we continue working in concert to build a safer, more prosperous, more tolerant world, may our friendship only deepen in the years to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2014 as Jewish American Heritage Month. I call upon all Americans to visit www.JewishHeritageMonth.gov to learn more about the heritage and contributions of Jewish Americans and to observe this month, the theme of which is healing the world, with appropriate programs, activities, and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–10448
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Presidential Documents

Proclamation 9110 of April 30, 2014

National Building Safety Month, 2014

By the President of the United States of America

A Proclamation

America's buildings do more than house people and goods. They embody innovation; inspire creativity; and provide foundations for families, businesses, and communities. During National Building Safety Month, we celebrate the dedicated professionals who keep our buildings secure, and we recommit to maintaining resilient, energy-efficient infrastructure.

Because this is not a task for government alone, my Administration has fostered partnerships between the public and private sectors. Joining with building officials, design professionals, scientists, and engineers, we continually develop new guidance and tools for increasing disaster-resistance and meeting building standards. For additional information and resources explaining simple steps people can take to better prepare their homes or businesses for a disaster, visit www.Ready.gov.

As Americans, our spirit is strong and resilient, and our buildings should match that spirit. From our homes to our high-rises, our museums to our malls, let us work to keep structures sound and up to code. By doing so, we can conserve energy, protect the environment, and help communities withstand the impacts of natural disasters and climate change.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2014 as National Building Safety Month. I encourage citizens, government agencies, businesses, nonprofits, and other interested groups to join in activities that raise awareness about building safety. I also call on all Americans to learn more about how they can contribute to building safety at home and in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–10451
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Presidential Documents

Proclamation 9111 of April 30, 2014

National Foster Care Month, 2014

By the President of the United States of America

A Proclamation

Every child deserves to grow, learn, and dream in a supportive and loving environment. During National Foster Care Month, we recognize the almost 400,000 young people in foster care and the foster parents and dedicated professionals who are making a difference in their lives. We also rededicate ourselves to giving every child a sense of stability and a safe place to call home.

While the number of young people in foster care has fallen, those still there face many challenges, including finding mentors to guide their transition into adulthood and getting the support to make that transition a success. One third of foster children are teenagers, in danger of aging out of a system that failed to find them a permanent family.

Across our Nation, ordinary Americans are answering the call to open their hearts and homes to foster children. From social workers and teachers to family members and friends, countless individuals are doing their part to help these striving young people realize their full potential. My Administration remains committed to doing our part. This year, the Affordable Care Act will extend Medicaid coverage up to age 26 for children who have aged out of foster care, allowing them to more easily access quality, affordable health coverage. We are working to break down barriers so every qualified caregiver can become an adoptive or foster parent. Additionally, in the past year, we awarded grants to States, tribes, and local organizations to give communities new strategies to help foster children, including methods for finding permanent families, preventing long-term homelessness of young people aging out of foster care, and supporting their behavioral and mental health needs.

This month, and all year long, let us all recognize that each of us has a part to play in ensuring America's foster children achieve their full potential. Together, we can reach the day where every child has a safe, loving, and permanent home.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2014 as National Foster Care Month. I call upon all Americans to observe this month by taking time to help youth in foster care and recognizing the commitment of all who touch their lives.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–10452
Filed 5–5–14; 8:45 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9112 of April 30, 2014

National Mental Health Awareness Month, 2014

By the President of the United States of America

A Proclamation

Despite great strides in our understanding of mental illness and vast improvements in the dialogue surrounding it, too many still suffer in silence. Tens of millions of Americans face mental health conditions like depression, anxiety, bipolar disorder, schizophrenia, or post-traumatic stress disorder. During National Mental Health Awareness Month, we reaffirm our commitment to building our understanding of mental illness, increasing access to treatment, and ensuring those who are struggling to know they are not alone.

Over the course of a year, one in five adults will experience a mental illness, yet less than half will receive treatment. Because this is unacceptable, my Administration is fighting to make mental health care more accessible than ever. Through the Affordable Care Act (ACA), we are extending mental health and substance use disorder benefits and parity protections to over 60 million Americans. Because of the ACA, insurers can no longer deny coverage or charge patients more due to pre-existing health conditions, including mental illness. The ACA also requires health plans to cover recommended preventive services like depression screening and behavioral assessments at no out-of-pocket cost. And under this law, we are expanding services for mental health and substance use disorder at community health centers across the country.

My Administration is also investing in programs that promote mental health among young people. We secured new funding to train teachers to identify and respond to mental illness and to train thousands of additional mental health professionals to serve students. And because it is our sacred obligation to give our veterans the support they have earned, we have increased the number of Department of Veterans Affairs (VA) mental health providers, enhanced VA partnerships with community providers, and improved Government coordination on research efforts.

We too often think about mental health differently from other forms of health. Yet like any disease, mental illnesses can be treated—and without help, they can grow worse. That is why we must build an open dialogue that encourages support and respect for those struggling with mental illness. To learn how you can get involved, visit www.MentalHealth.gov. Those seeking immediate help should call 1–800–662–HELP. The National Suicide Prevention Lifeline also offers immediate assistance for all Americans, including service members and veterans, at 1–800–273–TALK.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2014 as National Mental Health Awareness Month. I call upon citizens, government agencies, organizations, health care providers, and research institutions to raise mental health awareness and continue helping Americans live longer, healthier lives.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–10453
Filed 5–5–14; 8:45 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9113 of April 30, 2014

National Physical Fitness and Sports Month, 2014

By the President of the United States of America

A Proclamation

Sports keep children healthy, teach them to work as part of a team, and help them develop the discipline to achieve their goals. During National Physical Fitness and Sports Month, we encourage America's sons and daughters to get active and challenge everyone to join the movement for a happier, fitter Nation.

For 4 years, First Lady Michelle Obama's *Let's Move!* initiative has worked with community and faith leaders, educators, health care professionals, and businesses to give our children a healthy start and empower schools to build active environments. My Administration launched the Presidential Youth Fitness Program, replacing the old Physical Fitness Test to put a stronger emphasis on students' health. We also created the new Presidential Active Lifestyle Award, which encourages all Americans to commit to eating right and getting regular exercise. Because everyone should have the chance to get active, the President's Council on Fitness, Sports, and Nutrition is expanding *I Can Do It, You Can Do It!* —a program that creates more opportunities for Americans with disabilities to participate in fitness and sports. For more information or to learn how you can get involved, visit www.LetsMove.gov and www.Fitness.gov.

By leading more active lifestyles, we can invest in our futures and encourage our children to do the same. This month, let us champion fitness to our family, friends, and colleagues. Let us give young people the chance to find a sport or physical activity they love, boost their energy and confidence, and reach their fullest potential.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2014 as National Physical Fitness and Sports Month. I call upon the people of the United States to make daily physical activity, sports participation, and good nutrition a priority in their lives.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–10454
Filed 5–5–14; 8:45 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9114 of April 30, 2014

Older Americans Month, 2014

By the President of the United States of America

A Proclamation

Older Americans have fortified our country and shaped our world. They have made groundbreaking discoveries, pioneered new industries, led our Nation's businesses, and advanced our unending journey toward a more perfect Union. They have raised strong families and strengthened communities. And with unwavering courage and patriotism, many rose in defense of the land we love. This month, we celebrate the remarkable contributions and sacrifices of our elders, and we offer our renewed gratitude and support.

With decades of experience and unyielding enthusiasm, seniors continue to lift up our neighborhoods, offer perspective on pressing challenges, and serve as role models to our next generation—proving Americans never stop making a difference or giving back. I encourage older Americans to learn about service opportunities in their area by visiting *www.SeniorCorps.gov.*

My Administration stands with older Americans as they make their mark, which is why we are fighting to protect Social Security and Medicare. Through the Affordable Care Act, we lowered prescription drug costs, prohibited insurers from denying coverage to people with pre-existing conditions, and enabled seniors to receive recommended preventive health care at no out-of-pocket cost.

As vital members of our communities, seniors deserve the resources and information to stay healthy and safe. This year's Older Americans Month theme, ''Safe Today, Healthy Tomorrow,'' raises awareness about injury prevention. To take control of their safety, seniors can talk to their health care provider about the best physical activities for them, make sure their homes have ample lighting, and install handrails wherever they are helpful—particularly near stairs and in bathrooms.

During Older Americans Month, we pay tribute to our parents, grandparents, friends, neighbors, and every senior near to our hearts. We strive to build a bright future on the strong foundation they have laid.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2014 as Older Americans Month. I call upon all Americans of all ages to acknowledge the contributions of older Americans during this month and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–10455
Filed 5–5–14; 8:45 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9115 of April 30, 2014

Law Day, U.S.A., 2014

By the President of the United States of America

A Proclamation

More than two centuries ago, patriots battled to release America from the grip of tyranny. As these brave citizens defended their right to shape their own destiny, our Founders created a government of, by, and for the people—rooted in the belief that just power derives from the consent of the governed. It is a system that can only function through the rule of law.

This Law Day pays special tribute to the right to vote, the cornerstone of democracy. Many Americans won the franchise after generations of struggle, while others gave their lives so their children and grandchildren might one day enjoy what should have been their birthright. Thanks to women who picketed the White House and activists who marched on the National Mall, our laws finally recognized a truth that had always been self-evident—that every citizen should have a voice in our democracy. Over the centuries, we have made legal changes that eliminated formal voting restrictions based on wealth, race, and sex and that extended the right to vote to younger adults. Today, our laws continue to protect this fundamental right, laws like the Voting Rights Act, the National Voter Registration Act, the Help America Vote Act, and the Uniformed and Overseas Citizens Absentee Voting Act.

Despite this hard-fought progress, barriers to voting still exist, and the right to vote faces a new wave of threats. In some States, women may be turned away from the polls because they are registered under their maiden name; in others, seniors who have been voting for decades may suddenly be told they cannot vote because they do not have a particular form of identification. As we reflect on the trials and triumphs of generations past, we must rededicate ourselves to preserving those victories in our time. Earlier this year, a bipartisan commission I appointed recommended a series of common-sense reforms to protect the right to vote, curb the potential for fraud, and ensure no one has to wait more than a half hour to cast a ballot. States and local election officials should implement these recommendations. In addition, the Congress should demonstrate its commitment to our fundamental right by updating the Voting Rights Act.

Let us mark Law Day by recognizing the institutions that uphold the rule of law in America. Let us vow to keep safe our founding creed. And let us remember that opportunity requires justice, and justice requires the right to vote.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, in accordance with Public Law 87–20, as amended, do hereby proclaim May 1, 2014, as Law Day, U.S.A. I call upon all Americans to acknowledge the importance of our Nation's legal and judicial systems with appropriate ceremonies and activities, and to display the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–10457
Filed 5–5–14; 8:45 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9116 of April 30, 2014

Loyalty Day, 2014

By the President of the United States of America

A Proclamation

Over 150 years ago, as a civil war threatened to dissolve our Union, President Abraham Lincoln delivered the Gettysburg Address. Defining the American experiment as ''conceived in liberty, and dedicated to the proposition that 'all men are created equal,' '' he resolved that our Nation ''shall not perish from the earth.'' He understood that what makes America most worth preserving are our founding ideals. These ideals compelled colonists to rise up against an empire, and they have sustained generations of service members through the darkest days of war.

In the United States of America, we do not define loyalty as adherence to any single leader, party, or political platform. When we make big decisions as a country, we necessarily stir up passions and controversy. These debates are a hallmark of democracy; they allow us to trade ideas, question antiquated notions, and ensure our Nation's course reflects the will of the American people. Yet even as we disagree, we remain true to our shared values and our common hopes for America's future.

On Loyalty Day, we renew our conviction to the principles of liberty, equality, and justice under the law. We accept our responsibilities to one another. And we remember that our differences pale in comparison to the strength of the bonds that hold together the most diverse Nation on earth.

In order to recognize the American spirit of loyalty and the sacrifices that so many have made for our Nation, the Congress, by Public Law 85–529 as amended, has designated May 1 of each year as ''Loyalty Day.'' On this day, let us reaffirm our allegiance to the United States of America and pay tribute to the heritage of American freedom.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 1, 2014, as Loyalty Day. This Loyalty Day, I call upon all the people of the United States to join in support of this national observance, whether by displaying the flag of the United States or pledging allegiance to the Republic for which it stands.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–10458
Filed 5–5–14; 8:45 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9117 of April 30, 2014

National Day of Prayer, 2014

By the President of the United States of America

A Proclamation

One of our Nation's great strengths is the freedom we hold dear, including the freedom to exercise our faiths freely. For many Americans, prayer is an essential act of worship and a daily discipline.

Today and every day, prayers will be said for comfort for those who mourn, healing for those who are sick, protection for those who are in harm's way, and strength for those who lead. Today and every day, forgiveness and reconciliation will be sought through prayer. Across our country, Americans give thanks for our many blessings, including the freedom to pray as our consciences dictate.

As we give thanks for our liberties, we must never forget those around the world, including Americans, who are being held or persecuted because of their convictions. Let us remember all prisoners of conscience today, whatever their faiths or beliefs and wherever they are held. Let us continue to take every action within our power to secure their release. And let us carry forward our Nation's tradition of religious liberty, which protects Americans' rights to pray and to practice our faiths as we see fit.

The Congress, by Public Law 100–307, as amended, has called on the President to issue each year a proclamation designating the first Thursday in May as a ''National Day of Prayer.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 1, 2014, as a National Day of Prayer. I invite the citizens of our Nation to give thanks, in accordance with their own faiths and consciences, for our many freedoms and blessings, and I join all people of faith in asking for God's continued guidance, mercy, and protection as we seek a more just world.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–10460
Filed 5–5–14; 8:45 am]
Billing code 3295–F4

Rules and Regulations

Federal Register

Vol. 79, No. 87

Tuesday, May 6, 2014

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 1487

RIN 0551–AA71

Technical Assistance for Specialty Crops

AGENCY: Foreign Agricultural Service (FAS) and Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: This final rule amends an existing provision in the regulations for the Technical Assistance for Specialty Crops Program (TASC). Section 3205 of the Agricultural Act of 2014 enacted on February 7, 2014, amended the existing TASC statute by striking ''related barriers to trade'' and inserting ''technical barriers to trade''. This rule makes the corresponding change to the TASC regulations.

DATE: Effective June 5, 2014.

FOR FURTHER INFORMATION CONTACT: Mark Slupek at (202) 720–4327, fax at (202) 720–9361, or by email at: *podadmin@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is issued in conformance with Executive Order 12866. It has been determined to be not significant for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment of this rule was not completed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule would not be retroactive.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See 7 CFR part 3015, subpart V, and the related notice published at 48 FR 29115 (June 24, 1983).

Executive Order 13175

This rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000) that will preempt Tribal law.

Executive Order 13132

This rule does not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States was not required.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Assessment

CCC has determined that this rule does not constitute a major State or Federal action that would significantly affect the human or natural environment, consistent with the regulations implementing the National Environmental Policy Act (NEPA), 40 CFR parts 1500–1508. Therefore, no environmental assessment or environmental impact statement will be prepared.

Unfunded Mandates

Although CCC is publishing this as a final rule, Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because this rule contains no unfunded mandates as defined in section 202 of UMRA. Nor does this rule potentially affect small governments or contain significant Federal intergovernmental mandates.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, CCC has previously received approval from OMB with respect to the information collection required to support this program. The information collection is described below:

Title: Technical Assistance for Specialty Crops.

OMB Control Number: 0551–0038.

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. The forms, regulations, and other information collection activities required to be utilized by a person subject to this rule are available at *http://www.fas.usda.gov.*

Background

This final rule amends the regulations at 7 CFR part 1487 applicable to the TASC program. The Farm Security and Rural Investment Act of 2002, which was reauthorized by the Food, Conservation, and Energy Act of 2008, directed CCC to establish a program to provide mandatory funding to assist U.S. organizations to undertake projects that address sanitary, phytosanitary, and related barriers that prohibit or threaten the export of U.S. specialty crops. The Foreign Agricultural Service (FAS), which administers the TASC program on behalf of CCC, provides grant funds as direct assistance to U.S. organizations.

In addressing sanitary and phytosanitary trade barriers, FAS has provided TASC funding for projects such as pre-clearance programs, export protocol and work support plans, pest and disease research, the development of pest lists, field surveys, seminars and other plant health related projects. Until the passage of the Agricultural Act of 2014 (Pub. L. 113–79), certain export barriers such as quality or packaging issues and environmental sustainability labeling requirements could not be addressed under the TASC program because, although legitimate export barriers, they did not appear to meet the requirement of being related to a sanitary or phytosanitary barrier to trade. Industry groups requested Congress amend the law to broaden the types of trade barriers eligible under TASC. Section 3205 of the Agriculture

Act of 2014 amended the TASC statute by striking ''related barriers to trade'' and inserting ''technical barriers to trade'' in 7 U.S.C. 5680(b).

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 551 et.al) requires that a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. Because this rule involves grants and is a minor administrative change with no discretionary interpretation of law possible, CCC is publishing this rule without opportunity for public comment. The change will allow TASC funding of projects that address technical barriers to trade that are not related to any sanitary or phytosanitary barrier. In the past, the TASC program has been undersubscribed, while significant, but ineligible, trade barriers for specialty crops were unable to be addressed through the program. The specialty crops industry will now be able to use the program to fund a broader range of projects that all have the same underlying goal of increasing U.S. specialty crop exports. This change will increase the number of proposals that qualify for the program.

List of Subjects in 7 CFR Part 1487

Agricultural commodities, Exports, Specialty crops.

For the reasons set out in the preamble, 7 CFR part 1487 is amended as follows:

PART 1487—TECHNICAL ASSISTANCE FOR SPECIALTY CROPS

■ 1. The authority citation for part 1487 continues to read as follows:

Authority: Sec. 3205 of Pub. L. 107–171.

■ 2. Revise § 1487.2 to read as follows:

§ 1487.2 What is the TASC program?

Under the TASC program, CCC, an agency and instrumentality of the United States within the Department of Agriculture, provides funds to eligible organizations, on a grant basis, to implement activities that are intended to address a sanitary, phytosanitary, or technical barrier that prohibits or threatens the export of U.S. specialty crops that are currently available on a commercial basis. The TASC program is intended to benefit the represented industry rather than a specific company or brand. This program is administered by FAS.

Signed at Washington, DC, on the 22nd of April, 2014.

Bryce Quick,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2014–10375 Filed 5–5–14; 8:45 am]

BILLING CODE 3410–10–P

FEDERAL TRADE COMMISSION

16 CFR Part 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending the Hart-Scott-Rodino (''HSR'') Premerger Notification Rules (the ''Rules''), and the Premerger Notification and Report Form and associated Instructions (''Form and Instructions'') to reflect the new address of the Commission's Premerger Notification Office (the ''PNO'').

DATES: Effective May 6, 2014.

FOR FURTHER INFORMATION CONTACT: Robert L. Jones, Assistant Director, Premerger Notification Office, Bureau of Competition, Room 5301, Federal Trade Commission, 400 7th Street SW., Washington, DC 20024. Telephone: (202) 326–3100, Email: *rjones@ftc.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

Section 7A of the Clayton Act (the ''Act'') requires the parties to certain mergers or acquisitions to file with the Federal Trade Commission (the ''Commission'' or ''FTC'') and the Antitrust Division of the Department of Justice (the ''Assistant Attorney General'' or the ''Antitrust Division'') (together the ''Antitrust Agencies'' or ''Agencies'') to allow the agencies to conduct their initial review of a proposed transaction's competitive impact and requires the parties to wait a specified period of time before consummating such transactions. The reporting requirement and the waiting period that it triggers are intended to enable the Antitrust Agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation, pursuant to Section 7 of the Act.

Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Section 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of § 7A.

Pursuant to that authority, the Commission, with the concurrence of the Assistant Attorney General, developed the Rules, codified in 16 CFR Parts 801, 802 and 803, and the Form and its associated Instructions, codified at Part 803—Appendix, to govern the form of premerger notifications to be provided by merging parties. The Form is designed to provide the Commission and the Assistant Attorney General with the information and documentary material necessary for an initial evaluation of the potential anticompetitive impact of significant mergers, acquisitions and certain similar transactions.

Changes to the Form, Instructions and Rules

The Commission is amending Section 803.10 of the Rules, as well as the accompanying Form and Instructions, to incorporate the new address of the PNO. Accordingly, the Commission is updating the address of the PNO in the General Instructions (Information and Filing Sections), in the Disclosure Notice section of the Form, and in Section 803.10(c)(1)(i) of the Commission's Rules, to read as follows: Premerger Notification Office, Federal Trade Commission, Room 5301, 400 7th Street SW., Washington, DC 20024.

Administrative Procedure Act

The Commission finds good cause to adopt these changes without prior public comment. Under the APA, notice and comment are not required ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B).

The Commission is updating the address for submission of premerger notification forms in the Rule and the Appendix to Part 803 to reflect the PNO's new address. It does not involve any substantive changes in the Rule's requirements for entities subject to the Rule. Accordingly, the Commission finds that public comment is unnecessary.

In addition, under the APA, a substantive final rule is required to take effect at least 30 days after publication in the **Federal Register** unless an agency finds good cause that the rule should become effective sooner. 5 U.S.C. 553(d). However, this is purely a clerical change and is not a substantive rule change. Moreover, prompt adoption of this amendment is necessary to alert the public of the updated address for filing of premerger notification forms. Therefore, the Commission finds good cause to dispense with a delayed effective date.

For these reasons, the Commission finds that there is good cause for adopting this final rule as effective on April 28, 2014, without prior public comment.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities, unless the head of the agency certifies that the rule will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). However, the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking. 5 U.S.C. 603(a), 604(a). As discussed above, the Commission has determined for good cause that the APA does not require notice and public comment on this rule. Accordingly, the RFA does not apply to this final rule.

Paperwork Reduction Act

These changes do not contain any record maintenance, reporting or disclosure requirements that would constitute agency ''collections of information'' that would have to be submitted for clearance and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3518.

List of Subjects in 16 CFR Part 803

Antitrust.

For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR part 803 as set forth below:

PART 803—TRANSMITTAL RULES

■ 1. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 2. Amend § 803.10 by revising paragraphs (c)(1) introductory text and (c)(1)(i) to read as follows:

§ 803.10 Running of time.

* * * * *

(c)(1) *Date of receipt and means of delivery.* For purposes of this section, these procedures shall apply.

(i) The date of receipt shall be the date on which delivery is effected to the designated offices (Premerger Notification Office, Federal Trade Commission, Room 5301, 400 7th Street SW., Washington, DC 20024 and Director of Civil Enforcement, Office of Operations, Antitrust Division, Department of Justice, 950 Pennsylvania Avenue NW., Room #3335, Washington, DC 20530) during normal business hours. Delivery should be effected directly to the designated offices, either by hand or by certified or registered mail. In the event one or both of the delivery sites are unavailable, the FTC and DOJ may designate alternate sites for delivery of the filing. Notification of the alternate delivery sites will normally be made through a press release and, if possible, on the *http://www.ftc.gov* and *https://www.hsr.gov* Web sites.

* * * * *

■ 3. In the Appendix to part 803, revise Page 10 of the Notification and Report Form for Certain Mergers and Acquisitions, and pages I and II of the Instructions, to read as follows:

Appendix to Part 803—Notification and Report Form for Certain Mergers and Acquisitions

* * * * *

BILLING CODE: 6750–01–P

Attach the Affidavit required by § 803.5 to the Form.

THE INFORMATION REQUIRED TO BE SUPPLIED ON THESE ANSWER SHEETS IS SPECIFIED IN THE INSTRUCTIONS

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to §7A of the Clayton Act, 15 U.S.C. §18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the *Federal Register* at 43 FR 33450; the rules may also be found at 16 CFR Parts 801-03. Failure to file this **Notification and Report Form**, and to observe the required waiting period before consummating the acquisition in accordance with the applicable provisions of 15 U.S.C. §18a and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty of not more than $16,000 for each day during which such person is in violation of 15 U.S.C. §18a.

Pursuant to the Hart-Scott-Rodino Act, information and documentary material filed in or with this Form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

DISCLOSURE NOTICE - Public reporting burden for this report is estimated to vary from 8 to 160 hours per response, with an average of 37 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this report, including suggestions for reducing this burden to:

Premerger Notification Office, Room 5301, Federal Trade Commission, 400 7th Street, S.W., Washington, DC 20024
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

Under the **Paperwork Reduction Act**, as amended, 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. That number is 3084-0005, which also appears above.

Privacy Act Statement--Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. 7701. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt collection and reporting purposes. Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to $16,000 per day. We also may be unable to process the Form unless you provide all of the requested information.

This page may be omitted when submitting the Form.

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM for Certain Mergers and Acquisitions

INSTRUCTIONS

GENERAL

The Notification and Report Form ("the Form") is required to be submitted pursuant to §803.1(a) of the premerger notification rules, 16 CFR Parts 801-803 ("the Rules").

These instructions specify the information which must be provided in response to the items on the Form. The completed Form, together with all documentary attachments, are to be filed with the Federal Trade Commission and the Department of Justice ("the Agencies").

The term "documentary attachments" refers to materials supplied in response to Item 3(b), Item 4 and to submissions pursuant to §803.1(b) of the Rules.

Persons providing responses on attachment pages rather than on the Form must submit a complete set of attachment pages with each copy of the Form.

Information

The central office for information and assistance concerning the Rules and the Form is:

Premerger Notification Office
Federal Trade Commission, Room 5301
400 7th Street, S.W.
Washington, D.C. 20024
phone: (202) 326-3100 - e-mail: HSRHelp@hsr.gov

Copies of the Form, Instructions and Rules as well as materials to assist in completing the Form are available at www.ftc.gov/bc/hsr. An electronic version of the Form is available at www.hsr.gov and may be used for the direct electronic submission of filings or to generate a print version of the Form for paper copy submission.

Definitions

The definitions and other provisions governing this Form are set forth in the Rules, 16 CFR Parts 801-803. The governing statute ("the Act"), the Rules, and the Statement of Basis and Purpose for the Rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) 48 FR 34427 (July 29, 1983), 61 FR 13688 (March 28, 1996), 66 FR 8693 (February 1, 2001), 70 FR 4994 (January 31, 2005), 70 FR 11513 (March 8, 2005), 70 FR 73369 (December 12, 2005), 70 FR 77312 (December 30, 2005), 71 FR 2943 (January 18, 2006), and Pub. L. No. 106-533, 114 Stat. 2762. See www.ftc.gov/bc/hsr for copies of these materials.

Affidavit

Attach the affidavit required by §803.5 to the Form. If filing electronically, submit an electronic version of the affidavit as attachment 1.

The language found in 28 U.S.C. §1746 relating to unsworn declarations under penalty of perjury may be used instead of notarization of the affidavit.

For acquisitions to which §801.30 does not apply, the affidavit must attest that a contract, agreement in principle or letter of intent to merge or acquire has been executed, and further attest to the good faith intention of the person filing notification to complete the transaction.

For acquisitions to which §801.30 does apply, the affidavit must also attest that the issuer whose voting securities or the unincorporated entity whose non-corporate interests are to be acquired has received notice; the identity of the acquiring person and the fact that the acquiring person intends to acquire voting securities of the issuer or non-corporate interests of the unincorporated entity; the specific notification threshold that the acquiring person intends to meet or exceed if an acquisition of voting securities; the fact that the acquisition may be subject to the Act, and that the acquiring person will file notification under the Act; the anticipated date of receipt of such notification by the Agencies; and the fact that the person within which the issuer or unincorporated entity is included may be required to file notification under the Act.

Acquiring persons in transactions covered by §801.30 are required to also submit a copy of the notice served on the acquired person pursuant to §803.5(a)(3).

In the case of a tender offer, the affidavit must also attest that the intention to make the tender offer has been publicly announced.

An affidavit is **not** required of an acquired person in a transaction covered by §801.30. (See §803.5(a)).

Responses

Each answer should identify the item to which it is addressed. Attach separate additional sheets as necessary in answering each item. Each additional sheet should identify, at the top of the page, the item to which it is addressed. Voluntary submissions pursuant to §803.1(b) should also be identified.

For electronic filings, all items are automatically identified within the Form. Electronic attachments and endnotes may be appended to the Form for any item.

Enter the name of the person filing notification as reported in Item 1(a) on page 1 of the Form and the date on which the Form is completed at the top of each page of the Form, at the top of any sheets attached to complete the response to any item, and at the top of the first or cover page of each documentary attachment.

If unable to answer any item fully, give such information as is available and provide a statement of reasons for non-compliance as required by §803.3. If exact answers to any item cannot be given, enter best estimates and indicate the sources or bases of such estimates. All financial information should be expressed in millions of dollars rounded to the nearest one-tenth of a million dollars. Estimated data should be followed by the notation, "est." For electronic filings, add an endnote with the notation, "est." to any item where data is estimated.

Year
All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

North American Industry Classification System (NAICS) Data
The Form requests dollar revenues and lines of commerce for non-manufactured and manufactured products with respect to operations conducted within the United States and for products manufactured outside of the United States and sold into the United States. Filing persons must submit data at the 6-digit NAICS national industry code level to reflect non-manufacturing revenues. To the extent that dollar revenues (see §803.2(d)) are derived from manufacturing operations (NAICS Sectors 31-33), filing persons must submit data at the 10-digit NAICS product code levels.

References
In reporting information by 6-digit NAICS industry code, refer to the most recent *North American Industry Classification System - United States* published by the Executive Office of the President, Office of Management and Budget. In reporting information by 10-digit NAICS product code, refer to the most recent *Numerical List of Manufactured and Mineral Products* published by the Bureau of the Census. Information regarding NAICS is available at www.census.gov.

Thresholds
Filing fee and notification thresholds are adjusted annually pursuant to Section 7A(a)(2) of the Clayton Act based on the change in gross national product, in accordance with Section 8(a)(5). The current threshold values can be found at www.ftc.gov/bc/hsr.

Limited Response
Information need not be supplied regarding assets, non-corporate interests, or voting securities currently being acquired, when their acquisition is exempt under the statute or rules. (See §803.2(c)). The acquired person should limit its response in the case of an acquisition of assets, to the assets being sold, in the case of an acquisition of non-corporate interests, to the unincorporated entity(s) whose non-corporate interests are being acquired, and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such acquired entities. Separate responses may be required where a person is both acquiring and acquired. (See §§803.2(b) and (c)).

Filing
Filers have three options:

(1) Complete and return **ONE** original and **ONE** copy (with one notarized original affidavit and certification and one set of documentary attachments) of the Notification and Report Form ("Form") to:

Premerger Notification Office
Federal Trade Commission, Room 5301
400 7th Street, S.W.
Washington, D.C. 20024

Also, **THREE** copies (with one set of documentary attachments) should be sent to:

Office of Operations, Premerger Unit
Antitrust Division, Department of Justice
950 Pennsylvania Avenue, N.W., Room #3335
Washington, D.C. 20530.

(For FEDEX airbills to the Department of Justice, do not use the 20530 zip code; use zip code 20004);

(2) Complete the electronic version of the Form and submit the completed Form with all electronic attachments as directed at www.hsr.gov; or

(3) Complete the electronic version of the Form and submit it electronically as directed at www.hsr.gov, while providing the documentary attachments in paper copy to the FTC and DOJ as in Option 1 above. Note that for Option 3, the attachments must be listed on the attachments page of the Form and classified as "paper to follow".

If one or both delivery sites are unavailable, the Agencies may announce alternate sites for delivery through the media and, if possible, at www.ftc.gov/bc/hsr and www.hsr.gov.

ITEM BY ITEM

Fee Information
The fee for filing the Notification and Report Form is based on the aggregate total amount of assets, voting securities, and controlling non-corporate interests to be held as a result of the acquisition:

Value of assets, voting securities and controlling non-corporate interests to be held	Fee Amount
greater than $50 million (as adjusted) but less than $100 million (as adjusted)	$45,000
$100 million (as adjusted) or greater but less than $500 million (as adjusted)	$125,000
$500 million or greater (as adjusted)	$280,000

For current thresholds and fee information, see www.ftc.gov/bc/hsr

Amount Paid
Indicate the amount of the filing fee paid. This amount should be net of any banking or financial institution charges. Where an explanatory attachment is required, include in your explanation any adjustments to the acquisition price that serve to lower the fee from that which would otherwise be due. If there is no acquisition price or if the acquisition price may fall within a range that straddles two filing fee thresholds, state the transaction value on which the fee is based and explain the valuation method used. Include in your explanation a description of any exempt assets, the value assigned to each, and the valuation method use

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By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–09821 Filed 5–5–14; 8:45 am]

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

RIN 1212–AB18

Benefits Payable in Terminated Single-Employer Plans; Limitations on Guaranteed Benefits; Shutdown and Similar Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans, which sets forth rules on PBGC's guarantee of pension plan benefits, including rules on the phase-in of the guarantee. The amendments implement the Pension Protection Act of 2006 provision that the phase-in period for the guarantee of benefits that are contingent upon the occurrence of an ''unpredictable contingent event,'' such as a plant shutdown, starts no earlier than the date of the shutdown or other unpredictable contingent event.

DATES: Effective June 5, 2014.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4224 or *klion.catherine@pbgc.gov.* (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4224.)

SUPPLEMENTARY INFORMATION:

Executive Summary

This rule is needed to conform PBGC's benefit payment regulation to Pension Protection Act of 2006 changes to the phase-in of PBGC's guarantee of benefits that are contingent upon the occurrence of an ''unpredictable contingent event,'' such as a plant shutdown.

PBGC's legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of Title IV of ERISA, and section 4022 of ERISA, which sets forth rules on PBGC's guarantee of benefits in terminated single-employer plans.

This final regulation codifies the Pension Protection Act of 2006 provision that the phase-in period for the guarantee of benefits that are contingent upon the occurrence of an ''unpredictable contingent event,'' such as a plant shutdown, starts no earlier than the date of the shutdown or other unpredictable contingent event. The regulation incorporates the definition of an unpredictable contingent event benefit under Title II of ERISA and Treasury regulations; provides that the guarantee of an unpredictable contingent event benefit is phased in from the latest of the date the benefit provision is adopted, the date the benefit is effective, or the date the event that makes the benefit payable occurs; and includes eight examples that show how the phase-in rules apply in various situations.

PBGC received one public comment on its 2011 proposed regulation. PBGC has made a change to the final regulation in response to the comment.

Background

The Pension Benefit Guaranty Corporation (PBGC) administers the single-employer pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The program covers certain private-sector, single-employer defined benefit plans, for which premiums are paid to PBGC each year.

Covered plans that are underfunded may terminate either in a distress termination under section 4041(c) of ERISA or in an involuntary termination (one initiated by PBGC) under section 4042 of ERISA. When such a plan terminates, PBGC typically is appointed statutory trustee of the plan, and becomes responsible for paying benefits in accordance with the provisions of Title IV.

Under sections 4022(b)(1) and 4022(b)(7) of ERISA and §§ 4022.24 through .26 of PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans, 29 CFR part 4022, PBGC's guarantee of new pension benefits and benefit increases is ''phased in'' over a five-year period, which begins on the date the new benefit or benefit increase is adopted or effective, whichever is later.

The Pension Protection Act of 2006, Public Law 109–280 (PPA 2006), amended section 4022 of ERISA by adding a new section 4022(b)(8), which changes the start of the phase-in period for plant shutdown and other ''unpredictable contingent event benefits.'' Under section 4022(b)(8), the phase-in rules are applied as if a plan amendment creating an unpredictable contingent event benefit (UCEB) was adopted on the date the unpredictable contingent event (UCE) occurred rather than as of the actual adoption date of the amendment, which is almost always earlier. As a result of the change, the guarantee of benefits arising from plant shutdowns and other UCEs that occur within five years of plan termination (or the date the plan sponsor entered bankruptcy, if applicable under PPA 2006, as explained below) generally will be lower than under prior law. This provision, which does not otherwise change the existing phase-in rules, applies to benefits that become payable as a result of a UCE that occurs after July 26, 2005.

Phase-In of PBGC Guarantee

Under section 4022(b)(7) of ERISA, the guarantee of benefits under a new plan or of a new benefit or benefit increase under an amendment to an existing plan (all of which are referred to in PBGC's regulations as ''benefit increases'') is ''phased in'' based on the number of full years the benefit increase is in the plan. The time period that a benefit increase has been provided under a plan is measured from the later of the adoption date of the provision creating the benefit increase or the effective date of the benefit increase. Generally, 20 percent of a benefit increase is guaranteed after one year, 40 percent after two years, etc., with full phase-in of the guarantee after five years. If the amount of the monthly benefit increase is below $100, the annual rate of phase-in is $20 rather than 20 percent.

The phase-in limitation generally serves to protect the insurance program from losses caused by benefit increases that are adopted or made effective shortly before plan termination. This protection is needed because benefit increases can create large unfunded liabilities. An example is a plan amendment that significantly increases credit under the plan benefit formula for service performed prior to the amendment. Such increases generally are funded over time under the ERISA minimum funding rules. Congress determined that an immediate full guarantee would result in an inappropriate loss for PBGC if a plan terminated before an employer significantly funded a benefit increase. Phase-in of the guarantee allows time for some funding of new liabilities before they are fully guaranteed.

Funding of liabilities created by a benefit increase generally starts at the

same time as the PBGC guarantee first applies under the phase-in rule. Under ERISA and the Internal Revenue Code (Code), liability created by a benefit increase must be reflected in a plan's required contribution no later than the plan year following adoption of the benefit increase. For example, a benefit increase that is adopted and effective in the 2009 plan year must be reflected in the minimum funding contribution calculations for a plan year not later than the 2010 plan year. Similarly, such a benefit increase would become partially guaranteed during the 2010 plan year.

Over the years, legislative reforms, including those in PPA 2006, have generally shortened the permitted funding period from thirty years to seven years (or less in certain cases). This closer coordination between the permitted funding period and five-year guarantee phase-in period generally enhanced the effectiveness of the phase-in provisions in protecting the PBGC insurance program against losses due to unfunded benefit increases. However, as explained below, before the PPA 2006 changes to the phase-in of UCEBs, this coordination generally failed in the case of UCEBs.

Unpredictable Contingent Event Benefits

UCEBs, described more specifically below, are benefits or benefit increases that become payable solely by reason of the occurrence of a UCE such as a plant shutdown. UCEBs typically provide a full pension, without any reduction for age, starting well before an unreduced pension would otherwise be payable. The events most commonly giving rise to UCEBs are events relating to full or partial plant shutdowns or other reductions in force. UCEBs, which are frequently provided in pension plans in various industries such as the steel and automobile industries, are payable with respect to full or partial plant shutdowns as well as shutdowns of different kinds of facilities, such as administrative offices, warehouses, retail operations, etc. UCEBs are also payable, in some cases, with respect to layoffs and other workforce reductions.[1]

A typical shutdown benefit provision in the steel industry—the so-called ''70/80 Rule''—generally allows participants who lose their jobs due to the complete or partial closing of a facility or a reduction-in-force and whose age plus service equals 70 (if at least age 55) or 80 (at any age) to begin receiving their full accrued pension immediately, even though they have not reached normal retirement age. Similar UCEBs are common in the automobile industry with respect to shutdowns and layoffs. The purpose of these benefits is to assist participants financially in adjusting to a permanent job loss.

Time Lag Between Start of Guarantee Phase-In and Funding of UCEBs

A UCEB provision typically has been in a plan many years before the occurrence of the event that eventually triggers the benefit, such as a plant shutdown. As a result, before PPA 2006, shutdown benefits, for example, were often fully guaranteed under the phase-in rules when a shutdown occurred. Because the benefit is contingent on the occurrence of an unpredictable event, plan sponsors typically did not make contributions to provide for advance funding of such benefits; funding of such benefits often did not begin until after the UCE had occurred. If, as often happened, plan termination occurred within a few years after a shutdown, the time lag between the start of the phase-in period and the start of funding resulted in an increased loss to the insurance program.

Treatment of UCEBs in OBRA 1987

Congress first explicitly addressed UCEBs in funding reforms contained in the Pension Protection Act of 1987, enacted as part of Public Law 100–203, the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987). The OBRA 1987 rules for deficit reduction contributions required employers to recognize UCEBs on an accelerated basis (generally, within five to seven years), beginning after the triggering event occurred.[2] However, the rules did not address the mismatch of the funding and guarantee phase-in periods discussed above. They also did not address the fact that UCEBs are likely to be triggered when the employer is experiencing financial difficulty, which threatens both funding and continuation of the plan. For these reasons, in the years since OBRA 1987, PBGC has assumed more than $1 billion of unfunded benefit liabilities from shutdown and similar benefits.

Treatment of UCEBs in PPA 2006

Congress further addressed UCEBs in PPA 2006. PPA 2006 affected UCEBs in two important ways.

First, PPA 2006 added new ERISA section 206(g) and parallel Code section 436(b) that restrict payment of UCEBs with respect to a UCE if the plan is less than 60 percent funded for the plan year in which the UCE occurs (or would be less than 60 percent funded taking the UCEB into account). Unless the restriction is removed during that plan year as a result of additional contributions to the plan or an actuarial certification meeting certain requirements, the restriction becomes permanent and, under Treas. Reg. § 1.436–1(a)(4)(iii),[3] the plan is treated as if it does not provide for those UCEBs.[4] Because PBGC guarantees only benefits that are provided under a plan, a UCEB that is treated as not provided under the plan because of this restriction is not guaranteeable by PBGC at all, and the phase-in rules that are the subject of this final regulation do not come into play for such a UCEB. Moreover, under Treas. Reg. § 1.436–1(a)(3)(ii), benefit limitations under ERISA section 206(g) that were in effect immediately before plan termination continue to apply after termination.

Second, PPA 2006 better aligns the starting dates of the funding and guarantee phase-in of UCEBs. Under PPA 2006, phase-in of the PBGC guarantee does not start until the UCE actually occurs. Specifically, ERISA section 4022(b)(8), added by section 403 of PPA 2006, provides: ''If an unpredictable contingent event benefit (as defined in section 206(g)(1)) is payable by reason of the occurrence of any event, this section shall be applied as if a plan amendment had been adopted on the date such event occurred.'' The provision applies to UCEs that occur after July 26, 2005. Thus, for purposes of the phase-in limitation, the date a UCE occurs is treated as the adoption date of the plan provision that provides for the related UCEB. This statutory change provides

[1] The Technical Explanation of PPA 2006 prepared by the Joint Committee on Taxation Staff specifies that UCEBs include benefits payable with respect to ''facility shutdowns or reductions in workforce.'' Joint Committee on Taxation, *Technical Explanation of H.R. 4, the ''Pension Protection Act of 2006,'' as passed by the House on July 26, 2006, and as considered by the Senate on August 3, 2006* (JCX–38–06), August 3, 2006, at 90 (hereinafter *Technical Explanation of PPA 2006*).

[2] Public Law 100–203, 10 Stat. 1330, 339–41 (codified as amended at 26 U.S.C. 412(l) (1987)); *see* S. Rep. No. 100–63 at 171–72, 175–76 (1987).

[3] Treasury Regulations under Code sections 430 and 436 also apply for purposes of the parallel rules in ERISA sections 303 and 206(g).

[4] 74 FR 53004, 53062 (Oct. 15, 2009). Treas. Reg. § 1.436–1(a)(4)(iii) permits all or any portion of prohibited UCEBs to be restored by a plan amendment that meets the requirements of section 436(c) of the Code and Treas. Reg. § 1.436–1(c) and other applicable requirements. Such an amendment would create a ''benefit increase'' under § 4022.2 and therefore PBGC's guarantee of UCEBs restored by such an amendment would be phased in from the later of the adoption date of the amendment or the effective date as of which the UCEB is restored, as provided under § 4022.27(c) of the final regulation.

the PBGC insurance program a greater measure of protection than prior law from losses due to unfunded UCEBs—most notably, benefits that become payable by reason of a plant shutdown or similar event such as a permanent layoff.[5]

ERISA section 206(g)(1), as added by section 103(a) of PPA 2006, defines ''unpredictable contingent event benefit'' as any benefit payable solely by reason of a plant shutdown (or similar event, as determined by the Secretary of the Treasury), or an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

PPA 2006 did not alter the rule that UCEBs are not guaranteed at all unless the triggering event occurred prior to the plan termination date (see *PBGC* v. *Republic Tech. Int'l, LLC,* 386 F.3d 659 (6th Cir. 2004)).

Treasury Final Regulation

On October 15, 2009 (at 74 FR 53004), the Department of the Treasury (Treasury) published a final rule on Benefit Restrictions for Underfunded Pension Plans that defines UCEB for purposes of ERISA section 206(g)(1), and thus also for purposes of section 4022(b)(8). Treasury's final regulation clarifies the following points regarding UCEBs:

- UCEBs include only benefits or benefit increases to the extent such benefits or benefit increases would not be payable but for the occurrence of a UCE.
- The reference to ''plant shutdown'' in the statutory definition of UCEB includes a full or partial shutdown.

Treasury's final regulation also states that a UCEB includes benefits triggered by events similar to plant shutdowns. Treas. Reg. § 1.436–1(j)(9) defines a UCEB at 26 CFR 1.436(j)(9).

PBGC Proposed Rule and Public Comment

On March 11, 2011 (at 76 FR 13304), PBGC published a proposed rule to implement section 403 of PPA 2006.[6] PBGC received one comment on the proposed rule, from an association of labor organizations.[7] The commenter requested that the final rule limit PBGC's discretion to determine the beginning date of the phase-in period for the guarantee of a UCEB and require PBGC to notify participants affected by the phase-in of the date of the UCE. The commenter also expressed concern about the participant-by-participant basis for determining the date on which a UCE occurs in the case of a reduction in force. PBCG's response to the comment is discussed below.

Overview of Final Regulation

The final regulation incorporates the definition of UCEB under section 206(g)(1)(C) of ERISA and Treas. Reg. § 1.436–1(j)(9). It also provides that the guarantee of a UCEB is phased in from the latest of the date the benefit provision is adopted, the date the benefit is effective, or the date the UCE that makes the benefit payable occurs. The final rule includes eight examples that show how the UCEB phase-in rules apply in the following situations:

- Shutdown that occurs later than the announced shutdown date.
- Sequential permanent layoffs.
- Skeleton shutdown crews.
- Permanent layoff benefit for which the participant qualifies shortly before the sponsor enters bankruptcy.
- Employer declaration during a layoff that return to work is unlikely.
- Shutdown benefit with age requirement that can be met after the shutdown.
- Retroactive UCEB.
- Removal of IRC Section 436 restriction.[8]

The final regulation is nearly the same as the proposed regulation. As explained below, PBGC has made one change in the regulation in response to the public comment. In addition, PBGC has updated the dates in the examples.

Regulatory Changes

UCEBs Covered

As explained above, ERISA section 4022(b)(8), added by section 403 of PPA 2006, changes the rules for phasing in the guarantee of UCEBs in the case of UCEs that occur after July 26, 2005. Section 4022(b)(8) covers shutdown-type benefits, including benefits payable by reason of complete shutdowns of plants, and benefits payable when participants lose their jobs or retire as a result of partial closings or reductions-in-force at all kinds of facilities, in addition to other UCEBs. Accordingly, § 4022.27(a) expressly refers to benefits payable as a result of ''plant shutdowns or other unpredictable contingent events . . ., such as partial facility closings and permanent layoffs.''[9]

As stated above, a UCEB is defined by section 206(g)(1)(C) of ERISA to include benefits payable solely by reason of (1) a plant shutdown or similar event, or (2) an event other than an event such as attainment of a certain age or performance of service, that would trigger eligibility for a retirement benefit. The final regulation provides that PBGC will determine whether a benefit is a UCEB based on the facts and circumstances; the substance of the benefit, not what it is called, determines whether the benefit would be a UCEB covered by the new phase-in rule. Accordingly, under § 4022.27(b), the guarantee of any benefit that PBGC determines, based on plan provisions and facts and circumstances, is a shutdown benefit or is otherwise a UCEB will be phased in as a UCEB.

The definition of UCEB under § 4022.2 provides that a benefit does not cease to be a UCEB for phase-in purposes merely because the UCE has already occurred or its occurrence has become reasonably predictable. This interpretation is supported by the plain language of ERISA section 4022(b)(8), which incorporates ERISA section 206(g)(1)(C). Section 206(g)(1)(C) expressly defines a UCEB not in terms of degree of predictability, but rather whether a benefit is ''payable solely by reason of a shutdown or similar event . . . or an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.'' In other words, section 206(g)(1)(C) provides that a UCEB remains a UCEB after the UCE occurs. Because many events that are not reliably and reasonably predictable become predictable immediately before they occur, and the concept of predictability does not apply to events after they have occurred, PBGC interprets ERISA section 4022(b)(8) to apply to benefits such as shutdown benefits regardless of whether the events

[5] In addition, Treas. Reg. § 1.430(d)–(1)(f)(6) requires that calculation of the funding target for a single-employer plan take into account, based on information as of the valuation date, the probability that UCEBs will become payable. Under that Treasury regulation, the probability may be assumed to be zero if there is not more than a de minimis likelihood that the UCE will occur.

[6] With one exception, explained below under the heading ''Bankruptcy filing date treated as deemed termination date,'' the other provisions of PPA 2006 affecting PBGC's guarantee do not affect phase-in of the guarantee of UCEBs and thus were not addressed in the proposed rule.

[7] The comment is posted on PBGC's Web site, *www.pbgc.gov.*

[8] The examples are not an exclusive list of UCEs or UCEBs and are not intended to narrow the statutory definition, as further delineated in Treasury Regulations.

[9] As explained in Technical Explanation of PPA 2006, *supra* note 1, ''layoff benefits,'' as that term is used in Treas. Reg. § 1.401–1(b)(1)(i), are *severance* benefits that may not be included in tax-qualified pension plans. In contrast, the benefits covered in this regulation are *retirement benefits* payable in the event of certain workforce reductions. These retirement benefits—generally subsidized early retirement benefits—may be provided in tax-qualified plans insured by PBGC.

triggering those benefits have already occurred or have become predictable.

Date UCE Occurs

Under the final regulation, PBGC determines the date a UCE occurs based on the plan provisions and other facts and circumstances, including the nature and level of activity at a facility that is closing and the permanence of the event. Statements or determinations by the employer, the plan administrator, a union, an arbitrator under a collective bargaining agreement, or a court about the date of the event may be relevant but are not controlling. Where a plan provides that a UCEB is payable only upon the occurrence of more than one UCE, the regulation provides that the guarantee is phased in from the latest date when all such UCEs have occurred. For example, if a UCEB is payable only if a participant is laid off and the layoff continues for a specified period of time, the phase-in period begins at the end of the specified period of time. Similarly, if a UCEB is payable only if both the plant where an employee worked is permanently shut down and it is determined that the employer has no other suitable employment for the employee, the phase-in period begins when it is determined that the employer had no other suitable employment for the employee (assuming that date was later than the shutdown date).

The commenter expressed concern that the proposed ''facts and circumstances'' standard granted PBGC broad discretionary authority to reduce participants' guaranteed benefits and requested that this discretion should be limited, in general, by granting deference to eligibility determinations made by the plan sponsor (when acting as plan administrator), or that PBGC should be bound by the decision of an arbitrator, benefit agreement or judicial decision construing a collective bargaining agreement. The commenter points out that such deference is especially appropriate where participants are receiving benefits and have relied upon those determinations.

Because shutdowns and similar situations are fact-specific, PBGC continues to believe that a facts-and-circumstances approach is the best way to implement the statute. However, PBGC agrees with the commenter that determinations made by a plan, arbitrator, or court regarding the date when participants became entitled to the UCEB may be relevant. Accordingly, in response to the comment, § 4022.27(d) of the final regulation specifically includes determinations and statements by such parties as factors that will be considered, to the extent relevant, in establishing the UCE date. PBGC will not, however, treat any such determinations or statements as controlling.

This change does not alter the principle that PBGC is ultimately responsible for determining participants' guaranteed benefits. The agency administers a program that places statutory limits on benefits, and it is not generally bound by a private party's determination of benefits.

Whether a UCEB phase-in determination applies on a participant-by-participant basis, as opposed to facility-wide or some other basis, will depend largely upon plan provisions. For example, a benefit triggered by a reduction-in-force would be determined with respect to each participant, and thus layoffs that occur on different dates would generally be distinct UCEs. See Example 2 of the final regulation (§ 4022.27(e)(2)). But a benefit payable only upon the complete shutdown of the employer's entire operations applies plan-wide, and thus the shutdown date generally is the date of the UCE for all participants.

The commenter expressed concern that in cases of sequential layoffs, participants laid off early in a shutdown process would obtain a greater phase-in percentage than participants laid off later in the process. The commenter suggested that sequential layoffs resulting in a shutdown should be viewed as a single event, and the UCE date should be the date on which the sponsor decided upon the layoffs, or at the latest, the date on which the first participants are laid off. PBGC has not adopted this suggestion.

In the case of a sequential layoff where the plan provides that benefits become payable as of the layoff date, it is true that a participant-by-participant determination of the UCE date could result in participants laid off early in a shutdown process receiving a greater phase-in percentage than participants laid off later in the process. However, that result is dictated by plan language that conditions a benefit upon the participant's layoff, and ERISA section 4022(b)(8), which requires that the phase-in period commence no earlier than the date of the event that triggers the UCEB. Setting a phase-in date that is prior to the date of the event that made the layoff benefit payable would not accord with the statute and therefore would be beyond PBGC's authority.[10]

The commenter also requested that the final rule require that PBGC explain in detail, as part of the benefit determination process, the reasons for its selection of the triggering date on which the phase-in is based, if that date is different from the triggering date used by the plan. PBGC's regulations do not specify the amount of detail to be included in benefit determinations, in order to preserve flexibility in dealing with a wide variety of plans and plan provisions. In issuing benefit determinations to participants and beneficiaries, PBGC carefully balances providing additional information with reducing the potential for confusion from undue complexity. However, PBGC understands the commenter's concern and is committed to transparency in its communications with participants and beneficiaries. In response to the comment, PBGC's policy will be to provide the UCE date and the information necessary to understand it, in all benefit determinations, with the amount of additional information necessarily varying from case to case.

Date Phase-In Begins

ERISA sections 4022(b)(1) and 4022(b)(7) provide that PBGC's guarantee of a benefit increase is phased in from the date the benefit increase is ''in effect,'' i.e., from the later of the adoption date or effective date of the increase. ERISA section 4022(b)(8) (added by PPA 2006) provides that, for phase-in purposes, shutdown benefits and other UCEBs are deemed to be ''adopted on the date . . . [the UCE] occurs.'' Thus ERISA section 4022(b)(8) protects PBGC in the typical situation where a shutdown or permanent layoff occurs long after a shutdown benefit provision was originally adopted.

Section 4022(b)(8) could be read to produce an incongruous result in an unusual situation where the UCE occurs first and a UCEB is adopted later, effective retroactive to the UCE. Because the date of the UCE would be treated under section 4022(b)(8) as the adoption date of the UCEB, in this situation the phase-in arguably would begin on the date of the UCE, rather than on the actual adoption date of the plan amendment, as under pre-PPA 2006 law. The result would be a more generous—and more costly—guarantee of UCEBs than under pre-PPA 2006 law. To avoid this incongruous result, § 4022.27(c) provides that a benefit increase due solely to a UCEB is ''in effect'' as of the latest of the adoption date of the plan provision that provides

[10] In contrast, where the plan provides that a UCEB is payable only when all participants are laid off and the plant is permanently shut down, the plan itself has created a benefit trigger that is actually a single event, and therefore phase-in would commence as of the same date for all participants.

for the UCEB, the effective date of the UCEB, or the date the UCE occurs.

Finally, if a UCEB becomes payable because a restriction under IRC section 436 is removed after, for example, an adequate funding contribution is made, the effective date of the UCEB for phase-in purposes is determined without regard to the restriction.

Allocation of Assets

When PBGC becomes trustee of a pension plan that terminates without sufficient assets to provide all benefits, it allocates plan assets to plan benefits in accordance with the statutory priority categories in section 4044 of ERISA. The category to which a particular benefit is assigned in the asset allocation can affect insurance program costs and the extent to which participants receive nonguaranteed benefits.

Priority category 3 in the asset allocation is particularly important, because it often includes benefits that, depending on the level of the plan assets, may be paid by PBGC even though not guaranteed. Priority category 3 contains only those benefits that were in pay status at least three years before the termination date of the plan (or that would have been in pay status if the participant had retired before that three-year period). An individual's benefit amount in priority category 3 is based on the plan provisions in effect during the five-year period preceding plan termination under which the benefit amount would be the least. Thus priority category 3 does not include benefit increases that were adopted or became effective in the five years before plan termination or, in some cases as discussed below, the bankruptcy filing date.

PBGC considered whether the UCEBs that are not guaranteed under the PPA 2006 changes should be excluded from priority category 3. Under that approach, plan assets would go farther to pay for other benefits, especially guaranteed benefits, and participants would be less likely to receive UCEBs that are not guaranteed. Alternatively, if UCEBs that are not guaranteed under the PPA 2006 changes were included in priority category 3—as they are under pre-PPA law and PBGC's current regulation on Allocation of Assets (part 4044)—plan assets would be less likely to reach other benefits, especially guaranteed benefits, and participants would be more likely to receive UCEBs that are not guaranteed.

Because section 403 of PPA 2006 does not make any reference to section 4044,[11] PBGC concluded that the latter interpretation is the better one, and thus the final regulation, like the proposed regulation, does not amend part 4044.

Bankruptcy Filing Date Treated as Deemed Termination Date

On June 14, 2011 (76 FR 34590), PBGC published a final rule, ''Bankruptcy Filing Date Treated as Plan Termination Date for Certain Purposes; Guaranteed Benefits; Allocation of Plan Assets; Pension Protection Act of 2006,'' to implement section 404 of PPA 2006, which added a new section 4022(g) to ERISA. This section provides that when an underfunded plan terminates while its contributing sponsor is in bankruptcy, the amount of guaranteed benefits under section 4022 will be determined as of the date the sponsor entered bankruptcy (bankruptcy filing date) rather than as of the termination date. The provision applies to plans terminating while the sponsor is in bankruptcy, if the bankruptcy filing date is on or after September 16, 2006.[12]

Section 4022(g) applies to all types of plan benefits, including UCEBs. Under this provision, if a permanent shutdown (or other UCE) occurs after the bankruptcy filing date, UCEBs arising from the UCE are not guaranteed because the benefits are not nonforfeitable as of the bankruptcy filing date. Similarly, if the shutdown (or other UCE) occurs before the bankruptcy filing date, the five-year phase-in period for any resulting UCEBs is measured from the date of the UCE to the bankruptcy filing date, rather than to the plan termination date. For example, if a permanent shutdown occurs three years before the bankruptcy filing date, the guarantee of any resulting UCEBs will be only 60 percent phased in, even if the shutdown was more than five years before the plan's termination date. This rule is illustrated by Examples 4 and 5 in the regulation (§ 4022.27(e)(4) and (5), respectively).

PBGC considered whether UCEBs could be excepted from the section 4022(g) bankruptcy provision on the ground that the general phase-in rule in section 4022(g) is superseded by the specific section 4022(b)(8) phase-in rule for UCEBs. However, PBGC concluded that the language of the bankruptcy and UCEB statutory provisions does not allow for any such exception. The UCEB provision alters the starting date for phase-in of UCEBs, while the bankruptcy provision alters the date beyond which no further phase-in is allowed for any benefit increase, including a UCEB. PBGC sees no conflict in applying both provisions to UCEBs.

Estimated Guaranteed Benefits

ERISA section 4041(c)(3)(D)(ii)(IV) requires administrators of plans terminating in a distress termination to limit payment of benefits to estimated guaranteed benefits and estimated non-guaranteed benefits funded under section 4044, beginning on the proposed termination date. Section 4022.62 of PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans contains rules for computing estimated guaranteed benefits, including provisions for estimating guaranteed benefits when a new benefit or benefit increase was added to the plan within five years before plan termination. The final regulation, like the proposed regulation, amends § 4022.62 to provide that the date the UCE occurs is treated as the date the UCEB was adopted, i.e., the date the plan was amended to include the UCEB.

Applicability

The amendments in this final rule, like section 403 of PPA 2006, will apply to UCEBs that become payable as a result of a UCE that occurs after July 26, 2005.

Regulatory Procedures

Executive Order 12866 ''Regulatory Planning and Review'' and Executive Order 13563 ''Improving Regulation and Regulatory Review''

PBGC has determined, in consultation with the Office of Management and Budget, that this final rule not is a ''significant regulatory action'' under Executive Order 12866.

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. Executive Orders 12866 and 13563 require that a comprehensive regulatory impact

[11] By contrast, three other provisions of PPA 2006 that changed PBGC's guarantee of benefits specifically provide changes to the asset allocation scheme under section 4044. *See* PPA 2006 sections 404 (treatment of bankruptcy filing date as deemed termination date), 402(g)(2)(A) (special termination rules for commercial airlines), and 407 (relating to majority owners), enacting respectively sections 4044(e), 4022(h), and 4044(b)(3) of ERISA.

[12] See definition of ''PPA 2006 bankruptcy termination'' in § 4001.2.

analysis be performed for any economically significant regulatory action, defined as an action that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. In accordance with OMB Circular A–4, PBGC has examined the economic and policy implications of this final rule and has concluded that the action's benefits justify its costs.

Under Section 3(f)(1) of Executive Order 12866, a regulatory action is economically significant if ''it is likely to result in a rule that may . . . [h]ave 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 governments or communities.'' This final rule does not cross the $100 million threshold for economic significance and is not otherwise economically significant.

The economic effect of the final rule is entirely attributable to the economic effect of section 403 of PPA 2006. Three factors tend to reduce the economic impact of section 403.

First, before section 403 went into effect, PBGC often involuntarily terminated plans with shutdown liabilities before company-wide shutdowns, under the ''long-run loss'' provision in section 4042(a)(4) of ERISA. That provision allows PBGC to initiate termination proceedings if its long-run loss ''may reasonably be expected to increase unreasonably if the plan is not terminated.'' A sudden increase in PBGC's liabilities resulting from a shutdown could create just such an unreasonable increase in long-run loss. Section 403 avoids the need for PBGC to make case-by-case decisions whether to initiate such ''pre-emptive'' terminations. Although it is difficult to make assumptions about PBGC's ability and intent to pursue such terminations if section 403 had not gone into effect, this factor tends to reduce its economic impact.

Second, another PPA 2006 amendment provides that if a plan terminates while the sponsor is in bankruptcy, the amount of benefits guaranteed by PBGC is fixed at the date of the bankruptcy filing rather than at the plan termination date. Because of that provision, if a plant shutdown or other UCE occurred between the bankruptcy filing date and the termination date, the resulting UCEB would not be guaranteed at all, and thus section 403 would have no economic effect.

Third—and perhaps most important—as also discussed above, other PPA 2006 provisions restrict payment of UCEBs if a plan is less than 60 percent funded. If, because of those restrictions, a UCEB was not payable at all, section 403 again would have no economic effect.

As stated above in Applicability, section 403 of PPA 2006 applies to any UCEB that becomes payable as a result of a UCE that occurs after July 26, 2005. PBGC estimates that, to date, the total effect of section 403—in terms of lower benefits paid to participants and associated savings for PBGC—is less than $4 million. Although PBGC cannot predict with certainty which plans with UCEBs will terminate, the funding level of such plans, or what benefits will be affected by the guarantee limits, given the relatively low estimate of the effect of the statutory provision to date, PBGC has determined that the annual effect of the rule will be less than $100 million.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities. The amendments implement and in some cases clarify statutory changes made in PPA 2006; they do not impose new burdens on entities of any size. Virtually all of the statutory changes affect only PBGC and persons who receive benefits from PBGC. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects in 29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons given above, PBGC is amending 29 CFR part 4022 as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In § 4022.2:

■ a. Amend the definition of ''benefit increase'' by removing the final ''and'' in the second sentence and adding in its place, ''an unpredictable contingent event benefit, and''; and

■ b. Add in alphabetical order definitions for *unpredictable contingent event (UCE)* and *unpredictable contingent event benefit (UCEB)* to read as follows:

§ 4022.2 Definitions.

* * * * *

Unpredictable contingent event (UCE) has the same meaning as unpredictable contingent event in section 206(g)(1)(C) of ERISA and Treas. Reg. § 1.436–1(j)(9) (26 CFR 1.436–1(j)(9)). It includes a plant shutdown (full or partial) or a similar event (such as a full or partial closing of another type of facility, or a layoff or other workforce reduction), or any event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

Unpredictable contingent event benefit (UCEB) has the same meaning as unpredictable contingent event benefit in section 206(g)(1)(C) of ERISA and Treas. Reg. § 1.436–1(j)(9) (26 CFR 1.436–1(j)(9)). Thus, a UCEB is any benefit or benefit increase to the extent that it would not be payable but for the occurrence of a UCE. A benefit or benefit increase that is conditioned upon the occurrence of a UCE does not cease to be a UCEB as a result of the contingent event having occurred or its occurrence having become reasonably predictable.

■ 3. Revise § 4022.24(e) to read as follows:

§ 4022.24 Benefit increases.

* * * * *

(e) Except as provided in § 4022.27(c), for the purposes of §§ 4022.22 through 4022.28, a benefit increase is deemed to be in effect commencing on the later of its adoption date or its effective date.

* * * * *

§ 4022.27 [Redesignated as § 4022.28]

■ 4. Section 4022.27 is redesignated as § 4022.28.

■ 5. New § 4022.27 is added to read as follows:

§ 4022.27 Phase-in of guarantee of unpredictable contingent event benefits.

(a) *Scope.* This section applies to a benefit increase, as defined in § 4022.2, that is an unpredictable contingent event benefit (UCEB) and that is payable with respect to an unpredictable contingent event (UCE) that occurs after July 26, 2005.

(1) Examples of benefit increases within the scope of this section include unreduced early retirement benefits or other early retirement subsidies, or other benefits to the extent that such benefits would not be payable but for the occurrence of one or more UCEs.

(2) Examples of UCEs within the scope of this section include full and partial closings of plants or other

facilities, and permanent workforce reductions, such as permanent layoffs. Permanent layoffs include layoffs during which an idled employee continues to earn credited service (creep-type layoff) for a period of time at the end of which the layoff is deemed to be permanent. Permanent layoffs also include layoffs that become permanent upon the occurrence of an additional event such as a declaration by the employer that the participant's return to work is unlikely or a failure by the employer to offer the employee suitable work in a specified area.

(3) The examples in this section are not an exclusive list of UCEs or UCEBs and are not intended to narrow the statutory definitions, as further delineated in Treasury Regulations.

(b) *Facts and circumstances.* If PBGC determines that a benefit is a shutdown benefit or other type of UCEB, the benefit will be treated as a UCEB for purposes of this subpart. PBGC will make such determinations based on the facts and circumstances, consistent with these regulations; how a benefit is characterized by the employer or other parties may be relevant but is not determinative.

(c) *Date phase-in begins.* (1) The date the phase-in of PBGC's guarantee of a UCEB begins is determined in accordance with subpart B of this part. For purposes of this subpart, a UCEB is deemed to be in effect as of the latest of—

(i) The adoption date of the plan provision that provides for the UCEB,

(ii) The effective date of the UCEB, or

(iii) The date the UCE occurs.

(2) The date the phase-in of PBGC's guarantee of a UCEB begins is not affected by any delay that may occur in placing participants in pay status due to removal of a restriction under section 436(b) of the Code. See the example in paragraph (e)(8) of this section.

(d) *Date UCE occurs.* For purposes of this section, PBGC will determine the date the UCE occurs based on plan provisions and other facts and circumstances, including the nature and level of activity at a facility that is closing and the permanence of the event. PBGC will also consider, to the extent relevant, statements or determinations by the employer, the plan administrator, a union, an arbitrator under a collective bargaining agreement, or a court, but will not treat such statements or determinations as controlling.

(1) The date a UCE occurs is determined on a participant-by-participant basis, or on a different basis, such as a facility-wide or company-wide basis, depending upon plan provisions and the facts and circumstances. For example, a benefit triggered by a permanent layoff of a participant would be determined with respect to each participant, and thus layoffs that occur on different dates would generally be distinct UCEs. In contrast, a benefit payable only upon a complete plant shutdown would apply facility-wide, and generally the shutdown date would be the date of the UCE for all participants who work at that plant. Similarly, a benefit payable only upon the complete shutdown of the employer's entire operations would apply plan-wide, and thus the shutdown date of company operations generally would be the date of the UCE for all participants.

(2) For purposes of paragraph (c)(1)(iii) of this section, if a benefit is contingent upon more than one UCE, PBGC will apply the rule under Treas. Reg. § 1.436–1(b)(3)(ii) (26 CFR 1.436–1(b)(3)(ii)) (i.e., the date the UCE occurs is the date of the latest UCE).

(e) *Examples.* The following examples illustrate the operation of the rules in this section. Except as provided in Example 8, no benefit limitation under Code section 436 applies in any of these examples. Unless otherwise stated, the termination is not a PPA 2006 bankruptcy termination.

Example 1. Date of UCE. (i) *Facts:* On January 1, 2006, a Company adopts a plan that provides an unreduced early retirement benefit for participants with specified age and service whose continuous service is broken by a permanent plant closing or permanent layoff that occurs on or after January 1, 2007. On January 1, 2013, the Company informally and without announcement decides to close Facility A within a two-year period. On January 1, 2014, the Company's Board of Directors passes a resolution directing the Company's officers to close Facility A on or before September 1, 2014. On June 1, 2014, the Company issues a notice pursuant to the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. 2101, *et seq.,* that Facility A will close, and all employees will be permanently laid off, on or about August 1, 2014. The Company and the Union representing the employees enter into collective bargaining concerning the closing of Facility A and on July 1, 2014, they jointly agree and announce that Facility A will close and employees who work there will be permanently laid off as of November 1, 2014. However, due to unanticipated business conditions, Facility A continues to operate until December 31, 2014, when operations cease and all employees are permanently laid off. The plan terminates as of December 1, 2015.

(ii) *Conclusion:* PBGC would determine that the UCE is the facility closing and permanent layoff that occurred on December 31, 2014. Because the date that the UCE occurred (December 31, 2014) is later than both the date the plan provision that established the UCEB was adopted (January 1, 2006) and the date the UCEB became effective (January 1, 2007), December 31, 2014, would be the date the phase-in period under ERISA section 4022 begins. In light of the plan termination date of December 1, 2015, the guarantee of the UCEBs of participants laid off on December 31, 2014, would be 0 percent phased in.

Example 2. Sequential layoffs. (i) *Facts:* The same facts as Example 1, with these exceptions: Not all employees are laid off on December 31, 2014. The Company and Union agree to and subsequently implement a shutdown in which employees are permanently laid off in stages—one third of the employees are laid off on October 31, 2014, another third are laid off on November 30, 2014, and the remaining one-third are laid off on December 31, 2014.

(ii) *Conclusion:* Because the plan provides that a UCEB is payable in the event of either a permanent layoff or a plant shutdown, PBGC would determine that phase-in begins on the date of the UCE applicable to each of the three groups of employees. Because the first two groups of employees were permanently laid off before the plant closed, October 31, 2014, and November 30, 2014, are the dates that the phase-in period under ERISA section 4022 begins for those groups. Because the third group was permanently laid off on December 31, 2014, the same date the plant closed, the phase-in period would begin on that date for that group. Based on the plan termination date of December 1, 2015, participants laid off on October 31, 2014, and November 30, 2014, would have 20 percent of the UCEBs (or $20 per month, if greater) guaranteed under the phase-in rule. The guarantee of the UCEBs of participants laid off on December 31, 2014, would be 0 percent phased in.

Example 3. Skeleton shutdown crews. (i) *Facts:* The same facts as Example 1, with these exceptions: The plan provides for an unreduced early retirement benefit for age/service-qualified participants only in the event of a break in continuous service due to a permanent and complete plant closing. A minimal skeleton crew remains to perform primarily security and basic maintenance functions until March 31, 2015, when skeleton crew members are permanently laid off and the facility is sold to an unrelated investment group that does not assume the plan or resume business operations at the facility. The plan has no specific provision or past practice governing benefits of skeleton shutdown crews. The plan terminates as of January 1, 2015.

(ii) *Conclusion:* Because the continued employment of the skeleton crew does not effectively continue operations of the facility, PBGC would determine that there is a permanent and complete plant closing (for purposes of the plan's plant closing provision) as of December 31, 2014, which is the date the phase-in period under ERISA section 4022 begins with respect to employees who incurred a break in continuous service at that time. The UCEB of those participants would be a nonforfeitable benefit as of the plan termination date, but PBGC's guarantee of the UCEB would be 0 percent phased in. In the case of the skeleton

crew members, such participants would not be eligible for the UCEB because they did not incur a break in continuous service until after the plan termination date. (If the plan had a provision that there is no shutdown until all employees, including any skeleton crew are terminated, or if the plan were reasonably interpreted to so provide in light of past practice, PBGC would determine that the date that the UCE occurred was after the plan termination date. Thus the UCEB would not be a nonforfeitable benefit as of the plan termination date and therefore would not be guaranteeable.)

Example 4. Creep-type layoff benefit/bankruptcy of contributing sponsor. (i) *Facts:* A plan provides that participants who are at least age 55 and whose age plus years of continuous service equal at least 80 are entitled to an unreduced early retirement benefit if their continuous service is broken due to a permanent layoff. The plan further provides that a participant's continuous service is broken due to a permanent layoff when the participant is terminated due to the permanent shutdown of a facility, or the participant has been on layoff status for two years. These provisions were adopted and effective in 1990. Participant A is 56 years old and has 25 years of continuous service when he is laid off in a reduction-in-force on May 15, 2014. He is not recalled to employment, and on May 15, 2016, under the terms of the plan, his continuous service is broken due to the layoff. He goes into pay status on June 1, 2016, with an unreduced early retirement benefit. The contributing sponsor of Participant A's plan files a bankruptcy petition under Chapter 11 of the U.S. Bankruptcy Code on September 1, 2017, and the plan terminates during the bankruptcy proceedings with a termination date of October 1, 2018. Under section 4022(g) of ERISA, because the plan terminated while the contributing sponsor was in bankruptcy, the five-year phase-in period ended on the bankruptcy filing date.

(ii) *Conclusion:* PBGC would determine that the guarantee of the UCEB is phased in beginning on May 15, 2016, the date of the later of the two UCEs necessary to make this benefit payable (i.e., the first UCE is the initial layoff and the second UCE is the expiration of the two-year period without rehire). Since that date is more than one year (but less than two years) before the September 1, 2017, bankruptcy filing date, 20 percent of Participant A's UCEB (or $20 per month, if greater) would be guaranteed under the phase-in rule.

Example 5. Creep-type layoff benefit with provision for declaration that return to work unlikely. (i) *Facts:* A plan provides that participants who are at least age 60 and have at least 20 years of continuous service are entitled to an unreduced early retirement benefit if their continuous service is broken by a permanent layoff. The plan further provides that a participant's continuous service is broken by a permanent layoff if the participant is laid off and the employer declares that the participant's return to work is unlikely. Participants may earn up to 2 years of credited service while on layoff. The plan was adopted and effective in 1990. On March 1, 2014, Participant B, who is age 60 and has 20 years of service, is laid off. On June 15, 2014, the employer declares that Participant B's return to work is unlikely. Participant B retires and goes into pay status as of July 1, 2014. The employer files for bankruptcy on September 1, 2016, and the plan terminates during the bankruptcy.

(ii) *Conclusion:* PBGC would determine that the phase-in period of the guarantee of the UCEB would begin on June 15, 2014—the later of the two UCEs necessary to make the benefit payable (i.e., the first UCE is the initial layoff and the second UCE is the employer's declaration that it is unlikely that Participant B will return to work). The phase-in period would end on September 1, 2016, the date of the bankruptcy filing. Thus 40 percent of Participant B's UCEB (or $40 per month, if greater) would be guaranteed under the phase-in rule.

Example 6. Shutdown benefit with special post-employment eligibility provision. (i) *Facts:* A plan provides that, in the event of a permanent shutdown of a plant, a participant age 60 or older who terminates employment due to the shutdown and who has at least 20 years of service is entitled to an unreduced early retirement benefit. The plan also provides that a participant with at least 20 years of service who terminates employment due to a plant shutdown at a time when the participant is under age 60 also will be entitled to an unreduced early retirement benefit, provided the participant's commencement of benefits is on or after attainment of age 60 and the time required to attain age 60 does not exceed the participant's years of service with the plan sponsor. The plan imposes no other conditions on receipt of the benefit. Plan provisions were adopted and effective in 1990. On January 1, 2014, Participant C's plant is permanently shut down. At the time of the shutdown, Participant C had 20 years of service and was age 58. On June 1, 2015, Participant C reaches age 60 and retires. The plan terminates as of September 1, 2015.

(ii) *Conclusion:* PBGC would determine that the guarantee of the shutdown benefit is phased in from January 1, 2014, which is the date of the only UCE (the permanent shutdown of the plant) necessary to make the benefit payable. Thus 20 percent of Participant C's UCEB (or $20 per month, if greater) would be guaranteed under the phase-in rule.

Example 7. Phase-in of retroactive UCEB. (i) *Facts:* As the result of a settlement in a class-action lawsuit, a plan provision is adopted on September 1, 2014, to provide that age/service-qualified participants are entitled to an unreduced early retirement benefit if permanently laid off due to a plant shutdown occurring on or after January 1, 2014. Benefits under the provision are payable prospectively only, beginning March 1, 2015. Participant A, who was age/service-qualified, was permanently laid off due to a plant shutdown occurring on January 1, 2014, and therefore he is scheduled to be placed in pay status as of March 1, 2015. The unreduced early retirement benefit is paid to Participant A beginning on March 1, 2015. The plan terminates as of February 1, 2017.

(ii) *Conclusion:* PBGC would determine that the guarantee of the UCEB is phased in beginning on March 1, 2015. This is the date the benefit was effective (since it was the first date on which the new benefit was payable), and it is later than the adoption date of the plan provision (September 1, 2014) and the date of the UCE (January 1, 2014). Thus 20 percent of Participant A's UCEB (or $20 per month, if greater) would be guaranteed under the phase-in rule.

Example 8. Removal of IRC section 436 restriction. (i)(A) *Facts:* A plan provision was adopted on September 1, 1989, to provide that age/service-qualified participants are entitled to an unreduced early retirement benefit if permanently laid off due to a plant shutdown occurring after January 1, 1990. Participant A, who was age/service-qualified, was permanently laid off due to a plant shutdown occurring on April 15, 2014. The plan is a calendar year plan.

(B) Under the rules of Code section 436 (ERISA section 206(g)) and Treasury regulations thereunder, a plan cannot provide a UCEB payable with respect to an unpredictable contingent event, if the event occurs during a plan year in which the plan's adjusted funding target attainment percentage is less than 60%. On March 17, 2014, the plan's enrolled actuary issued a certification stating that the plan's adjusted funding target attainment percentage for 2014 is 58%. Therefore, the plan restricts payment of the unreduced early retirement benefit payable with respect to the shutdown on April 15, 2014.

(C) On August 15, 2014, the plan sponsor makes an additional contribution to the plan that is designated as a contribution under Code section 436(b)(2) to eliminate the restriction on payment of the shutdown benefits. On September 15, 2014, the plan's enrolled actuary issues a certification stating that, due to the additional section 436(b)(2) contribution, the plan's adjusted funding target attainment percentage for 2014 is 60%. On October 1, 2014, Participant A is placed in pay status for the unreduced early retirement benefit and, as required under Code section 436 and Treasury regulations thereunder, is in addition paid retroactively the unreduced benefit for the period May 1, 2014 (the date the unreduced early retirements would have become payable) through September 1, 2014. The plan terminates as of September 1, 2016.

(ii) *Conclusion:* PBGC would determine that the guarantee of the UCEB is phased in beginning on April 15, 2014, the date the UCE occurred. Because April 15, 2014, is later than both the date the UCEB was adopted (September 1, 1989) and the date the UCEB became effective (January 1, 1990), it would be the date the phase-in period under ERISA section 4022 begins. Commencement of the phase-in period is not affected by the delay in providing the unreduced early retirement benefit to Participant A due to the operation of the rules of Code section 436 and the Treasury regulations thereunder. Thus 40 percent of Participant A's UCEB (or $40 per month, if greater) would be guaranteed under the phase-in rule.

■ 6. In § 4022.62(c)(2)(i), add a sentence after the third sentence to read as follows:

§ 4022.62 Estimated guaranteed benefit.

* * * * *

(c) * * *

(2) * * *

(i) * * * ''New benefits'' also result from increases that become payable by reason of the occurrence of an unpredictable contingent event (provided the event occurred after July 26, 2005), to the extent the increase would not be payable but for the occurrence of the event; in the case of such new benefits, the date of the occurrence of the unpredictable contingent event is treated as the amendment date for purposes of Table I. * * *

* * * * *

Issued in Washington, DC, this 30th day of April 2014.

Joshua Gotbaum,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2014–10357 Filed 5–5–14; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 60

[Docket ID: DOD–2008–OS–0128]

RIN 0790–AI40

Family Advocacy Command Assistance Team (FACAT)

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This final rule updates Department of Defense (DoD) policy and responsibilities and prescribes procedures for the implementation and use of the FACAT in accordance with 10 U.S.C. 1794. It is DoD policy to provide a safe and secure environment for DoD personnel and their families by promoting the prevention, early identification, and intervention in all allegations of child abuse and neglect.

DATES: *Effective Date:* This rule is effective June 5, 2014.

FOR FURTHER INFORMATION CONTACT: Mary Campise, 571–372–5346.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

To establish DoD policy, assign responsibilities, and prescribe procedures for implementation and use of the multi-disciplinary Family Advocacy Command Assistant Team to respond to allegations of child sexual abuse in DoD-sanctioned childcare and youth activities.

a. The need for the regulatory action and how the action will meet that need.

Child sexual abuse allegations in DoD sponsored childcare and youth activities require a coordinated community response between law enforcement, child protection agencies, and the setting from which the allegation arose. Local teams who may not be sufficiently resourced to conduct large scale investigations and coordinate an effective multi-level response can request the deployment and support of the FACAT to foster cooperation among the DoD, other Federal agencies, and responsible civilian authorities when addressing allegations of child sexual abuse in DoD-sanctioned activities; promote timely and comprehensive reporting of all allegations; and actively seek prosecution of alleged perpetrators to the fullest extent of the law.

b. Statement of legal authority for the regulatory action.

Section 1794 of title 10, United States Code (U.S.C.) requires the Secretary of Defense to maintain a special task force to respond to allegations of widespread child abuse at a military installation. The task force shall be composed of personnel from appropriate disciplines, including, medicine, psychology, and child development. This task force will provide assistance to the commander of the installation, and to parents at the installation, to effectively deal with the allegations.

II. Summary of the Major Provisions of the Regulatory Action in Question

a. This regulatory action establishes a DoD multi-disciplinary Family Advocacy Command Assistant Team (FACAT) to support local installation personnel in responding to extrafamilial child sexual abuse allegations in DoD sanctioned childcare and youth activities.

b. The deployment of the FACAT provides a coordinated and comprehensive DoD response to assist the Military Department upon DoD Component request to address allegations when local resources are limited.

c. The goal of the FACAT is to foster cooperation among the DoD, other Federal agencies, and responsible civilian authorities when addressing allegations of extrafamilial child sexual abuse in DoD-sanctioned activities, to ensure the timely and comprehensive reporting of all incidents to the appropriate authorities, and to seek prosecution of alleged perpetrators to the fullest extent of the law when appropriate.

III. Costs and Benefits

The benefit to the Department and to the public is to provide safe and secure environments for children of DoD personnel and their families by promoting a coordinated community response to allegations of child sexual abuse arising in DoD sponsored childcare and youth activities settings. The deployment of the FACAT to support local communities ensures that alleged offenders are identified, assessed, investigated, and prosecuted to the full extent of the law. Further, the multidisciplinary and well-coordinated approach promotes the identification of all potential child victims and provides a safe and secure setting for these children to be interviewed, assessed, and supported. Per Section 1794 of Title 10, United States Code, this rule has an internal reporting requirement that will cost the Department of Defense $600 annually. Costs for this program include salaries of government employees, training costs of approximately $30,000 every three years, and up to $15,000 to deploy a FACAT of five team members per response. There were no FACATs deployed in FY 2011, and there was one FACAT deployed in FY 2010. The cost of the FY 2010 deployment was approximately $7,500.

Public Comments

On Friday, April 26, 2013 (78 FR 24694–24697), the Department of Defense published a proposed rule requesting public comment. No comments were received on the proposed rule and no changes have been made in the final rule.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

It has been certified that 32 CFR part 60 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments 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; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Sec. 202, Pub. L. 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 60 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 60 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 60 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

It has been certified that 32 CFR part 60 does not have federalism implications, as set forth in Executive Order 13132. This rule does not substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 60

Child abuse, Family health.

■ Accordingly 32 CFR part 60 is added to read as follows:

PART 60—FAMILY ADVOCACY COMMAND ASSISTANCE TEAM (FACAT)

Sec.
60.1 Purpose.
60.2 Applicability.
60.3 Definitions.
60.4 Policy.
60.5 Responsibilities.
60.6 Procedures.

Authority: 10 U.S.C. 1794; 42 U.S.C. 13031.

§ 60.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for implementation and use of the FACAT in accordance with 10 U.S.C. 1794.

§ 60.2 Applicability.

(a) This part applies to Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities and all other organizational entities in the DoD (hereinafter referred to collectively as the ''DoD Components'').

(b) The term ''Military Services,'' as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 60.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

Child. An unmarried person under 18 years of age for whom a parent, guardian, foster parent, caregiver, employee of a residential facility, or any staff person providing out-of-home care is legally responsible. The term ''child'' means a biological child, adopted child, stepchild, foster child, or ward. The term also includes a sponsor's family member (except the sponsor's spouse) of any age who is incapable of self-support because of a mental or physical incapacity, and for whom treatment in a DoD medical treatment program is authorized.

Child abuse. The physical or sexual abuse, emotional abuse, or neglect of a child by a parent, guardian, foster parent, or by a caregiver, whether the caregiver is intrafamilial or extrafamilial, under circumstances indicating the child's welfare is harmed or threatened. Such acts by a sibling, other family member, or other person shall be deemed to be child abuse only when the individual is providing care under express or implied agreement with the parent, guardian, or foster parent.

Child sexual abuse. The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or the rape, and in cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children.

DoD-sanctioned activity. A U.S. Government activity or a nongovernmental activity authorized by appropriate DoD officials to perform child care or supervisory functions on DoD controlled property. The care and supervision of children may be either its primary mission or incidental in carrying out another mission (e.g., medical care). Examples include Child Development Centers, Department of Defense Dependents Schools, Youth Activities, School Age/Latch Key Programs, Family Day Care providers, and child care activities that may be conducted as a part of a chaplain's program or as part of another Morale, Welfare, or Recreation Program.

FACAT. A multidisciplinary team composed of specially trained and experienced individuals who are on-call to provide advice and assistance on cases of child sexual abuse that involve DoD-sanctioned activities.

Family Advocacy Program Director (FAPD). An individual designated by the Secretary of the Military Department or the head of another DoD Component to manage, monitor, and coordinate the FAP at the headquarters level.

Family Advocacy Program Manager (FAPM). An individual designated by the Secretary of the Military Department to manage, monitor, and coordinate the FAP at the headquarters level.

Military criminal investigative organization (MCIO). U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.

Out-of-home care. The responsibility of care for and/or supervision of a child in a setting outside the child's home by an individual placed in a caretaker role sanctioned by a DoD Component or authorized by a DoD Component as a provider of care. Examples include a child development center, school, recreation program, family child care, and child care activities that may be conducted as a part of a chaplain's program or as part of another morale, welfare, or recreation program.

§ 60.4 Policy.

It is DoD policy to:

(a) Provide a safe and secure environment for DoD personnel and their families by promoting the prevention, early identification, and intervention in all allegations of child abuse and neglect in accordance with DoD Directive 6400.1, ''Family Advocacy Program (FAP)'' (see *http://www.dtic.mil/whs/directives/corres/pdf/640001p.pdf*).

(b) Promote early identification and intervention in allegations of extrafamilial child sexual abuse in accordance with DoD Directive 6400.1 as it applies to DoD-sanctioned activities.

(c) Provide a coordinated and comprehensive DoD response through the deployment of the FACAT to assist the Military Department upon DoD

Component request to address allegations of extrafamilial child sexual abuse in DoD-sanctioned activities.

(d) Foster cooperation among the DoD, other Federal agencies, and responsible civilian authorities when addressing allegations of extrafamilial child sexual abuse in DoD-sanctioned activities.

(e) Promote timely and comprehensive reporting of all incidents covered by this part.

(f) As appropriate, actively seek prosecution of alleged perpetrators to the fullest extent of the law.

(g) Ensure that personally identifiable information, to include protected health information collected, used, and released by covered entities in the execution of this part is protected as required by DoD 6025.18–R, ''DoD Health Information Privacy Regulation'' (see *http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf*) and 5 U.S.C. 552a as implemented in the Department of Defense by 32 CFR part 310.

§ 60.5 Responsibilities.

(a) The Deputy Assistant Secretary of Defense for Military Community and Family Policy (DASD(MC&FP)), under the authority, direction, and control of the Assistant Secretary of Defense for Readiness and Force Management, shall:

(1) Monitor compliance with this part.

(2) Train, maintain, and support a team of full-time or permanent part-time federal officers or employees from various disciplines to comprise the FACAT and respond to child sexual abuse in DoD-sanctioned activities.

(3) Develop and coordinate criteria for determining the appropriate professional disciplines, support staff, and the required capabilities of FACAT members.

(4) Ensure that policies and guidelines on activation and use of the FACAT are shared and coordinated with the DoD Components.

(5) Program, budget, and allocate funds for the FACAT.

(6) Appoint the chief of the FACAT and team members, and provide required logistical support when the FACAT is deployed.

(7) Coordinate the management and interaction of this effort with other Federal and civilian agencies as necessary.

(8) Foster general awareness of FACAT goals and responsibilities.

(b) The Secretaries of the Military Departments shall:

(1) Ensure compliance with this part throughout their respective Departments.

(2) Establish departmental procedures to implement with this part.

(3) Designate nominees for the FACAT upon request and ensure replacements are nominated when vacancies are indicated.

(4) Ensure that commanders and staff are aware of the availability and proper use of the FACAT and the procedures for requesting a FACAT to assist in addressing extrafamilial child sexual abuse allegations covered by this part.

(5) Encourage timely and comprehensive reporting in accordance with this part.

§ 60.6 Procedures.

(a) *Reporting requirements.* Any person with a reasonable belief that an incident of child abuse has occurred in a DoD-sanctioned activity must report it to:

(1) The appropriate civilian agency in accordance with 42 U.S.C. 13031 and 28 CFR 81.1–81.5.

(2) The installation FAP as required by DoD Directive 6400.1.

(b) *Notification of suspected abuse*—(1) *Physical or emotional abuse or neglect.* If a report of suspected child physical abuse, emotional abuse, or neglect in a DoD-sanctioned activity is made to the FAP, the FAPM shall:

(i) Notify the appropriate military or civilian law enforcement agency, or multiple law enforcement agencies as appropriate.

(ii) Contact the appropriate civilian child protective services agency, if any, to request assistance.

(2) *Sexual abuse.* If a report of suspected child sexual abuse in a DoD-sanctioned activity is made to the FAP, the FAPM, in addition to the procedures noted in paragraph (b)(1) of this section, shall:

(i) Immediately notify the servicing MCIO and civilian law enforcement as appropriate.

(ii) Forward the report DD Form 2951, ''Initial Report of Suspected Child Sexual Abuse in DoD Operated or Sponsored Activities,'' required by 10 U.S.C. 1794 through DoD Component FAP channels to the DASD(MC&FP) within 72 hours.

(iii) Consult with the person in charge of the DoD-sanctioned activity and the appropriate law enforcement agency to estimate the number of potential victims and determine whether an installation response team may be appropriate to address the investigative, medical, psychological, and public affairs issues that may arise.

(iv) Notify the installation commander of the allegation and recommend whether an installation response team may be appropriate to assess the current situation and coordinate the installation's response to the incidents.

(v) Submit a written follow-up report using DD Form 2952, ''Closeout Report of Suspected Child Sexual Abuse in DoD Operated or Sponsored Activities,'' through DoD Component channels regarding all allegations of child sexual abuse to the DASD(MC&FP) when:

(A) There have been significant changes in the status of the case;

(B) There are more than five potential victims;

(C) The sponsors of the victims are from different Military Services or DoD Components;

(D) There is increased community sensitivity to the allegation; or

(E) The DASD(MC&FP) has requested a follow-up report.

(c) *Requesting a FACAT.* An installation commander may request a FACAT through appropriate DoD Component channels from the DASD(MC&FP) when alleged child sexual abuse by a care provider in a DoD-sanctioned-activity has been reported and at least one of the following apply:

(1) Additional personnel are needed to:

(i) Fully investigate a report of child sexual abuse by a care provider or employee in a DoD-sanctioned activity;

(ii) Assess the needs of the child victims and their families; or

(iii) Provide supportive treatment to the child victims and their families.

(2) The victims are from different Military Services or DoD Components, or there are multiple care providers who are the subjects of the report from different Military Services or DoD Components.

(3) Significant issues in responding to the allegations have arisen between the Military Services or DoD Components and other Federal agencies or civilian authorities.

(4) The situation has potential for widespread public interest that could negatively impact performance of the DoD mission.

(d) *Deployment of a FACAT.* (1) The DASD(MC&FP) shall deploy a FACAT at the request of a DoD Component.

(2) The DASD(MC&FP) may deploy a FACAT at the request of the Head of the DoD Component without a request from the installation commander. Such circumstances include a case where:

(i) The victims are from different Military Services or DoD Components, or there are multiple care providers who are the subjects of the report from different Military Services or DoD Components;

(ii) Significant issues in responding to the allegations have arisen between the Military Services or DoD Components and other Federal agencies or civilian authorities; or

(iii) The situation has potential for widespread public interest that could negatively impact performance of the DoD mission.

(3) The DASD(MC&FP) shall configure the FACAT based on the information and recommendations of the requestor, the installation FAPM, and the FAPD of the DoD Component.

(4) The DASD(MC&FP) shall:

(i) Request the FAPDs to identify several individuals from the FACAT roster who are available for deployment.

(ii) Request, through the appropriate channels of the DoD Component, that the individuals' supervisors release them from normal duty positions to serve on temporary duty with the deploying FACAT.

(5) The DASD(MC&FP) shall provide fund citations to the FACAT members for their travel orders and per diem and shall provide information regarding travel arrangements. The FACAT members shall be responsible for preparing travel orders and making travel arrangements.

(6) FACAT members who are subject to DoD Instruction 6025.13, ''Medical Quality Assurance (MQA) and Clinical Quality Management in the Military Health System (MHS)'' (see *http://www.dtic.mil/whs/directives/corres/pdf/602513p.pdf*) shall be responsible for arranging temporary clinical privileges in accordance with DoD 6025.13–R, ''Military Health System (MHS) Clinical Quality Assurance (CQA) Program Regulation'' (see *http://www.dtic.mil/whs/directives/corres/pdf/602513r.pdf*) at the installation to which they shall be deployed.

(e) *FACAT tasks.* The FACAT shall meet with the installation's commanding officer, the MCIO, or designated response team to assess the current situation and assist in coordinating the installation's response to the incidents. Depending on the composition of the team, such tasks may include:

(1) Investigating the allegations.

(2) Conducting medical and mental health assessment of the victims and their families.

(3) Developing and implementing plans to provide appropriate treatment and support for the victims and their families and for the non-abusing staff of the DoD-sanctioned activity.

(4) Coordinating with local officials to manage public affairs tasks.

(f) *Reports of FACAT activities.* The FACAT chief shall prepare three types of reports:

(1) Daily briefs for the installation commander or designee.

(2) Periodic updates to the FAPD of the DoD Component and to the DASD(MC&FP).

(3) An after-action brief for the installation commander briefed at the completion of the deployment and transmitted to the DASD(MC&FP) and the FAPD of the DoD Component.

Dated: May 1, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–10343 Filed 5–5–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2014–0089]

RIN 1625–AA08

Special Local Regulation; Stuart Sailfish Regatta, Indian River; Stuart, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the Indian River located northeast of Ernest F. Lyons Bridge and south of Joes Cove, in Stuart, Florida during the Stuart Sailfish Regatta, a series of high-speed boat races. The Stuart Sailfish Regatta will take place from May 16 through May 18, 2014. Approximately 120 high-speed power boats will be participating in the event. It is anticipated that at least 100 spectator vessels will be present during the event. This special local regulation is necessary for the safety of race participants, participant vessels, spectators, and the general public during the event. The special local regulation will establish the following three areas: A race area, where all persons and vessels, except those participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within; a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, or authorized participants or vessels transiting to the race area, are prohibited from entering, transiting through, anchoring in, or remaining within; and a spectator area, where all persons are prohibited from entering the water or swimming in the designated area.

DATES: This rule is effective from 8 a.m. until 5 p.m. on May 16, 2014 through May 18, 2014.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer John K. Jennings, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–4317, email *John.K.Jennings@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, 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

On March 21, 2014, a Notice of Proposed Rulemaking (NPRM) entitled Special Local Regulation; Stuart Sailfish Regatta, Indian River; Stuart, FL in the **Federal Register** (77 FR 79 FR 15715). We received no comments on the proposed rule. No public meeting was requested, and none was held.

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**. Any delay in the effective date of this rule would be contrary to the public interest, because immediate action is necessary to protect the safety of the participants from the dangers associated with other vessels transiting this area while the race occurs.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to

provide for the safety of life on the navigable waters of the United States during the Stuart Sailfish Regatta.

C. Discussion of the Final Rule

From May 16 through May 18, 2014, Stuart Sailfish Regatta Inc. will be hosting the Stuart Sailfish Regatta, a series of high-speed boat races. The races will be held on the Indian River located northeast of Ernest F. Lyons Bridge and south of Joes Cove, in Stuart, Florida. Approximately 120 high-speed power boats will be participating in the event. It is anticipated that at least 100 spectator vessels will be present during the event.

The special local regulation will encompass certain navigable waters of the Indian River located northeast of Ernest F. Lyons Bridge and south of Joes Cove, in Stuart, Florida. The special local regulation will be enforced daily from 8 a.m. until 5 p.m. from May 16 through May 18, 2014. The special local regulation will consist of the following three areas: (1) A race area, where all persons and vessels, except those participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within; (2) a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, or authorized participants or vessels transiting to the race area, are prohibited from entering, transiting through, anchoring in, or remaining within; and (3) a spectator area, where all persons are prohibited from entering the water or swimming in the designated area.

Persons and vessels may request authorization to enter the special local regulated area by contacting the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the special local regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or the designated representative.

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 or 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. The economic impact of this rule is not significant for the following reasons: (1) This special local regulation will be enforced for nine hours a day for three days; (2) non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during their respective enforcement periods if authorized by the Captain of the Port Miami or a designated representative; (3) non-participant persons and vessels not able to enter, transit through, anchor in, or remain within the regulated areas without authorization from the Captain of the Port Miami or a designated representative may operate in the surrounding areas during the respective enforcement periods; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast 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. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within any of the regulated area during the respective enforcement periods. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

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). The Coast Guard previously completed an environmental assessment for this event and regulation in 2012, as well as conducted a supplemental environmental assessment in 2013. The event and regulation for the 2012 and 2013 occurrences are similar in all aspects to this year's event and regulation; therefore the same environmental assessment and supplemental environmental assessment are being referenced for this year's event and regulation. The environmental assessment is available in the docket folder for USCG–2012–0150, and the supplemental environmental assessment is available in the docket folder USCG–2012–0150 at *www.regulations.gov*. This rule involves establishing a special local regulation that will be enforced from 8 a.m. until 5 p.m. daily May 16 through 18 2014. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T07–0089 to read as follows:

§ 100.35T07–0089 Special Local Regulation; Stuart Sailfish Regatta, Indian River, Stuart, FL.

(a) *Regulated Areas.* The following regulated area is established as a special local regulation. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of Indian River located northeast of Ernest Lyons Bridge and south of Joes Cove that are encompassed within the following points: starting at Point 1 in position 27°12′46″ N, 80°11′09″ W; thence southeast to Point 2 in position 27°12′41″ N, 80°11′08″ W; thence southwest to Point 3 in position 27°12′37″ N, 80°11′11″ W; thence southwest to Point 4 in position 27°12′33″ N, 80°11′18″ W; thence southwest to Point 5 in position 27°12′31″ N, 80°11′23″ W; thence west to Point 6 in position 27°12′31″ N, 80°11′27″ W; thence northwest to Point 7 in position 27°12′33″ N, 80°11′31″ W; thence northwest to Point 8 in position 27°12′38″ N, 80°11′32″ W; thence northeast to Point 9 in position 27°12′42″ N, 80°11′30″ W; thence northeast to Point 10 in position 27°12′46″ N, 80°11′26″ W; thence northeast to Point 11 in position 27°12′48″ N, 80°11′20″ W; thence east to Point 12 in position 27°12′48″ N, 80°11′15″ W; thence southeast back to origin. All persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the race area.

(2) *Buffer Zone.* All waters of Indian River located northeast of Ernest Lyons Bridge and south of Joes Cove that are encompassed within the following points: starting at Point 1 in position 27°12′47″ N, 80°11′43″ W; thence southeast to Point 2 in position 27°12′22″ N, 80°11′28″ W; thence northeast to Point 3 in position 27°12′35″ N, 80°11′00″ W; thence northwest to Point 4 in position 27°12′47″ N, 80°11′04″ W; thence northeast to Point 5 in position 27°13′05″ N, 80°11′01″ W; thence southeast back to origin. All persons and vessels, except those persons and vessels enforcing the buffer zone, or authorized participants or vessels transiting to the race area, are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zone.

(3) *Spectator Area.* All waters of Indian River located northeast of Ernest Lyons Bridge and south of Joes Cove that are encompassed within the following points: starting at Point 1 in position 27°12′48″ N, 80°11′43″ W; thence northeast to Point 2 in position 27°12′55″ N, 80°11′26″ W; thence southeast to Point 3 in position 27°12′52″ N, 80°11′24″ W; thence southwest to Point 4 in position 27°12′40″ N, 80°11′39″ W; thence northwest back to origin. All persons are prohibited from entering the water or swimming in the spectator area.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(c) *Regulations.*

(1) Non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race area and/or buffer zone of the special local regulated area unless authorized by Captain of the Port Miami or a designated representative. All persons are prohibited from entering the water or swimming in the spectator area. Non-participant persons and vessels may

request authorization to enter, transit through, anchor in, or remain within the race area and/or buffer zone of the special local regulated area by contacting the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(2) The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule will be enforced daily from 8 a.m. until 5 p.m. from May 16, 2014 through May 18, 2014.

Dated: April 25, 2014.

A.J. Gould,

Captain, U. S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2014–10271 Filed 5–5–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0317]

Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Witt-Penn (Rt-7) Bridge across the Hackensack River at mile 3.1, at Jersey City, New Jersey. The deviation is necessary to facilitate replacement of the safety barrier gates at the bridge. This temporary deviation authorizes the bridge to remain in the closed position for five days.

DATES: This deviation is effective from June 9, 2014 through June 13, 2014.

ADDRESSES: The docket for this deviation, USCG–2014–0317 is available at *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 deviation. 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 temporary deviation, call or email Mr. Joe Arca, Project Officer, First Coast Guard District, telephone (212) 668–7165, email *joe.m.arca@uscg.mil*. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Witt-Penn (Rt-7) Bridge across the Hackensack River at mile 3.1, at Jersey City, has a vertical clearance in the closed position of 35 feet at mean high water and 40 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723. The waterway users are seasonal recreational vessels and commercial vessels of various sizes.

The owner of the bridge, New Jersey Department of Transportation, requested a temporary deviation from the operating schedule to facilitate replacement of the safety barrier gates at the bridge.

Under this temporary deviation the Witt-Penn (Rt-7) Bridge may remain in the closed position for five days from June 9, 2014 through June 13, 2014. There are no alternate routes for vessel traffic. The bridge could be opened in an emergency situation.

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

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

Dated: April 24, 2014.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2014–10265 Filed 5–5–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2010–0750; FRL–9667–3]

RIN 2060–AQ10

New Source Performance Standards Review for Nitric Acid Plants

Correction

In rule document 2012–19691 appearing on pages 48433 through 48448 in the issue of Tuesday, August 14, 2012, make the following correction.

1. On page 48447, Equation 1 is corrected as set forth below.

§ 60.75a Calculations [Corrected]

$$E_{30} = k\frac{1}{n}\sum_{i=1}^{n} C_i\, Q_i/P_i \qquad \text{(Eq. 1)}$$

[FR Doc. C1–2012–19691 Filed 5–5–14; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2011–0028; FRL–9845–6]

RIN 2060–AR61

Greenhouse Gas Reporting Program: Final Amendments and Confidentiality Determinations for Subpart I

Correction

In rule document 2013–23804 appearing on pages 68162 through 68238 in the issue of Wednesday, November 13, 2013, make the following corrections.

1. On page 68203, Equation I–8 is corrected as set forth below.

§ 98.93 Calculating GHG emissions [Corrected]

$$E_{ij} = C_{ij} * (1 - U_{ij}) * \left(1 - (a_{ij} * d_{ij} * UT_{ij})\right) * 0.001 \qquad \text{(Eq. I-8)}$$

2. On page 68205, Equation I–15 is corrected as set forth below.

$$UT_{ij} = 1 - \frac{\sum_p Td_{ijp}}{\sum_p UT_{ijp}} \qquad \text{(Eq. I-15)}$$

3. On page 68209, Equation I–23 is corrected as set forth below.

$$UT_f = 1 - \frac{\sum_p Td_{pf}}{\sum_p UT_{pf}} \qquad \text{(Eq. I-23)}$$

[FR Doc. C1–2013–23804 Filed 5–5–14; 8:45 am]
BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No 13–39; DA 14–526]

Rural Call Completion Order

AGENCY: Federal Communications Commission.

ACTION: Comments requested.

SUMMARY: This document seeks comment on whether additional guidance, clarification, or modification regarding the ''answered'' and ''ring no answer'' categories of call attempts described in Appendix C of the Rural Call Completion Order is necessary. Appendix C provides a spreadsheet that covered providers must use to file the required call completion data with the Commission each quarter. This document seeks comment on whether Appendix C should be clarified to eliminate any basis for interpreting it inconsistently with the definition of ''answered call'' in the Order, and revise the description of ''ring no answer'' call attempts in Appendix C to provide clearer guidance to covered providers.

DATES: Comments must be filed by May 13, 2014.

ADDRESSES: You may submit comments, identified by WC Docket No. 13–39, by any of the following methods:

- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- Email *ecfs@fcc.gov*, and include the following words in the body of the message: ''get form.'' A sample form and directions will be sent in response. Include the docket numbers in the subject line of the message.
- Mail: Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gregory Kwan, Wireline Competition Bureau, Competition Division, at (202) 418–1191 or by email at *Gregory.Kwan@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's document in Rural Call Completion, FCC 13–135, published at 78 FR 76218, December 17, 2013. The complete text of this document is available on the Commission's Internet site at *www.fcc.gov* and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau Reference Information Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. The full text of this document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, email at *fcc@bcpiweb.com*, or via its Web site at *http://www.bcpiweb.com.*

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

• Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis

The Wireline Competition Bureau seeks comment on whether guidance or additional clarification would assist providers with their filing obligations related to the Rural Call Completion Order, FCC 13–135, published at 78 FR 76218, December 17, 2013. Specifically, we seek comment on whether to modify or otherwise provide assistance regarding the criteria described in Appendix C of the Rural Call Completion Order for categorizing certain types of call attempts. We release this document in response to questions raised in the record regarding the ''answered'' and ''ring no answer'' categories of call attempts described in Appendix C, pursuant to delegated authority. These questions raise the possibility that the relevant criteria in Appendix C were inadvertently drafted in a way that fails to reflect the Commission's clear intent, as expressed in the Order.

''Answered'' call attempts. The reporting requirements in the Rural Call Completion Order require covered providers to categorize call attempts either as ''answered'' or as one of three types of calls that are not answered: ''busy,'' ''ring no answer,'' or ''unassigned number.'' The Rural Call Completion Order defines ''answered call'' as

> a call that was answered by or on behalf of the called party (including calls completed to devices, services or parties that answer the call such as an interactive voice response, answering service, voicemail or call-forwarding system), causing the network to register that the terminating party is prepared to receive information from the calling user.

The Commission emphasized that ''the call answer rate is the data point least susceptible to variations in data reporting or to differences in the quality or accuracy of signaling: the called party either answered the call or did not answer the call.''

Appendix C of the Rural Call Completion Order provides a spreadsheet that covered providers must use to file the required call completion data with the Commission each quarter. The legend accompanying the spreadsheet identifies specific ''ISUP Cause values and corresponding SIP Response messages'' for each category of call attempt. An ''answered'' call is described in Appendix C as a call attempt ''signaled back with ISUP 16 & 31 and SIP BYE & CANCEL.''

In recent meetings with Commission staff, Level 3 and Verizon explained that release cause code 16—one of the codes identified in Appendix C as denoting an answered call—is also used to indicate that the calling party has hung up before the called party answered. Level 3 contends that including calling-party hangups as answered calls would result in a ''much higher'' reported call-completion rate than a provider would report if it excluded them.

In this document, we seek comment on this contention and on whether it would assist providers if the Bureau clarified that, as specified in the Order, covered providers should record and report calls as ''answered'' only to the extent that such calls satisfy the definition of ''answered call'' that appears in paragraph 72 of the Rural Call Completion Order. Appendix C could be clarified to eliminate any basis for interpreting it inconsistently with the definition of ''answered call'' in the Order. If so, should the description of ''answered call'' in Appendix C be revised to include a different description (e.g., a different set of release codes) of how networks identify answered calls? Or should the legend in Appendix C simply be deleted, allowing each covered provider to identify answered calls in a manner consistent with the definition in the Rural Call Completion Order and with industry practice?

''Ring no answer'' call attempts. The Rural Call Completion Order requires covered providers to record and report ''ring no answer'' call attempts, which are required to calculate the network effectiveness ratio (NER). A ''ring no answer'' call is described in Appendix C as a call attempt that is ''signaled back with ISUP 18 & 19 and IP 408 & 480.''

Level 3 asserted that some of the criteria in Appendix C for ''ring no answer'' call attempts will only capture a very small percentage of the intended call attempts. Verizon expressed concern about using call signaling data to identify ''ring no answer'' calls at all. We therefore seek comment on whether the description of ''ring no answer'' call attempts in Appendix C should be revised to provide clearer guidance to covered providers, and if so, how. Alternatively, should the legend in Appendix C be deleted, allowing each covered provider to interpret the required call attempt categories in a manner consistent with industry practice and with the Commission's stated intent in the Rural Call Completion Order?

Federal Communications Commission.

Lisa S. Gelb,

Deputy Bureau Chief, Wireline Competition Bureau.

[FR Doc. 2014–10261 Filed 5–5–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0069; 4500030113]

RIN 1018–AY73

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Leavenworthia exigua var. laciniata (Kentucky Glade Cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for *Leavenworthia exigua* var. *laciniata* (Kentucky glade cress), a plant species from Bullitt and Jefferson Counties, Kentucky. The effect of this regulation will be to add this species to the List of Endangered and Threatened Plants.

DATES: This rule is effective June 5, 2014.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are also available by appointment during normal business hours at: U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office, J.C. Watts Federal Building, 330 W. Broadway, Rm. 265, Frankfort, KY 40601; telephone 502–695–0468.

FOR FURTHER INFORMATION CONTACT: Lee Andrews, Field Supervisor, U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office (see **ADDRESSES** above). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Action

Please refer to the proposed listing rule for *Leavenworthia exigua* var. *laciniata* (78 FR 31498; May 24, 2013) for a detailed description of previous Federal actions concerning this species.

Background

Leavenworthia exigua var. *laciniata* is an annual member of the mustard family (*Brassicaceae*) known only from Bullitt and Jefferson Counties, Kentucky. The natural habitat for *L. exigua* var. *laciniata* is cedar or limestone glades (Baskin and Baskin 1981, p. 243), but the taxon is also known from overgrazed pastures, eroded shallow soil areas with exposed bedrock, and areas where the soil has been scraped off the underlying bedrock (Evans and Hannan 1990, p. 8). The plants grow to 5 to 10 centimeters (1.97 to 3.94 inches) in height with early leaves that are simple with a slender petiole (central stalk of the leaf) and mature leaves that are sharply lobed (appear as disconnected pieces along the main leaf vein), somewhat squarish at the ends, and arranged as a rosette (circular cluster of leaves) (Evans and Hannan 1990, p. 5). Please refer to the proposed listing rule for *L. exigua* var. *laciniata* (78 FR 31498; May 24, 2013) for a summary of species information.

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Summary of Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Comprehensively, the loss and degradation of habitat represents the greatest threat to *Leavenworthia exigua* var. *laciniata.* Destruction and degradation of glades through development, roads, utilities, and conversion to lawns have resulted in fewer occurrences of *L. exigua* var. *laciniata* and reduced the quality of many of the remaining occurrences. Additional impacts of this nature are expected to continue far into the future as the human population within the range of *L. exigua* var. *laciniata* continues to grow. While the rate of development and associated activities will probably not reach the highs seen during the housing market bubble of the mid-2000s, it is expected to continue at a rate above the State average. As the Louisville metropolitan area continues to expand, undeveloped portions of southern Jefferson and northeastern Bullitt Counties will continue to be attractive to developers, and, consequently, residential and commercial development and its ancillary activities will continue. Documented impacts from horseback riding, off-road vehicle use, and changes in grazing practices have resulted in the loss or degradation of several *L. exigua* var. *laciniata* occurrences. These activities are expected to continue in the future but to an unknown extent. Forest encroachment is expected to continue in areas without active management. A few voluntary conservation measures are in place on properties owned by private individuals, or State or local government, that reduce threats to specific *L. exigua* var. *laciniata* occurrences, but to date, none of these has resulted in any measurements of success or assurances that these activities will continue into the future. Climate change has the potential to impact this species, but to what extent we cannot predict.

Summary of Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We have no information to suggest that *Leavenworthia exigua* var. *laciniata* is currently collected for commercial, recreational, or educational purposes. The Service will coordinate with any agency or university studying *L. exigua* var. *laciniata* to ensure that future collections will not significantly contribute to the decline of the species. Accordingly, we have no reason to believe that this factor will become a threat to the species in the future.

Summary of Factor C: Disease or Predation

There is no available information regarding disease in *Leavenworthia exigua* var. *laciniata.* Furthermore, we have not identified any information regarding animal (wild or domestic) predation on *L. exigua* var. *laciniata.* Field observations by the Kentucky State Nature Preserves Commission (KSNPC) during extensive surveys of this species indicate that neither disease nor predation is a factor contributing to the decline of the species at this time (Evans and Hannan 1990, p. 12; White, pers. comm., 2012).

Summary of Factor D: The Inadequacy of Existing Regulatory Mechanisms

Other than the Act (16 U.S.C. 1531 *et seq.*), we are not aware of any State or Federal statutes or regulations that would provide protections to *Leavenworthia exigua* var. *laciniata.* The Kentucky Rare Plants Recognition Act (Kentucky Revised Statutes, chapter 146, sections 600–619) directs the KSNPC to identify plants native to Kentucky that are in danger of extirpation within Kentucky and report every 4 years to the Governor and General Assembly on the conditions and needs of these endangered or threatened plants. We determined that this statute does not include any regulatory prohibitions of activities or direct protections for any identified species. The intent of this statute is not to

ameliorate the threats identified for the species, but it does provide information on the species.

Summary of Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

Leavenworthia exigua var. *laciniata* is subject to several ongoing natural and manmade factors that could affect its continued existence. The species has a narrow range, occurring in only small portions of two counties. Within this range, *L. exigua* var. *laciniata* is restricted to cedar glades and similar shallow-soiled areas that occur sporadically across the range. More than half of the remaining occurrences had low (fewer than 100 individuals) population counts at the time of the most recent survey. Additionally, the presumed low genetic diversity within individual occurrences of *L. exigua* var. *laciniata* could place those occurrences at a high risk of extirpation as their capacity for adaptation to change is reduced.

Please refer to Summary of Factors Affecting the Species section of the species status assessment (78 FR 31498; May 24, 2013) for a more detailed discussion of the factors affecting *L. exigua* var. *laciniata*. Our assessment evaluated the biological status of the species and threats affecting its continued existence. The assessment was based upon the best available scientific and commercial data and the expert opinion of the species status assessment team members.

Summary of Comments and Recommendations

In the proposed rule published on May 24, 2013 (78 FR 31498), we requested that all interested parties submit written comments on the proposal on or before July 23, 2013. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Louisville Courier Journal and the Pioneer News. We did not receive any requests for a public hearing. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from seven knowledgeable individuals with scientific expertise that included familiarity with *Leavenworthia exigua* var. *laciniata* and its habitat, biological needs, and threats. We received responses from three of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the listing of *L. exigua* var. *laciniata.* The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

(1) Comment: One peer reviewer recommended that within the *Biology* section, where we describe the changes that *L. exigua* var. *laciniata* seed undergo during the summer, we change the word ''physical'' to ''physiological.''

Our Response: We appreciate the recommendation and have updated the *Biology* section to reflect this change.

(2) Comment: One peer reviewer questioned the statement in the section on *Current Range/Distribution* that very little remaining glade habitat within the species' range has not been surveyed. This peer reviewer asked if we had intended to state that little habitat had been surveyed.

Our Response: We intended to state that very little glade habitat remains within the species' range that has not been surveyed. Over the last 20 years, KSNPC has systematically used aerial photography and known geology to identify potential *L. exigua* var. *laciniata* glade habitat with the intent of identifying new populations within the known range and exploring potential areas to expand the known habitat. Very little potential habitat, i.e., cedar or limestone glades, the only habitat known for this species, has not been surveyed. Also, this part of the State is heavily explored because it is so populated and accessible; therefore, discovering any additional habitat for this species is very unlikely (D. White, pers. comm., 2012).

(3) *Comment:* One peer reviewer stated that it is not clear in our discussion of significant landownerships whether the species is actually present at the locations identified.

Our Response: Table 3 of the proposed rule (78 FR 31498; May 24, 2013) summarizes the ownership areas and includes the most recent population data for *L. exigua* var. *laciniata* in those areas.

Comments From States

The Commonwealth of Kentucky did not submit comments. We note, however, that one of the peer reviewers was from KSNPC. Those comments are addressed above.

Public Comments

During the public comment period, we received two comment letters directly addressing the proposed listing. These letters also addressed the proposed critical habitat designation. Comments pertaining to the critical habitat designation are addressed in that final rule, published elsewhere in today's **Federal Register**. Both comment letters received regarding the proposed listing were positive and in support of the proposed listing.

(4) Comment: One commenter provided information regarding recent infrastructure improvements (water line extensions, new sewer pump station) that would encourage expanded development within the range of *L. exigua* var. *laciniata.*

Our Response: We appreciate the supporting information.

(5) Comment: One commenter stated that more locations of *L. exigua* var. *laciniata* will be identified.

Our Response: We agree that it is likely that the plant will be found in more locations as survey efforts increase. Intense efforts on the ground and via aerial imagery have already been conducted to identify and explore potential cedar glade habitats. We will evaluate new information as it becomes available to determine if it results in any significant expansion of the species' range or a significant increase in extant occurrences.

(6) Comment: One commenter provided information on a possible *L. exigua* var. *laciniata* occurrence in the vicinity of Chenoweth Run Creek and Seatonville Road and voiced concerns about future impacts that could affect the species at this location.

Our Response: We are not aware of any *L. exigua* var. *laciniata* occurrences at this location but will carefully evaluate any proposed projects that we review in this area, or for any proposed projects within the range of the species, for potential impacts to the species or its habitat.

(7) Comment: One commenter asked if the limestone quarry in Bullitt County could be affecting the habitat of *L. exigua* var. *laciniata.*

Our Response: We have no data to suggest that the quarry has impacted *L. exigua* var. *laciniata* or its habitat. There are no known historical or extant *L. exigua* var. *laciniata* populations known to occur at the quarry.

(8) Comment: One commenter recommended seed collection as an important way to ensure the survival of the species.

Our Response: Some seed collection for this species has already occurred, as we discussed under the Factor B analysis in the proposed rule. The use of seed collection as a possible tool for recovering this species will be considered during the development of the recovery plan for *L. exigua* var. *laciniata.*

Summary of Changes From Proposed Rule

Other than minor changes in response to recommendations, in this final rule we made no substantial changes to the proposed rule.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Leavenworthia exigua* var. *laciniata.* The most significant threats to the species are described under Factors A (the present or threatened destruction, modification, or curtailment of its habitat or range) and E (other natural or manmade factors affecting its continued existence). Specifically, destruction and degradation of glade habitat through development, roads, utilities, and conversion to lawns has resulted in fewer occurrences of *L. exigua* var. *laciniata* and reduced the quality of many of the remaining occurrences. Additional impacts of this nature are expected to continue for the foreseeable future as the human population within the range of *L. exigua* var. *laciniata* continues to grow. Within the narrow (small portions of two Kentucky counties) range, *L. exigua* var. *laciniata* is restricted to cedar glades and similar shallow-soiled areas, which occur sporadically across the range. The presumed low genetic diversity within individual occurrences of *L. exigua* var. *laciniata* could place those occurrences at a high risk as their capacity for adaptation to change is reduced. These threats occur across the taxon's range and are ongoing and, therefore, imminent.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' Although we recognize that the threats to the species are ongoing, often severe, and occurring throughout the species' range, we find that an endangered species status is not appropriate for *Leavenworthia exigua* var. *laciniata* because the possibility that all occurrences of the species would be equally impacted in the foreseeable future, thus resulting in extinction, is unlikely. However, we find that *L. exigua* var. *laciniata* is likely to become endangered throughout all or a significant portion of its range within the foreseeable future based on the severity and immediacy of threats currently impacting the species.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. As stated above, the threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to the species throughout its range.

Significant Portion of the Range

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' A major part of the analysis of ''significant portion of the range'' requires considering whether the threats to the species are geographically concentrated in any way. If the threats are essentially uniform throughout the species' range, then no portion is likely to warrant further consideration.

We have carefully considered all scientific and commercial information available regarding the past, present, and future threats to *L. exigua* var. *laciniata. L. exigua* var. *laciniata,* proposed for listing in this rule, occurs only in portions of two Kentucky counties and the threats to the survival of the taxon are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to the taxon throughout its entire range. We find that *L. exigua* var. *laciniata* is likely, within the foreseeable future, to become an endangered species throughout its entire range, based on the immediacy, severity, and scope of the threats described above. We are listing *L. exigua* var. *laciniata* as threatened in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery

progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

When this species is listed (see **DATES**), funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the Commonwealth of Kentucky will be eligible for Federal funds to implement management actions that promote the protection or recovery of *L. exigua* var. *laciniata.* Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the *L. exigua* var. *laciniata.* Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include issuance of Federal permits under section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) by the U.S. Army Corps of Engineers; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the Federal Highway Administration.

With respect to threatened plants, 50 CFR 17.71 provides that all of the provisions in 50 CFR 17.61 shall apply to threatened plants. These provisions make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. However, there is the following exception for threatened plants. Seeds of cultivated specimens of species treated as threatened shall be exempt from all the provisions of 50 CFR 17.61, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container during the course of any activity otherwise subject to these regulations. Exceptions to these prohibitions are outlined in 50 CFR 17.72.

We may issue permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.72. With regard to threatened plants, a permit issued under this section must be for one of the following: Scientific purposes, the enhancement of the propagation or survival of threatened species, economic hardship, botanical or horticultural exhibition, educational purposes, or other activities consistent with the purposes and policy of the Act.

Under section 4(d) of the Act, the Secretary has discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of threatened species. Our implementing regulations (50 CFR 17.71) for threatened plants generally incorporate the prohibitions of section 9 of the Act for endangered plants, except when a rule promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. In such a case, the general prohibitions in 50 CFR 17.61 would not apply to that species, and instead, the special rule would define the specific take prohibitions and exceptions that would apply for that particular threatened species, which we consider necessary and advisable to conserve the species. With respect to a threatened plant, the Secretary of the Interior also has the discretion to prohibit by regulation any act prohibited by section 9(a)(2) of the Act. Exercising this discretion, which has been delegated to the Service by the Secretary, the Service has developed general prohibitions that are appropriate for most threatened species at 50 CFR 17.71 and exceptions to those prohibitions at 50 CFR 17.72. We have determined to not promulgate a rule under section 4(d) of the Act, and as a result, all of the section 9(a)(2) general prohibitions, including the ''take'' prohibitions, will apply to the *L. exigua* var. *laciniata.*

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of listed species. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements:

(1) Normal agricultural and silvicultural practices, including herbicide and pesticide use, which are carried out in accordance with any

existing regulations, permit and label requirements, and best management practices; and,

(2) Normal residential landscape activities.

Based on the best available information, the following activities may potentially result in a violation of section 9 the Act; this list is not comprehensive:

Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, GA 30345 (Phone 404/679–7313; Fax 404/679–7081).

Required Determinations

National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the NEPA, need not be prepared in connection with listing a species as an endangered or threatened species under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2013–0069 and upon request from the Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Kentucky Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. In § 17.12(h), add an entry for ''*Leavenworthia exigua* var. *laciniata*'' in alphabetical order under FLOWERING PLANTS to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering Plants							
*	*	*	*	*	*		*
Leavenworthia exigua var. *laciniata*.	Kentucky glade cress.	U.S.A. (KY)	Brassicaceae	T	833	17.96(a)	NA
*	*	*	*	*	*		*

* * * * *

Dated: April 21, 2014.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–10049 Filed 5–5–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0015; 4500030113]

RIN 1018–AZ47

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Leavenworthia exigua var. laciniata (Kentucky Glade Cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for *Leavenworthia exigua* var. *laciniata* (Kentucky glade cress) under the Endangered Species Act (Act). In total, approximately 2,053 acres (830 hectares) in Bullitt and Jefferson Counties, Kentucky, fall within the boundaries of the critical habitat designation.

DATES: This rule is effective on June 5, 2014.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov*. Comments and materials we received, as well as some supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov*. All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office, J.C. Watts Federal Building, 330 W. Broadway, Rm. 265, Frankfort, KY 40601; telephone 502–695–0468.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0015. Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Lee Andrews, Field Supervisor, U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office, (see **ADDRESSES** above). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act of 1973, as amended (Act), when we determine that a species is endangered or threatened we must designate critical habitat to the maximum extent prudent and determinable. Designations of critical habitat can only be completed by issuing a rule. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for *Leavenworthia exigua* var. *laciniata*.

This rule consists of: A final rule for designation of critical habitat for *L. exigua* var. *laciniata*. We are designating approximately 2,053 acres (830 hectares) of critical habitat for *L. exigua* var. *laciniata* in Bullitt and Jefferson Counties, Kentucky. Elsewhere in today's **Federal Register,** we published a final rule listing *L. exigua* var. *laciniata* as a threatened species.

We have prepared an economic analysis of the designation of critical habitat. We prepared an analysis of the economic impacts of the critical habitat designation and related factors. We announced the availability of the draft economic analysis in the **Federal Register** on January 7, 2014 (79 FR 796), allowing the public to provide comments on our analysis. We have incorporated the comments and have completed a final economic analysis concurrently with this final determination.

Peer review and public comment. We sought comments from seven independent specialists to review our technical assumptions and analysis, and whether or not we used the best information, to ensure that this designation of critical habitat is based on scientifically sound data and analyses. We obtained opinions from three of those individuals. These peer reviewers generally concurred with our methods and conclusions. We also considered all comments and information we received from the public during the comment period.

Previous Federal Actions

Please refer to the proposed listing rule for *Leavenworthia exigua* var. *laciniata* (78 FR 31498; May 24, 2013) for a detailed description of previous Federal actions concerning this species. On May 24, 2013, we proposed critical habitat for *L. exigua* var. *laciniata* (78 FR 31479). On January 7, 2014 (79 FR 796), we announced the availability of the draft economic analysis (DEA) for the proposed critical habitat designation, and reopened the public comment period to allow comment on the DEA and further comment on the proposed rule.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *L. exigua* var. *laciniata* during two comment periods. The first comment period opened with the publication of the proposed rule (78 FR 31479) on May 24, 2013, and closed on July 23, 2013. We also requested comments on the proposed critical habitat designation and associated draft economic analysis during a comment period that opened January 7, 2014, and closed on February 6, 2014 (79 FR 796). We did not receive any requests for a public hearing. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties, and invited them to comment on the proposed rule and draft economic analysis during these comment periods.

During the first comment period, we received two comment letters directly addressing the proposed critical habitat designation. During the second comment period, we received no comment letters addressing the proposed critical habitat designation or the draft economic analysis. All substantive information provided during the comment periods has either been incorporated directly into this final determination or is addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from seven knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from three of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding critical habitat for *L. exigua* var. *laciniata*. Although the peer reviewers were supportive of the proposed critical habitat designation, they did not provide any additional

information, clarifications, or suggestions to improve this final critical habitat rule.

Comments From States

The Commonwealth of Kentucky did not submit comments on the proposed rule. We note, however, that one of the peer reviewers was from the Kentucky State Nature Preserves Commission (KSNPC).

Public Comments

During the public comment periods, we received two comment letters directly addressing the proposed critical habitat. These letters also addressed the proposed listing; comments pertaining to the listing are addressed in that final rule, published elsewhere in today's **Federal Register**. Both comment letters we received regarding the proposed critical habitat were positive and in support of the proposed designation.

(1) *Comment:* One commenter noted that proposed subunits 4D and 4E are found along Bardstown Road in an area of high traffic and increasing commercial development.

Our Response: We acknowledge that additional development in the area of subunits 4D and 4E has the potential to impact *L. exigua* var. *laciniata* and its habitat. Section 7 of the Act (16 U.S.C. 1531 *et seq.*) requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by a Federal agency (thereby constituting a Federal nexus) is not likely to result in the destruction or adverse modification of critical habitat. If there is no Federal nexus for a given action, then critical habitat designation, including on private land, does not restrict any actions that destroy or adversely modify critical habitat. The Service will provide technical assistance to avoid and minimize impacts to *L. exigua* var. *laciniata's* critical habitat if such assistance is requested.

(2) *Comment:* The Service should take into consideration the economic benefits of conserving the State's natural heritage.

Our Response: As required by Executive Order (E.O.) 12866 and section 4(b)(2) of the Act, the Service has completed an economic analysis on the effects of the critical habitat designation. The findings of this analysis were published in the **Federal Register** (79 FR 796; January 7, 2014). While the Service recognizes that there will be benefits associated with designating critical habitat for this species, we are unable to assess the magnitude of these benefits due to existing data limitations.

Summary of Changes From Proposed Rule

Information we received during the comment periods did not result in any substantial changes to this final rule from what we proposed.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General

Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for *L. exigua* var. *laciniata* from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on May 24, 2013 (78 FR 31479), and in the information presented below. Additional information can be found in the final listing rule published elsewhere in today's **Federal Register**. We have determined that the following physical and biological features are essential for *L. exigua* var. *laciniata*.

Space for Individual and Population Growth and for Normal Behavior

Leavenworthia exigua var. *laciniata* is typically found in cedar or limestone glades (Baskin and Baskin 1981, p. 243), which are described by Baskin and Baskin (1999, p. 206) as ''open areas of rock pavement, gravel, flagstone, and/or shallow soil in which occur natural, long-persisting (edaphic climax) plant communities dominated by angiosperms and/or cryptogams.'' *L. exigua* var. *laciniata* is also known from gladelike areas such as overgrazed pastures, eroded shallow soil areas with exposed bedrock, and areas where the soil has been scraped off the underlying bedrock (Evans and Hannan 1990, p. 8). These disturbed areas are gladelike in the shallowness or near-absence of their soils, saturation, and/or inundation during the wet periods of late fall, winter, and early spring and then frequently dry below the permanent wilting point during the summer (Baskin and Baskin 2003, p. 101). These conditions likely prevent species that would shade or compete with *L. exigua* var. *laciniata* from establishing in these areas.

While the individual rock exposure or outcrop areas will vary in size and may be small and scattered throughout the glade(s) or gladelike area(s), they will ideally occur in groups to comprise a glade (or gladelike) complex. Habitat destruction, modification, and fragmentation within the narrow range of *L. exigua* var. *laciniata* make it difficult to determine the optimal size or density of glade habitats needed to support the long-term survival of the species. Pine Creek Barrens Preserve (owned by The Nature Conservancy) contains the only remaining A-ranked population of *L. exigua* var. *laciniata,* described as having thousands of plants scattered over 25 to 30 acres. Similarly, the B-ranked Rocky Run was described in 1990 as containing thousands of plants scattered over 2 miles. Many of the poor (D) ranked populations occur within areas as small as a few square meters (KSNPC 2012, pp. 1–108). While the long-term viability of these populations is considered poor, monitoring efforts have shown that for the short term, some *L. exigua* var. *laciniata* populations are able to persist (i.e., grow and reproduce) on these small and fragmented sites.

Based on the information above, we identify cedar glades and gladelike areas underlain by Silurian dolomite or dolomitic limestone as an essential physical or biological feature for the species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

The specific water needs of *L. exigua* var. *laciniata* are unknown; however, the sites it occupies are extremely wet from late winter to early spring and quickly become dry in late May and June. This hydrologic regime is critical for the plant's survival in that it provides sufficient moisture for the taxon's life cycle (germination in fall, plant growth from fall to early spring, and seed production in the spring). Additionally, the droughty conditions during the typical growing season prevent the establishment of plants that could shade or dominate *L. exigua* var. *laciniata*.

L. exigua var. *laciniata* is shade intolerant. Open glade habitats appear to provide the most favorable conditions for this species (Evans and Hannan

1990, p. 14). Baskin and Baskin (1988, p. 834) noted that most endemics occurring on rock outcrops (such as *L. exigua* var. *laciniata*) are restricted to the open and well-lighted areas of the outcrops as opposed to similar but more shaded areas near the surrounding forest.

L. exigua var. *laciniata* seems more dependent upon the lack of soil and the proximity of rock near or at the surface rather than a specific type of soil (Evans and Hannan 1990, p. 8). It occurs primarily in open, gravelly soils around rock outcrops in an area of the Caneyville–Crider soil association (Whitaker and Waters 1986, p. 16). Baskin and Baskin (1981, p. 245) identified shallow soils (1 to 5 centimeters (cm)) (0.39 to 1.97 inches (in)) over limestone or dolomite to be characteristic habitat of *L. exigua* var. *laciniata*.

Based on this information, we identify unshaded and shallow soils that are extremely wet from late winter to early spring and quickly become dry in late May and June to be an essential physical or biological feature for this species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring, Germination, or Seed Dispersal

Like all annuals, *L. exigua* var. *laciniata* reproduces sexually through seed production. Successful reproduction of *L. exigua* var. *laciniata* requires sufficient moisture for germination, growth, flowering, and seed production. Pollination of *L. exigua* var. *laciniata* can be by insects or self-pollination (Rollins 1963, p. 47). Seeds may fall to the ground, be transported by animals, or be carried by precipitation sheet flow to new sites.

The seeds of *L. exigua* var. *laciniata* germinate in the fall, with plants surviving through the winter as rosettes that flower in early spring. Seeds are typically dispersed from mid-May to late May (Evans and Hannan 1990, p. 11). After the seeds ripen, the silique (pod) soon splits open. Seeds may immediately fall out or remain on the plant for several days. The extent to which this plant can expand to new sites is unknown.

Lloyd (1965, p. 92) noted that seeds from *Leavenworthia* lack adaptations that would allow for dispersal by wind or animals. Sheet flow likely provides local dispersion for seeds lying on the ground (Lloyd 1965, pp. 92–93; Evans and Hannan 1990, p. 11). In reviewing aerial photography and topographic mapping of known *L. exigua* var. *laciniata* occurrences, it appears that populations often follow suitable habitat as it extends along topographic contours or within drainage patterns. Areas of bare ground are essential in the dispersal and germination of seeds. The cyclical moisture availability on the thin soils of glades and other habitats acts to limit the number of plant species that can tolerate these extremes (Evans and Hannan 1990, pp. 9–10).

L. exigua var. *laciniata* seeds have been shown to retain viability for at least 3 years under greenhouse conditions (Baskin and Baskin 1981, p. 247). A strong seed bank is expected to be important for the continued existence of *L. exigua* var. *laciniata,* especially following a year when conditions are unfavorable for reproduction (e.g., damage (natural or manmade) to plants prior to seed set). Accordingly, *L. exigua* var. *laciniata* habitat must be protected from activities that would damage or destroy the seed bank.

Based on the information above, we identify glade and gladelike habitats with intact hydrology and an undisturbed seed bank to be a physical or biological feature essential to the conservation of *L. exigua* var. *laciniata*. These areas are critical for seed dispersal and germination.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distribution of the Species

Disturbance in the form of development (and associated infrastructure) is a major factor in the loss and degradation of habitat for *L. exigua* var. *laciniata*. Development can directly eliminate or fragment essential habitat and indirectly cause changes to the habitat (e.g., through erosion, shading, introduction of invasive plants—all of which may cause declines in distribution or in numbers of plants per occurrence). Protected habitats are, therefore, of crucial importance for the growth and dispersal of *L. exigua* var. *laciniata*. These areas are critical to protecting *L. exigua* var. *laciniata* populations and habitat from impacts such as sedimentation, erosion, and competition from nonnative or invasive plants.

The natural areas supporting *L. exigua* var. *laciniata* are cedar or limestone glades, which Baskin and Baskin (2003, p. 101) describe as flat to gently sloping, open areas of shallow soils and/or calcareous rock (pavement, gravel, flagstone) that support an edaphic climax plant community dominated by non-woody species. These areas are often associated with eastern red-cedar thickets (Jones 2005, p. 33) and/or scrubby red-cedar-hardwood forests (Baskin and Baskin 1999, p. 102). These associated areas and other, adjacent, undeveloped ground provide important buffer protection from disturbance.

Leavenworthia species have a patchy distribution within the exposed rock outcrops and shallow soil areas of cedar glade habitats and gladelike areas (Lloyd 1965, p. 87). *L. exigua* var. *laciniata* is an endemic species restricted to a very specific habitat type with a patchy distribution across the landscape separated by large areas of habitat unsuitable for *L. exigua* var. *laciniata.* Although these cedar glades also contain areas of deeper soil where other, associated vegetation grows, these areas of deeper soil are essential components of the glade and critical for maintaining habitat suitable for occupation by *L. exigua* var. *laciniata.*

Based on a review of aerial imagery, habitat areas that appear to provide sufficient protection generally have the hillside (creek to topographic break) and adjacent contour surrounding the glade areas in vegetated (primarily wooded) habitat. Buffer areas of this magnitude protect *L. exigua* var. *laciniata* populations and habitat from adjacent development and habitat change. Although these areas are not directly occupied by *L. exigua* var. *laciniata,* they are essential to the growth and dispersal of the species within areas of suitable habitat.

Therefore, based on the information above, we identify vegetated areas surrounding glades and gladelike habitats that protect the hydrology, soils, and seed bank to be a physical or biological feature for this species.

Primary Constituent Elements for L. exigua var. laciniata

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of *L. exigua* var. *laciniata* in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to *L. exigua* var. *laciniata* are:

(1) Cedar glades and gladelike areas within the range of *L. exigua* var. *laciniata* that include:

(a) Areas of rock outcrop, gravel, flagstone of Silurian dolomite or dolomitic limestone, and/or shallow (1

to 5 cm (0.393 to 1.97 in)), calcareous soils;

(b) Intact cyclic hydrologic regime involving saturation and/or inundation of the area in winter and early spring, then drying quickly in the summer;

(c) Full or nearly full sunlight; and

(d) An undisturbed seed bank.

(2) Vegetated land around glades and gladelike areas that extends up and down slope and ends at natural (e.g., stream, topographic contours) or manmade breaks (e.g., roads).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection.

Threats to those features that define primary constituent elements for *L. exigua* var. *laciniata* include (but are not limited to): (1) Residential and commercial development on private land; (2) construction and maintenance of roads and utility lines; (3) incompatible agricultural or grazing practices; (4) off-road vehicle (ORV) use or horseback riding; (5) encroachment by nonnative plants or forage species; and (6) forest encroachment due to fire suppression. These threats are in addition to random effects of droughts, floods, or other natural phenomena.

Special management considerations or protection are required within critical habitat areas to address these threats. Management activities that could address these threats include (but are not limited to): (1) Avoiding cedar glades (or suitable gladelike habitats) when planning the location of buildings, lawns, roads (including horse or ORV trails), or utilities; (2) avoiding aboveground construction and/or excavations in locations that would interfere with natural water movement to suitable habitat sites; (3) protecting and restoring as many glade complexes as possible; (4) research supporting the development of management recommendations for grazing and other agricultural practices; (5) technical or financial assistance to landowners that may help in the design and implementation of management actions that protect the plant and its habitat; (6) avoiding lawn grass or tree plantings near glades; and (7) habitat management, such as brush removal, prescribed fire, and/or eradication of lawn grasses to maintain an intact native glade vegetation community.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b) we review available information pertaining to the habitat requirements of the species and identify areas occupied at the time of listing that contain the features essential to the conservation of the species. If, after identifying currently occupied areas, we determine that those areas are inadequate to ensure conservation of the species we then consider, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e), whether designating additional areas outside those currently occupied is essential for the conservation of the species. Here, we are not designating any areas outside the geographical area occupied by the species because we have determined that occupied areas are sufficient for the conservation of the species, and we have no evidence that this taxon ever existed beyond its current range.

Sites were considered occupied if the Kentucky State Nature Preserves Commission (KSNPC) Element Occurrence Report (KSNPC 2012, pp. 1–108) considered an element occurrence to be an extant population at the time of the proposed listing rule (May 24, 2013).

We also reviewed available information that pertains to habitat requirements of *Leavenworthia exigua* var. *laciniata.* The sources of information include, but are not limited to:

1. Data used to prepare the proposed listing package;

2. Peer-reviewed articles, various agency reports, and the KSNPC Natural Heritage Program database;

3. Information from species experts; and

4. Regional Geographic Information System (GIS) data (such as species occurrence data, topography, aerial imagery, and land ownership maps) for area calculations and mapping.

Areas for critical habitat designation were selected based on the quality of the element occurrence(s), condition of the habitat, and distribution within the species' range. Typically, selected areas contain good quality or better occurrences (A, B, or C-ranked) and natural habitat, as identified by KSNPC in the Natural Heritage Report (2012, pp. 1–108). However, some lower quality occurrences, with restoration potential, are included to ensure that critical habitat is being designated across the species' range and to avoid a potential reduction of the distribution of *L. exigua* var. *laciniata.* The glade habitat upon which the species depends is often easily viewed using aerial photography. Additionally, aerial photography provides an overview of the land use surrounding the glades. Topographic maps provide contours and drainage patterns that were used to help identify potential areas for growth and expansion of the species. A combination of these tools, in a GIS interface, allowed for the determination of the critical habitat boundaries.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for *L. exigua* var. *laciniata.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0015, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**).

Final Critical Habitat Designation

We are designating six units, consisting of 18 subunits, as critical habitat for *L. exigua* var. *laciniata.* The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Those six units are: (1) Unit 1: McNeely Lake, (2) Unit 2: Old Mans Run, (3) Unit 3: Mount Washington, (4) Unit 4: Cedar Creek, (5) Unit 5: Cox Creek, and (6) Unit 6: Rocky Run. All units and subunits are

currently occupied by the species and contain all physical and biological features and primary constituent elements that are essential to the conservation of the species.

TABLE 1—DESIGNATED CRITICAL HABITAT UNITS FOR *L. exigua* VAR. *laciniata*

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Sub unit	Land ownership by type	Size of unit in acres (hectares)
1	.....	Louisville/Jefferson County Metro Government	18 (7)
2	2A	Private	102 (41)
2	2B	Private	870 (352)
2	2C	Private	42 (17)
3	3A	Private	25 (10)
3	3B	Private	7 (3)
3	3C	Private	10 (4)
4	4A	Private	91 (37)
4	4B	KSNPC; Private; Private with KSNPC easement	69 (28)
4	4C	Private	83 (34)
4	4D	Private	46 (19)
4	4E	Private	102 (41)
4	4F	Private	120 (49)
4	4G	Private	20 (8)
4	4H	Private	16 (6)
5	5A	Private	8 (3)
5	5B	Private	50 (20)
6	.....	Private	374 (151)
Total	.....	.....	2,053 (830)

Note: Area sizes may not sum due to rounding.

Unit 1: McNeely Lake, Jefferson County, Kentucky

Unit 1 consists of 18 acres (ac) (7 hectares (ha)) within McNeely Lake Park in Jefferson County, Kentucky. This critical habitat unit is under county government ownership. This critical habitat unit occurs at the northwestern edge of the species' range, where there is little remaining habitat and few occurrences, and therefore this unit is important to the distribution of the species. Habitat degradation (e.g., erosion, invasive species) is impacting the species' ability to persist within this unit; however, the landowner has received funding and is working with the Service and KSNPC to develop a management plan for the site and to implement habitat improvement practices. These planned activities are expected to improve population numbers and viability at this important site. This unit helps to maintain the geographical range of the species and provides opportunity for population growth. Within Unit 1, the features essential to the conservation of the species may require special management considerations or protection to address potential adverse effects associated with encroachment by nonnative plants or forage species, and forest encroachment due to fire suppression.

Unit 2, Subunits A, B, and C: Old Mans Run, Jefferson and Bullitt Counties, Kentucky

Unit 2 consists of three subunits totaling 1,014 ac (410 ha) in Bullitt and Jefferson Counties, Kentucky. It is located just south of the Jefferson/Bullitt County line and extends north of Old Mans Run. This critical habitat unit includes four element occurrences. Subunit 2B represents the best remaining populations and habitat for *L. exigua* var. *laciniata* in Jefferson County. Subunits 2A and 2C are important areas at the northern extent of the species' range. These three subunits represent the northeastern extent of the population's range and increase population redundancy within the species' range. The features essential to the conservation of the species in Unit 2 may require special management considerations or protection to address potential adverse effects associated with development on private land, incompatible agricultural or grazing practices, ORV or horseback riding, competition from lawn grasses, and forest encroachment.

Subunit 2A is 102 ac (41 ha) in size and is located west of US 150 and northwest of Floyds Fork. It is in private ownership. While all PCEs are present within this subunit, it contains few native plant associates for *L. exigua* var. *laciniata,* and the increased competition from lawn grasses may decrease the ability of *L. exigua* var. *laciniata* to persist. This subunit is important for maintaining the northern distribution of *L. exigua* var. *laciniata.*

Subunit 2B is 870 ac (352 ha) in size and is located east of US 150 and extends north and south of Old Mans Run. It is in private ownership. This is the largest of the subunits and contains the two highest ranked (1–B and 1–C) occurrences in Jefferson County. It represents the best remaining habitat in this portion of the range and may contain more than half of the total *L. exigua* var. *laciniata* population based on a 2011 survey by KSNPC, which estimated more than 20,000 individuals at 4 sites within this subunit. In this subunit, competition from lawn grasses impacts *L. exigua* var. *laciniata* and may decrease the plant's ability to persist.

Subunit 2C is 42 ac (17 ha) in size and is located west of US 150 and east of Floyds Fork, extending into both Bullitt and Jefferson Counties. It is in private ownership. This subunit is primarily pasture, and habitat for *L. exigua* var. *laciniata* is impacted by competition from lawn grasses. Habitat management within this subunit to improve habitat for *L. exigua* var. *laciniata* is important for maintaining the northern distribution of the species.

Unit 3, Subunits A, B and C: Mount Washington, Bullitt County, Kentucky

Unit 3 consists of 42 ac (17 ha) and includes three subunits in Bullitt

County, Kentucky, primarily within or adjacent to the city limits of Mount Washington. This critical habitat unit includes three element occurrences and provides an important link between the northern and southern portions of the species' range. Within Unit 3, the features essential to the conservation of the species may require special management considerations or protection to address potential adverse effects associated with development on private land, incompatible agricultural or grazing practices, ORV or horseback riding, competition from lawn grasses, and forest encroachment due to fire suppression.

Subunit 3A is 25 ac (10 ha) in size and is located northeast of Mount Washington. It is in private ownership. Habitat for *L. exigua* var. *laciniata* within this subunit is degraded and would improve with management. It represents important habitat on the eastern extent of the species' range. In this subunit, habitat conversion and ORV use impact *L. exigua* var. *laciniata* habitat and may decrease the species' ability to persist at this site.

Subunit 3B is 7 ac (3 ha) in size and is located east of Hubbard Lane and south of Keeneland Drive. It is in private ownership. The glade habitat has been degraded by adjacent land use and would benefit from improved management. The subunit represents an important link between other subunits.

Subunit 3C is 10 ac (4 ha) in size and is located east of US 150 and south of Highway 44E. It is in private ownership. The subunit represents an important and high quality cedar glade in an area of ongoing, intensive development. Land use surrounding the glade remnant appears stable and the glade contains several native plant species associated with *L. exigua* var. *laciniata.*

Unit 4, Subunits A, B, C, D, E, F, G, and H: Cedar Creek, Bullitt County, Kentucky

Unit 4 consists of 547 ac (221 ha) and includes eight subunits, all in Bullitt County, Kentucky. This unit is located south of the Salt River and northeast of Cedar Grove and seems to represent the core of the remaining high-quality habitat for *L. exigua* var. *laciniata.* It includes eight element occurrences. In addition to being a stronghold for the species, these subunits are generally within close proximity (less than 0.5 miles (0.8 km)) to each other and represent the best opportunity for genetic exchange between occurrences.

Within Unit 4, the features essential to the conservation of the species may require special management considerations or protection to address potential adverse effects associated with development on private land, incompatible agricultural or grazing practices, ORV or horseback riding, competition from lawn grasses, and forest encroachment due to fire suppression.

Subunit 4A is 91 ac (37 ha) in size and is located south of Cedar Creek and west of Pine Creek Trail. This subunit is owned by The Nature Conservancy and encompasses most of the Pine Creek Barrens Preserve. This excellent-quality glade represents the only remaining ''A'' rank occurrence for *L. exigua* var. *laciniata.*

Subunit 4B is 69 ac (28 ha) in size and is located along an unnamed tributary to Cedar Creek, and south of KY 1442. This good-quality glade includes the Apple Valley Glade State Nature Preserve, owned by KSNPC (approximately 30 percent of subunit), as well as private land, including some under permanent conservation easement (approximately 41 percent of subunit) to protect *L. exigua* var. *laciniata.* Approximately 29 percent of this subunit is under private ownership without any protections for *L. exigua* var. *laciniata.*

Subunit 4C is 83 ac (34 ha) in size and located north of Cedar Creek and south of Apple Valley State Nature Preserve. It is in private ownership. This subunit contains high-quality glades with a community of native plants present.

Subunit 4D is 46 ac (19 ha) in size and is located north of Cedar Creek and south of Victory Church. It is in private ownership. This subunit has been degraded and would benefit from improved management. Native plants associated with *L. exigua* var. *laciniata* occur within this subunit, but competition from lawn grasses, as well as forest encroachment due to fire suppression, impacts *L. exigua* var. *laciniata* and may decrease its ability to persist.

Subunit 4E is 102 ac (41 ha) in size and is located southeast of subunit 4D and across Cedar Creek. It is in private ownership. It contains a large number of *L. exigua* var. *laciniata* (several thousand), but the habitat has been degraded by adjacent land use and would benefit from improved management. Competition from lawn grasses, as well as forest encroachment due to fire suppression, affects *L. exigua* var. *laciniata* and may decrease the plant's ability to persist.

Subunit 4F is 120 ac (49 ha) in size and is south of the confluence of Cedar Creek and Greens Branch. It is in private ownership. This is a degraded glade that still contains native plants associated with *L. exigua* var. *laciniata.* The subunit is disturbed by existing and surrounding land uses, as well as utility line maintenance and ORV use, which may decrease the species' ability to persist.

Subunit 4G is 20 ac (8 ha) in size and is located along either site of KY 480 near White Run Road. It is in private ownership. This site contains a large number of plants; however, improved habitat conditions are needed for long-term viability of the *L. exigua* var. *laciniata* occurrence. Impacts to *L. exigua* var. *laciniata,* which may decrease its ability to persist at this site, include incompatible agricultural or grazing practices, ORV use, competition from lawn grasses, and forest encroachment due to fire suppression.

Subunit 4H is 16 ac (6 ha) in size and is located 0.95 miles southeast of the KY 480/KY 1604 intersection. It is in private ownership. Within this subunit, several patches of good habitat for *L. exigua* var. *laciniata* remain as well as a good diversity of native plant associates. However, competition from lawn grasses, as well as forest encroachment due to fire suppression, affects *L. exigua* var. *laciniata* and may decrease its ability to persist.

Unit 5, Subunits A and B: Cox Creek, Bullitt County, Kentucky

Unit 5 consists of 58 ac (23 ha) and includes two subunits, both in Bullitt County, Kentucky. It includes two element occurrences, representing the most easterly occurrences south of the Salt River. These subunits are important for maintaining the distribution and genetic diversity of the species.

Within Unit 5, the features essential to the conservation of the species may require special management considerations or protection to address potential adverse effects associated with illegal waste dumps, development on private land, incompatible agricultural or grazing practices, ORV or horseback riding, competition from lawn grasses, and forest encroachment due to fire suppression.

Subunit 5A is 8 ac (3 ha) in size and is located east of Cox Creek and west of KY 1442. It is in private ownership. This site is threatened by ORV use and would benefit from improved habitat management.

Subunit 5B is 50 ac (20 ha) in size and is located west of Cox Creek near the Bullitt/Spencer County line. It is in private ownership. Incompatible agricultural practices and ORV use impacts *L. exigua* var. *laciniata* and may decrease its ability to persist. The native flora is mostly intact, and *L. exigua* var. *laciniata* would benefit from improved habitat management.

Unit 6: Rocky Run, Bullitt County, Kentucky

Unit 6 consists of 374 ac (151 ha) in Bullitt County, Kentucky. This critical habitat unit includes habitat that is under private ownership, including one 16-acre registered natural area. It includes one element occurrence. This unit appears to represent the largest intact glade habitat remaining within the range of the species. Within Unit 6, the features essential to the conservation of the species may require special management considerations or protection to address potential adverse effects associated with development on private land, incompatible agricultural or grazing practices, competition from lawn grasses, and forest encroachment due to fire suppression.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for *L. exigua* var. *laciniata.* As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for *L. exigua* var. *laciniata.* These activities include, but are not limited to:

(1) Actions within or near critical habitat that would result in the loss of bare or open ground. Such activities could include, but are not limited to: Development; road maintenance, widening, or construction; and utility line construction or maintenance. These activities could eliminate or reduce the habitat necessary for growth, reproduction, and/or expansion of *L. exigua* var. *laciniata.*

(2) Actions within or near critical habitat that would modify the hydrologic regime that allows for the shallow soils to be very wet in late winter to early spring and dry quickly. Such activities could include, but are not limited to: Development; road maintenance, widening, or construction; and utility line construction or maintenance. These activities could alter habitat conditions to the point of eliminating the site conditions required

for growth, reproduction, and/or expansion of *L. exigua* var. *laciniata.*

(3) Actions within or near critical habitat that would remove or alter vegetation and allow erosion, sedimentation, shading, or the introduction or expansion of invasive species. Such activities could include, but are not limited to: Land clearing; silviculture; fertilizer, herbicide, or insecticide applications; development; road maintenance, widening, or construction; and utility line construction or maintenance. These activities could alter habitat conditions to the point of eliminating the site conditions required for growth, reproduction, and/or expansion of *L. exigua* var. *laciniata.*

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Consideration of Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which together with our narrative and interpretation of effects we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors (IEc 2013). The analysis was made available for public review from January 7, 2014, through February 6, 2014 (79 FR 796). The DEA addressed potential economic impacts of critical habitat designation for *L. exigua* var. *laciniata.* Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for *L. exigua* var. *laciniata* is summarized below and available in the screening analysis for *L. exigua* var. *laciniata* (IEc 2013), available at *http://www.regulations.gov.*

The screening analysis addresses how probable economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. Decision-makers can use this information to evaluate whether the effects of the designation might unduly burden a particular group, area, or economic sector. The screening analysis assesses the economic impacts of *L. exigua* var. *laciniata* conservation efforts associated with the following categories of activity: Residential and commercial development; transportation projects; recreational activities; agricultural activities; utility projects; and commercial timber harvest.

In general, because *L. exigua* var. *laciniata* is a narrow endemic species, and all of the critical habitat units are occupied by the species, the quality of its habitat is closely linked to the species' survival (USFWS 2013). Consequently, the Service believes that in most circumstances, there will be no conservation efforts needed to prevent adverse modification of critical habitat beyond those that would be required to prevent jeopardy to the species. Any anticipated incremental costs of the critical habitat designation costs will predominantly be administrative in nature and would not be significant. Critical habitat may impact property values indirectly if developers assume the designation will limit the potential use of that land. However, the designation of critical habitat is not likely to result in an increase of consultations, but rather only the additional administrative effort within each consultation to address the effects of each proposed agency action on critical habitat.

Exclusions Based on Economic Impacts

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for *L. exigua* var. *laciniata* based on economic impacts.

A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the Kentucky Ecological Services Field Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.*

Exclusions Based on National Security Impacts or Homeland Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this final rule, we have determined that no lands within the designation of critical habitat for *L. exigua* var. *laciniata* are owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact to national security or homeland security. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts to national security or homeland security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we also consider any other relevant impacts resulting from the designation of critical habitat. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no permitted HCPs or other approved management plans for *L. exigua* var. *laciniata,* and the final designation does not include any tribal lands or trust resources. We anticipate no impact on partnerships or HCPs from this critical habitat designation. Accordingly, the Secretary is not exercising her discretion to exclude any areas from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration.

The DEA finds that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with *L. exigua* var. *laciniata* conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal

program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. The final economic analysis concludes incremental impacts may occur due to administrative costs of section 7 consultations for activities related to commercial, residential, and recreational development and associated actions; however, these are not expected to significantly affect small government entities. Consequently, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for *L. exigua* var. *laciniata* in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The DEA found that no significant economic impacts are likely to result from the designation of critical habitat for *L. exigua* var. *laciniata.* Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on the best available information, the takings implications assessment concludes that this designation of critical habitat for *L. exigua* var. *laciniata* does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Kentucky. We received comments from the Kentucky State Nature Preserves Commission and have addressed them in the Summary of Comments and Recommendations section of the rule. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of *L. exigua* var. *laciniata.* The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments,

individuals, businesses, or organizations. 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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. As stated above, we are not designating critical habitat for *L. exigua* var. *laciniata* on tribal lands.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Kentucky Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. In § 17.96, amend paragraph (a) by adding an entry for ''*Leavenworthia exigua* var. *laciniata* (Kentucky glade cress)'' in alphabetical order under the family Brassicaceae, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Brassicaceae: *Leavenworthia exigua* var. *lacinata* (Kentucky glade cress)

(1) Critical habitat units are depicted for Bullitt and Jefferson Counties, Kentucky, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *L. exigua* var. *laciniata* consist of these components:

(i) Cedar glades and gladelike areas within the range of *L. exigua* var. *laciniata* that include:

(A) Areas of rock outcrop, gravel, flagstone of Silurian dolomite or dolomitic limestone, and/or shallow (1 to 5 centimeters (0.393 to 1.97 inches)), calcareous soils;

(B) Intact cyclic hydrologic regime involving saturation and/or inundation of the area in winter and early spring, then drying quickly in the summer;

(C) Full or nearly full sunlight; and

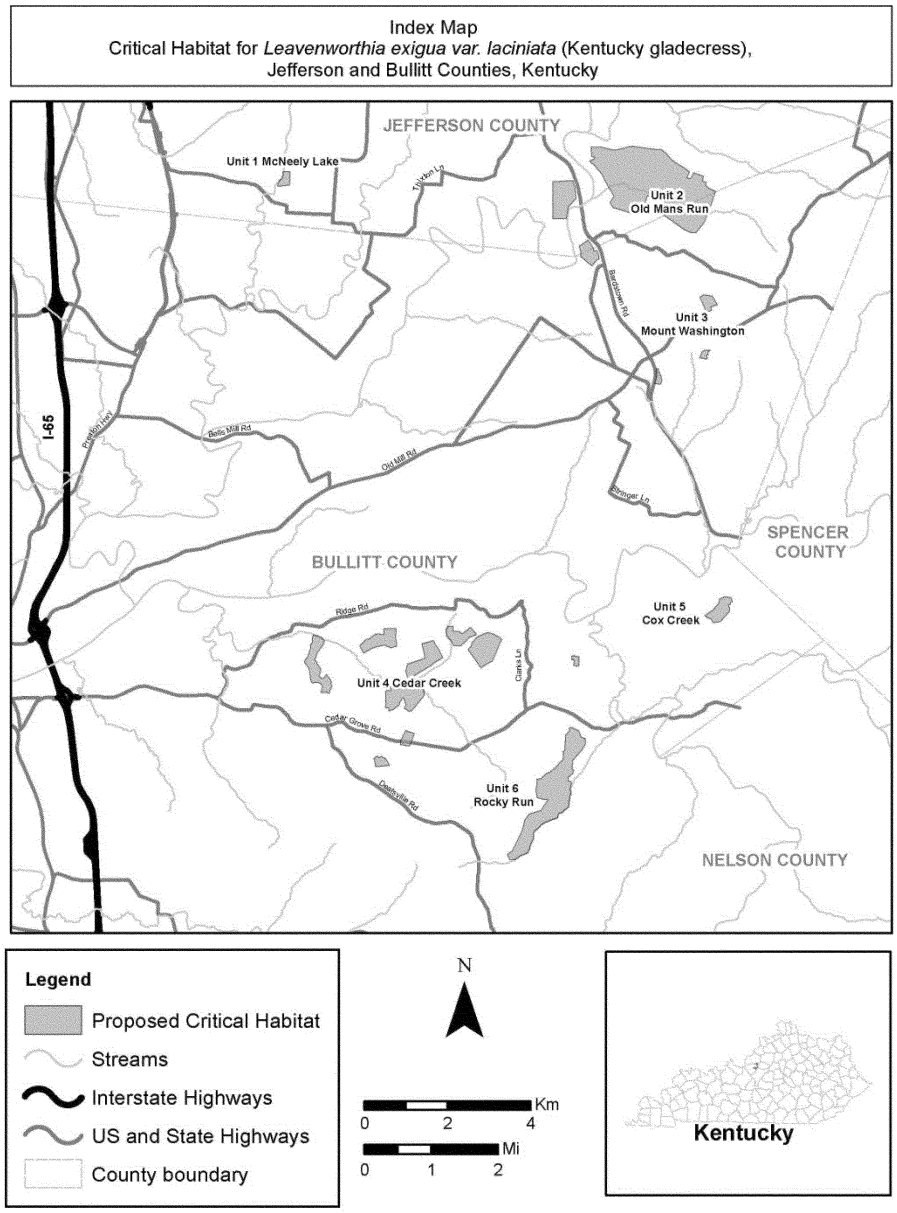
(D) An undisturbed seed bank.

(ii) Vegetated land around glades and gladelike areas that extends up and down slope and ends at natural (e.g., stream, topographic contours) or manmade breaks (e.g., roads).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on June 5, 2014.

(4) *Critical habitat map units.* Data layers defining critical habitat map units were created using a base of aerial photographs (USDA National Agricultural Imagery Program; NAIP 2010), and USA Topo Maps (National Geographic Society 2011). Critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 16 North American Datum (NAD) 1983 coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site, at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0015, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

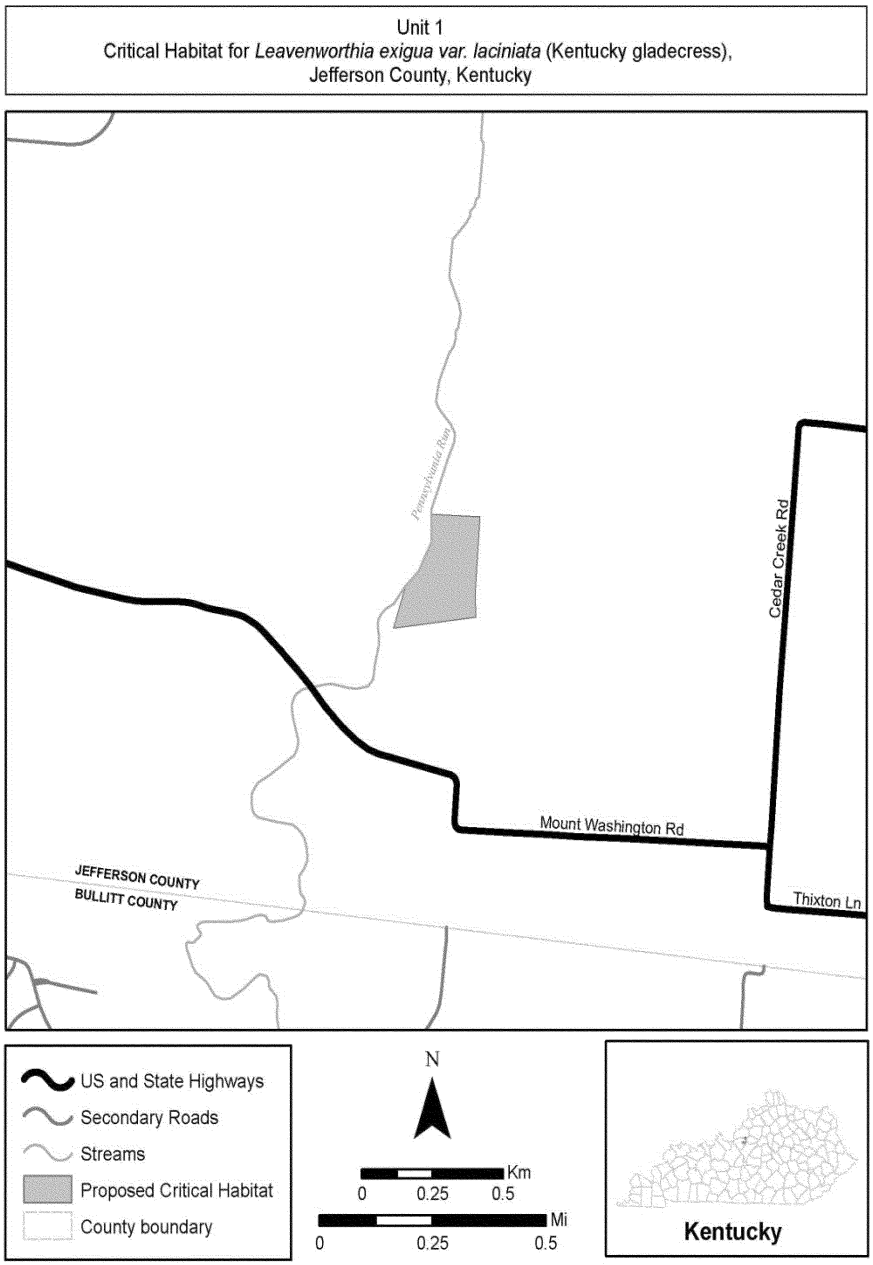
(5) Index map follows:



(6) Unit 1: McNeely Lake, Jefferson County, Kentucky.

(i) Unit 1 includes 18 ac (7 ha).

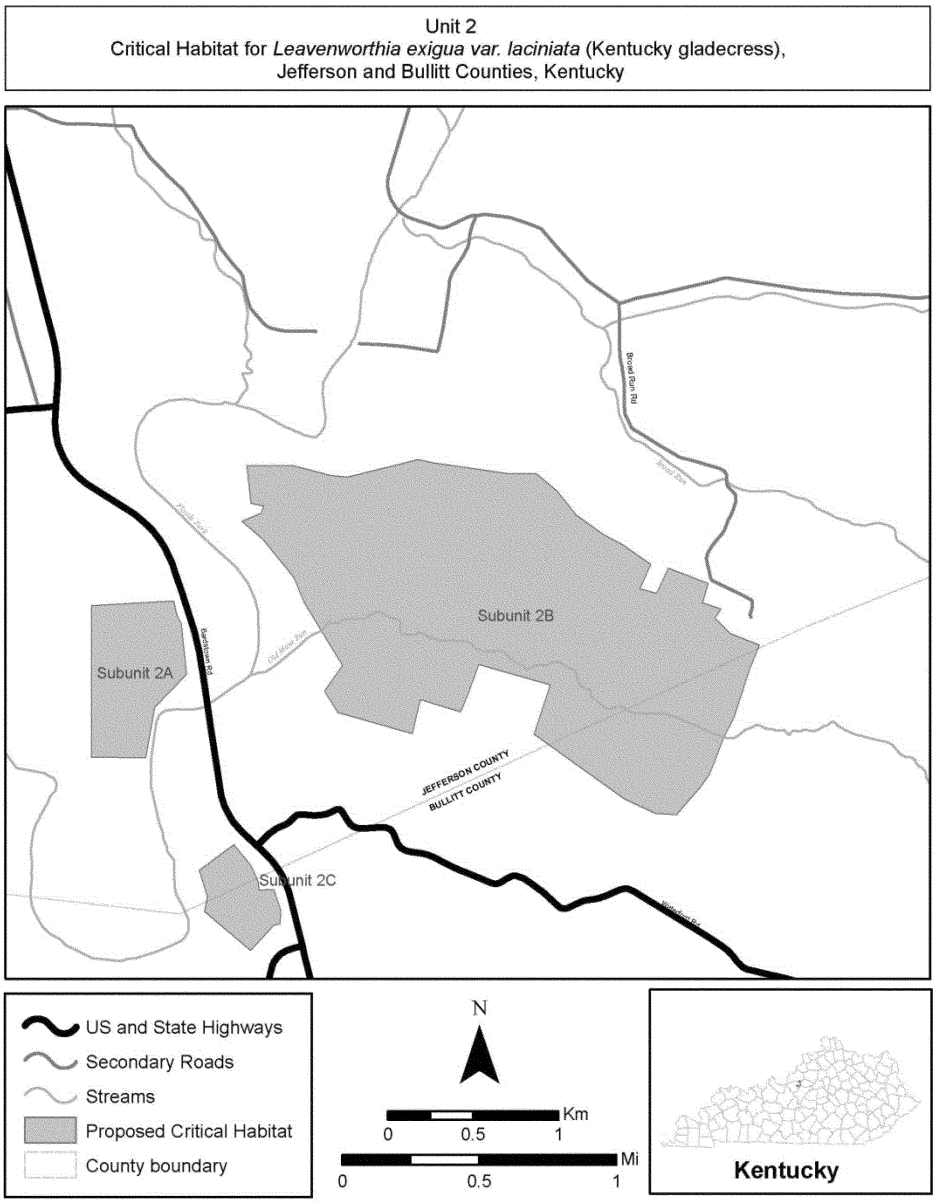
(ii) Map of Unit 1 follows:



(7) Unit 2: Old Mans Run, Bullitt and Jefferson Counties, Kentucky.

(i) Unit 2 includes 1,014 ac (410 ha): Subunit A includes 102 acres (41 ha); subunit B includes 870 acres (352 ha); and subunit C includes 42 ac (17 ha).

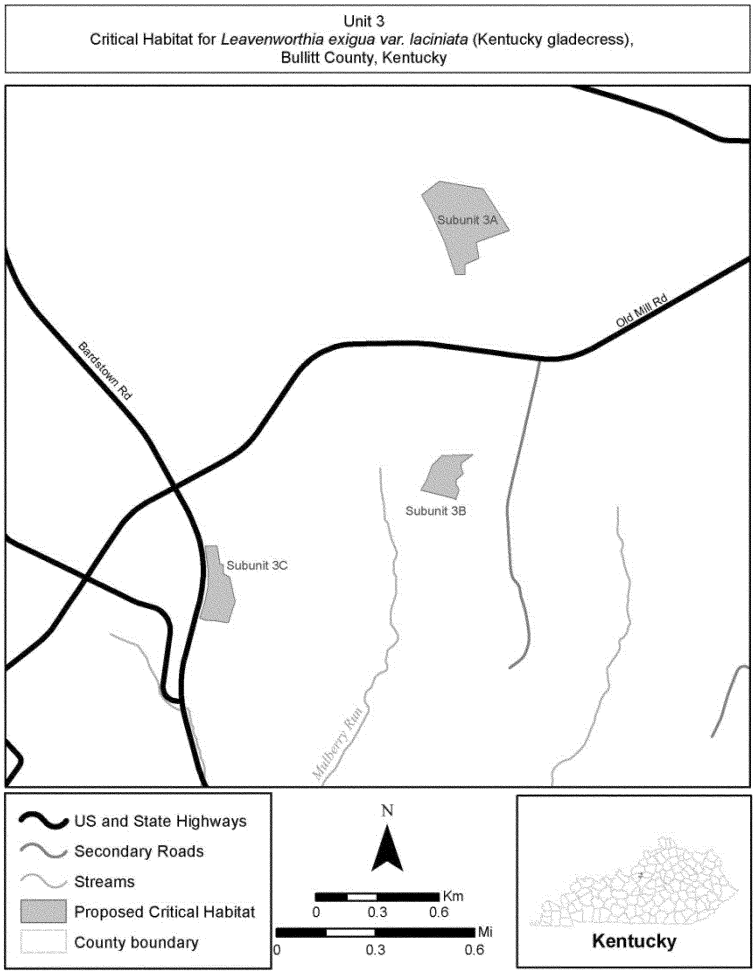
(ii) Map of Unit 2 follows:



(8) Unit 3: Mount Washington, Bullitt County, Kentucky.

(i) Unit 3 contains 42 ac (17 ha): Subunit A contains 25 ac (10 ha); subunit B contains 7 ac (3 ha); and subunit C contains 10 ac (4 ha).

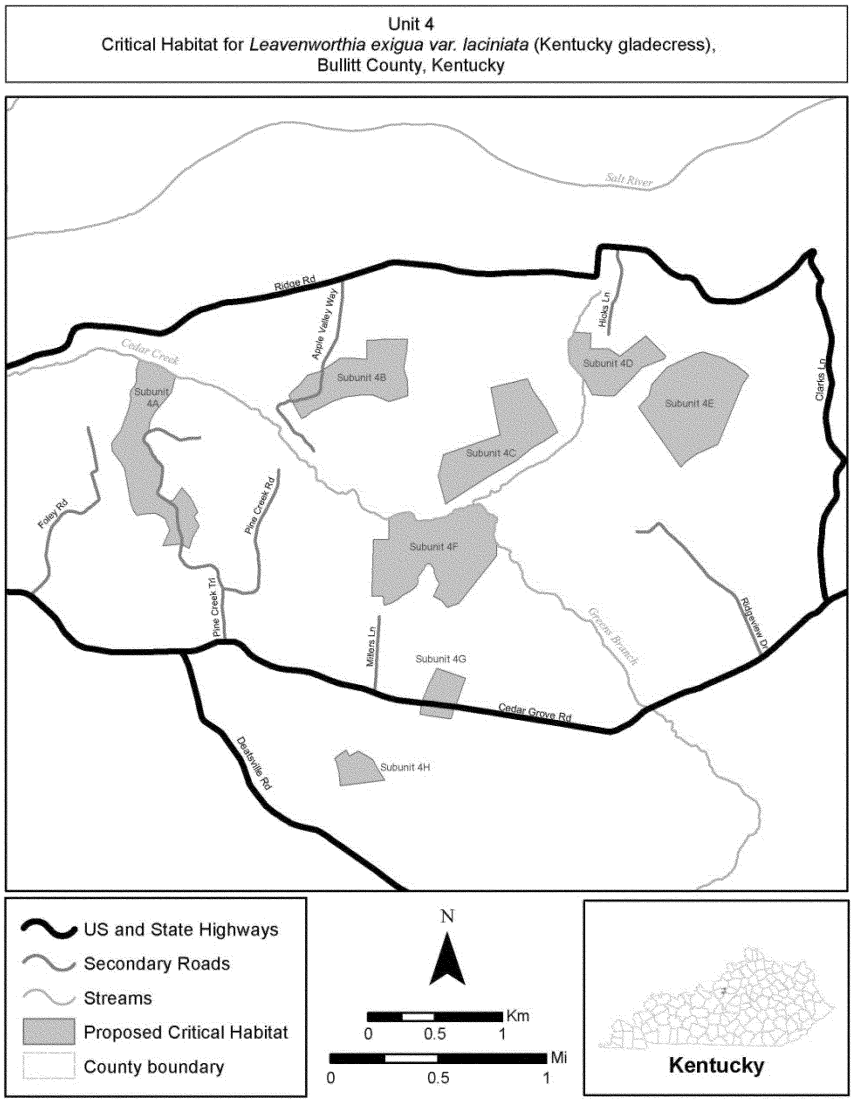
(ii) Map of Unit 3 follows:



(9) Unit 4: Cedar Creek, Bullitt County, Kentucky.

(i) Unit 4 contains 547 ac (221 ha): Subunit A contains 91 ac (37 ha); subunit B contains 69 ac (28 ha); subunit C contains 83 ac (34 ha); subunit D contains 46 ac (19 ha); subunit E contains 102 ac (41 ha); subunit F contains 120 ac (49 ha); subunit G contains 20 ac (8 ha); and subunit H contains 16 ac (6 ha).

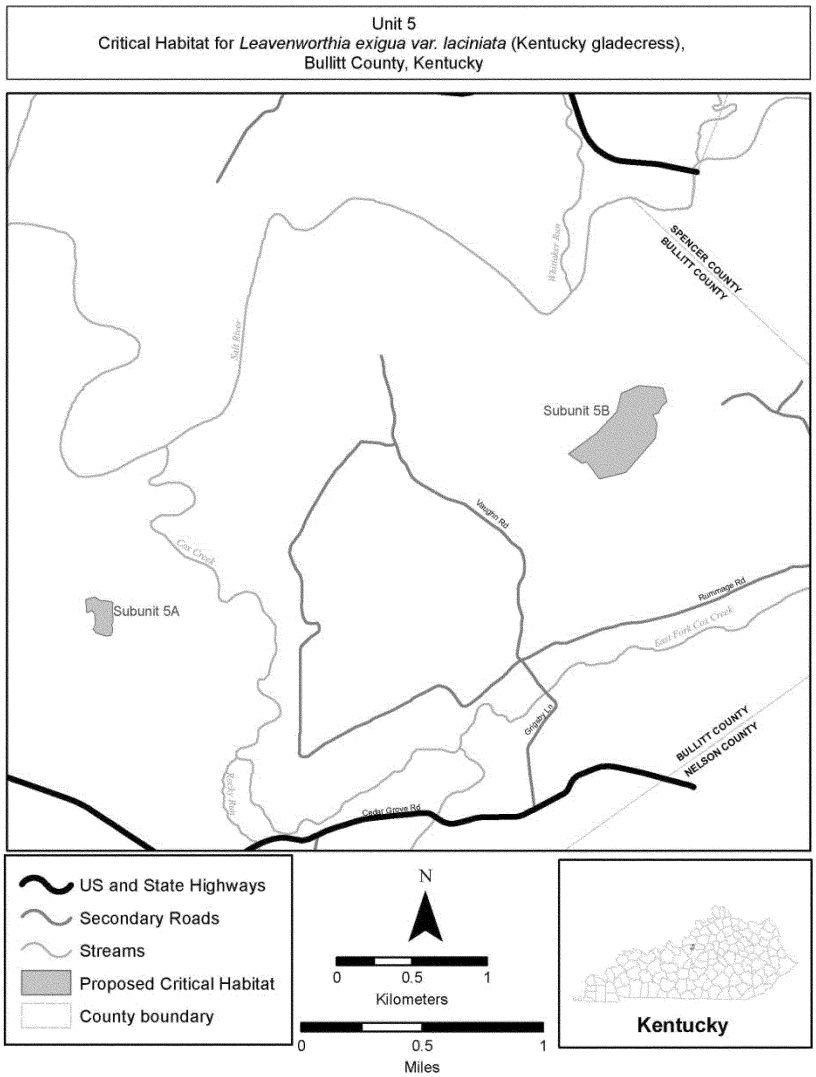
(ii) Map of Unit 4 follows:



(10) Unit 5: Cox Creek, Bullitt County, Kentucky.

(i) Subunit 5 contains 58 ac (23 ha): Subunit A contains 8 ac (3 ha), and subunit B contains 50 ac (20 ha).

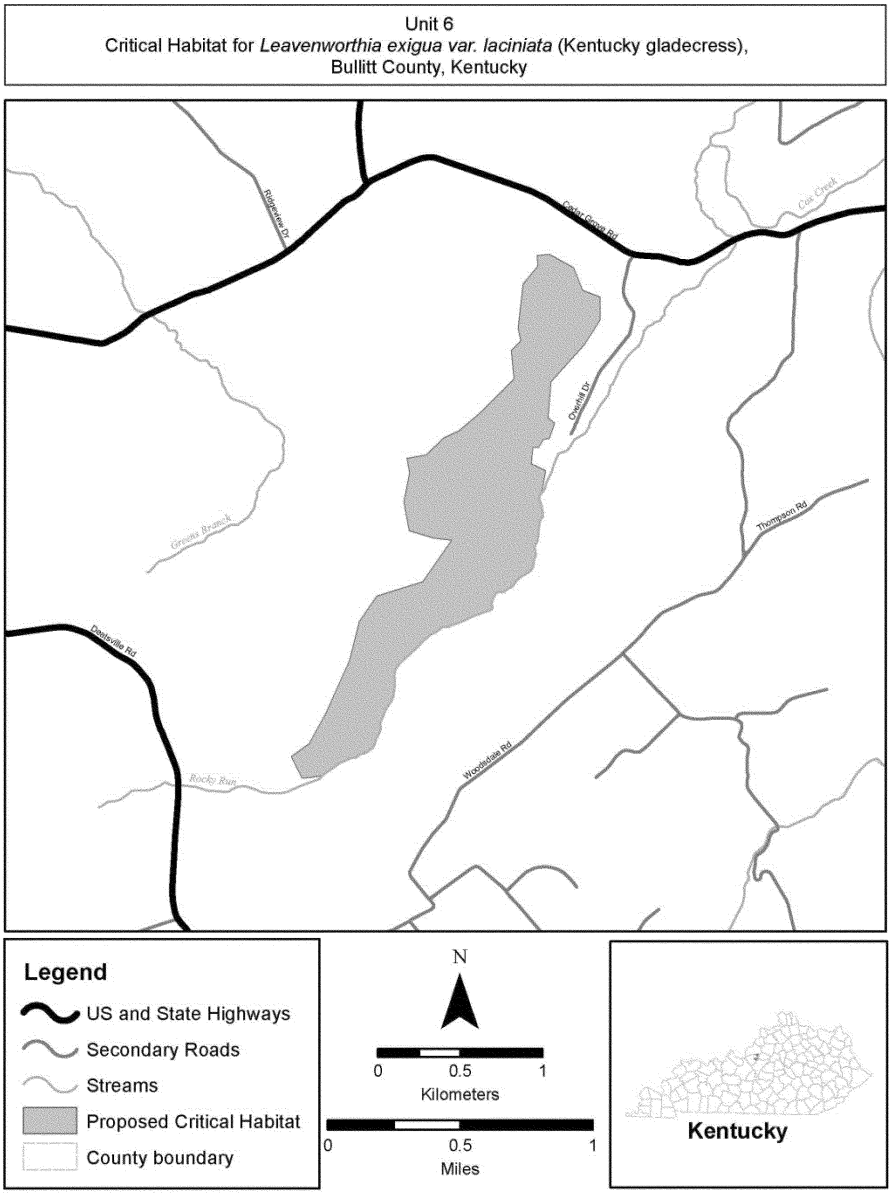
(ii) Map of Unit 5 follows:



(11) Unit 6: Rocky Run, Bullitt County, Kentucky.

(i) Unit 6 contains 374 ac (151 ha).

(ii) Map of Unit 6 follows:



* * * * *

Dated: April 24, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–10050 Filed 5–5–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 130214139–3542–02]

RIN 0648–XD251

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason Angling category retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) daily retention limit that applies to vessels permitted in the Highly Migratory Species (HMS) Angling category and the HMS Charter/Headboat category (when fishing recreationally for BFT) should be adjusted for the remainder of 2014, based on consideration of the regulatory determination criteria regarding inseason adjustments. The adjusted limit for private vessels (i.e., those with HMS Angling category permits) is one school BFT and one large school/small medium BFT per vessel per day/trip (i.e., one BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). The adjusted limit for charter vessels (i.e., those with HMS Charter/Headboat permits) is two school BFT and one large school/small medium

BFT per vessel per day/trip (i.e., two BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). These retention limits are effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT.

DATES: Effective May 8, 2014, through December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) and in accordance with implementing regulations (71 FR 58058, October 2, 2006). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The 2014 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2014. The Angling category season opened January 1, 2014, and continues through December 31, 2014. The size classes of BFT are summarized in Table 1. Please note that large school and small medium BFT traditionally have been managed as one size class, as described below, i.e., a limit of one large school/small medium BFT (measuring 47 to less than 73 inches).

TABLE 1—BFT SIZE CLASSES

Size class	Curved fork length
School	27 to less than 47 inches (68.5 to less than 119 cm).
Large school	47 to less than 59 inches (119 to less than 150 cm).
Small medium	59 to less than 73 inches (150 to less than 185 cm).
Large medium	73 to less than 81 inches (185 to less than 206 cm).
Giant	81 inches or greater (206 cm or greater).

Currently, the default Angling category daily retention limit of one school, large school, or small medium BFT applies (§ 635.23(b)(2)). These retention limits apply to HMS Angling and to HMS Charter/Headboat category permitted vessels (when fishing recreationally for BFT). The currently codified Angling category quota is 182 mt (94.9 mt for school BFT, 82.9 mt for large school/small medium BFT, and 4.2 mt for large medium/giant BFT).

Adjustment of Angling Category Daily Retention Limit

Under § 635.23(b)(3), NMFS may increase or decrease the retention limit for any size class of BFT based on consideration of the criteria provided under § 635.27(a)(8), which include: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)); effects of the adjustment on BFT rebuilding and overfishing (§ 635.27(a)(8)(v)); effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP (§ 635.27(a)(8)(vi)); variations in seasonal BFT distribution, abundance, or migration patterns (§ 635.27(a)(8)(vii)); effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota (§ 635.27(a)(8)(viii)); and a review of daily landing trends and availability of the BFT on the fishing grounds (§ 635.27(a)(8)(ix)). Retention limits may be adjusted separately for specific vessel type, such as private vessels, headboats, or charterboats.

NMFS has considered the set of criteria at § 635.27(a)(8) and their applicability to the Angling category BFT retention limit for the 2014 Angling category fishery. These considerations include, but are not limited to, the following: This action, which is taken consistent with the quotas previously established and analyzed in the 2011 BFT quota final rule (76 FR 39019, July 5, 2011) and consistent with objectives of the 2006 Consolidated HMS FMP, is not expected to negatively impact stock health. Biological samples collected from BFT landed by recreational fishermen continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. A principal consideration is the objective of providing opportunities to harvest the Angling category quota without exceeding it based upon the 2006 Consolidated HMS FMP goal: ''Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.'' It is also important that NMFS constrain landings to BFT subquotas both to adhere to the current FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (e.g., fish caught at each age) that was assumed in the projections of stock rebuilding.

Given the considerations above, NMFS has determined that the Angling category retention limit applicable to participants on HMS Angling and HMS Charter/Headboat category permitted vessels should be adjusted from the default level, and that implementation of separate limits for private and charter/headboat vessels is appropriate, recognizing the different nature, socio-economic needs, and recent landings results of the two components of the recreational BFT fishery. For example, charter operators historically have indicated that a multi-fish retention limit is vital to their ability to attract customers. In addition, Large Pelagics Survey estimates indicate that charter/headboat BFT landings averaged approximately 30 percent of recent recreational landings for 2011 through 2013, with the remaining 70 percent landed by private vessels.

Therefore, for private vessels (i.e., those with HMS Angling category permits), the limit is one school BFT and one large school/small medium BFT per vessel per day/trip (i.e., one BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). For charter vessels (i.e., those with HMS Charter/Headboat permits), the limit is two school BFT and one large school/small medium BFT per vessel per day/trip when fishing recreationally for BFT (i.e., two BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). These retention limits are effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing.

NMFS anticipates that the BFT daily retention limits in this action will result in landings during 2014 that would not exceed the available subquotas as codified in 2011. Lower retention limits could result in substantial underharvest of the codified Angling category subquota, and increasing the daily limits further may risk exceeding the available quota, contrary to the

objectives of the 2006 Consolidated HMS FMP. NMFS will monitor 2014 landings closely and will make further adjustments, including closure, with an inseason action if warranted.

This Angling category action is intended to provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities; and to be consistent with the objectives of the 2006 Consolidated HMS FMP.

HMS Angling and HMS Charter/Headboat category permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all BFT that are released must be handled in a manner that will maximize survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *www.nmfs.noaa.gov/sfa/hms/*.

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *hmspermits.noaa.gov,* for updates.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Based on available BFT quotas, fishery performance in recent years, the availability of BFT on the fishing grounds, among other considerations, an adjustment to the recreational BFT daily retention limit from the default level is warranted. Analysis of available data shows that adjustment to the BFT daily retention limit from the default level would result in minimal risks of exceeding the ICCAT-allocated quota. NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register,** emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *hmspermits.noaa.gov*.

These fisheries are currently underway and delaying this action would be contrary to the public interest. Delays in increasing the daily recreational BFT retention limit would adversely affect those HMS Angling and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one school, large school, or small medium BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.23(b)(3), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: April 30, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–10222 Filed 5–5–14; 8:45 am]

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Proposed Rules

Federal Register
Vol. 79, No. 87
Tuesday, May 6, 2014

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–13–0088; FV14–985–2 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of Administrative Rules and Regulations Governing Issuance of Additional Allotment Base

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revisions to the procedure currently prescribed for issuing additional allotment base for Class 1 (Scotch) and Class 3 (Native) spearmint oil to new and existing producers under the Far West spearmint oil marketing order (order). The order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). This action would: Reduce the number of new producers that are issued additional allotment bases each year from three to two, for each class of oil; temporarily change the method by which additional allotment base is allocated to existing producers to take into account small production operations; and amend the requirements for eligibility, retention, and transfer of additional allotment base issued to new and existing producers. Revising the procedure for issuing additional allotment base would help ensure that new and existing spearmint oil producers have sufficient allotment base to be economically viable in the future.

DATES: Comments must be received by May 21, 2014.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Manuel Michel or Gary D. Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Manuel.Michel@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

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

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

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

This proposal invites comments on revisions to the procedure currently prescribed for issuing additional allotment base for Class 1 (Scotch) and Class 3 (Native) spearmint oil to new and existing producers under the order's volume control provisions. This proposal would: (1) Reduce the number of allocations of additional allotment base issued to new producers each year from three to two, for each class of oil; (2) temporarily change the method by which additional allotment base is issued to existing producers in order to take into account producers whose total allotment base is below the size of the minimum economic enterprise (MEE) required to produce each class of spearmint oil; (3) provide that additional allotment base issued to existing producers under the revised procedure could not be used to replace allotment base that has been previously transferred away; and (4) provide that additional allotment base issued under the revised procedure could not be transferred to another producer for at least five years following issuance. This action was recommended unanimously by the Committee at a meeting on November 6, 2013.

Under the order, volume control measures are authorized to regulate the marketing of spearmint oil. Regulation is currently effectuated through the issuance of allotment bases to producers, the establishment of annual salable quantities and allotment percentages, and the reserve pooling of excess production. Allotment base is each producer's quantified share of the spearmint oil market based on a

statistical representation of past spearmint oil production, with accommodation for reasonable and normal adjustments to such base. The order's provisions allow for the regulation of spearmint oil volume available to the market. The objective of regulation is to establish orderly marketing conditions for spearmint oil and to ensure that there is sufficient spearmint oil supply available to meet market requirements. Since the program's inception, volume regulation has been instrumental in promoting market and price stability within the industry.

The order contains provisions to ensure that there is orderly market expansion and that new producers are able to produce and market spearmint oil. Section 985.53(d)(1) of the order requires the Committee to annually make additional allotment bases available for each class of oil in the amount of no more than 1 percent of the total allotment base for that class of oil. Fifty percent of these additional allotment bases shall be made available to new producers and 50 percent made available to existing producers.

Section 985.53(d)(3) requires the Committee, with the approval of the Secretary, to establish rules and regulations to be used for determining the distribution of additional allotment bases. In 1982, these rules and regulations were established and have been subsequently revised on several occasions, most recently in 2003. Each time a revision is made, the Committee considers several important factors which include: the size of the MEE required for spearmint oil production, the applicant's ability to produce spearmint oil, the area where the spearmint oil will be produced, and other economic and marketing factors that have a direct impact on spearmint oil producers. The Committee reviews regularly, and updates as needed, the size of the MEE required for spearmint oil production. Under the order, MEE is the minimum size of production operation that the Committee has determined to be economically viable for each class of spearmint oil. Between 1982 and 1997, the Committee revised the MEE for Scotch spearmint oil production three times and Native spearmint oil production four times. As a result, the MEE increased from 1,200 pounds to 3,000 pounds for Scotch spearmint oil, and from 1,800 pounds to 3,400 pounds for Native spearmint oil.

Section 985.153(c)(1) of the order's administrative rules and regulations prescribes the method by which additional allotment base is issued to new producers. In addition, § 985.153(c)(2) prescribes the procedure by which additional allotment base is issued to existing producers. Lastly, § 985.153(d) specifies certain requirements for spearmint oil producers who are issued additional allotment base pursuant to § 985.153(c)(1) and (c)(2).

The Committee met on November 6, 2013, to consider the current procedures for issuing additional allotment base to new and existing producers and to make recommendations regarding the revision of those procedures. As required by § 985.153(c)(1)(ii), the Committee first considered the size of the MEE required to produce each class of spearmint oil. The Committee determined that the MEE levels for both classes of spearmint oil were no longer representative and needed to be revised. The Committee recognized that, as production and cultural practices for spearmint oil have continued to change and production costs per acre have increased, the Committee's previously established MEE levels are too low and should be revised. As such, the Committee concluded that the MEE thresholds had increased to 5,121 pounds for Scotch spearmint oil and 5,812 pounds for Native spearmint oil.

As a result of the Committee's determination that the MEE thresholds have increased, and given the quantity of additional allotment base available to new producers each year (½ of 1 percent of the total allotment base for each class of oil), the additional allotment base issued each year is only enough for two new producers, instead of three, for each class of oil.

The Committee's initial calculation is that the total allotment base for Scotch spearmint oil during the 2014–2015 marketing year will be approximately 2,089,146 pounds. One half of one percent of this amount would be 10,445 pounds. With the MEE for Scotch spearmint oil determined to be 5,121 pounds, issuing allotment base to two new producers would require 10,242 pounds, which is within the amount of additional allotment base that would be available for the year.

Likewise, the Committee's initial calculation is that the total allotment base for Native spearmint oil during the 2014–2015 marketing year will be approximately 2,371,350 pounds. One half of one percent of this amount would be 11,856 pounds. With the MEE for Native spearmint oil determined to be 5,812 pounds, issuing allotment base to two new producers would require 11,624 pounds, which is within the amount of additional allotment base that would be available for the year.

Based on the above information, the Committee unanimously recommended reducing the number of new producers that would be issued additional allotment base each year from three to two for each class of oil. The Committee also recommended that the additional allotment base issued to new producers not be transferrable for at least five years following issuance. The current retention period prior to transferability is two years. New producers issued additional allotment base under this proposal would continue to be required to submit evidence of an ability to produce and sell oil from such allotment base in the first marketing year following issuance of such base.

The Committee also gave consideration to existing producers with regards to the size of the MEE required to produce spearmint oil and the allocation of additional allotment base. After analyzing the Committee's records, the Committee found that some existing producers hold allotment bases that are below the revised MEE levels. As a result, the Committee unanimously recommended that the additional allotment base that is made available each year to existing producers be temporarily allocated first to those eligible producers who hold allotment bases that are less than the MEE threshold in order to bring their total up to that level.

Under the proposal, existing Scotch spearmint oil producers whose allotment bases are less than 5,121 pounds as of October 17, 2012, who apply and who have the ability to produce additional quantities of spearmint oil, would be issued sufficient additional allotment base to bring them up to the MEE threshold over a three-year period extending through the 2016–2017 marketing year. In addition, existing Native spearmint oil producers who hold allotment bases of less than 5,812 pounds as of October 17, 2012, who apply and who have the ability to produce additional quantities of spearmint oil, would be issued sufficient additional allotment base to bring them up to the MEE threshold over a four-year period extending through the 2017–2018 marketing year.

The Committee estimates there would be 21 producers of Scotch spearmint oil and 30 producers of Native spearmint oil eligible for additional allotment base under the proposal. It is expected that eligible existing producers of both Scotch and Native spearmint oil would apply for the full amount of additional allotment base made available to them. If there is any unallocated additional allotment base remaining for either Scotch spearmint oil during the 2016–

2017 marketing year, or Native spearmint oil during the 2017–2018 marketing year, such amount would be distributed on a prorated basis among all existing producers of each respective class of spearmint oil.

The Committee also recommended that additional allotment base issued to producers under the proposed revised procedure should not be used to replace allotment base that has been previously transferred away by that producer and that additional allotment base issued under the revised procedure not be transferrable for at least five years following issuance.

Since the establishment of the order, one of the Committee's primary objectives has been to help ensure that all spearmint oil producers are economically viable, as evidenced by holding allotment bases that are above the minimum economic threshold required for spearmint oil production. The Committee has worked to meet this objective by regularly determining the size of the MEE and issuing additional allotment base accordingly. Specifically, the Committee has raised the quantity of allotment base issued to new producers, and increased the allotment bases of those existing producers who hold allotment bases that are below the levels that comprise the minimum economic threshold required for spearmint oil production.

Another Committee objective has been to issue as many additional allotment bases as possible to new producers, at levels considered economically viable to each recipient. However, since the order limits the amount of additional allotment base issued to new producers, and because the size of the MEE required for spearmint oil production must be considered, the Committee has found it necessary to limit the number of new producers that are issued additional allotment base each year. Therefore, given the circumstances, the Committee believes the combination of these actions provides the best method available for optimizing the number of new producers that enter and remain in business, and also helps assure that there will continue to be a broad base of spearmint oil production.

The procedure for issuing additional allotment base to new and existing producers has been modified several times since the inception of the order. Between 1982 and 1991, the entire Far West spearmint oil production area was treated as a single region for the purpose of issuing additional allotment base to new producers. The Committee would determine the size and number of economic enterprises of additional allotment base for each class of spearmint oil to be made available to new producers. The additional allotment bases were then issued to new producers drawn from the lot of eligible individuals who had requested additional allotment base.

In 1991, the order's administrative rules and regulations were modified through the rulemaking process to divide the production area into four regions for purposes of issuing additional allotment base to new producers. An equal number of allotment bases were issued to new producers in each region based on the amount of additional allotment base available and the MEE determined by the Committee. Based on the Committee's determinations, this effectively allowed one new producer annually from each of the four regions to be issued additional allotment base, for each class of spearmint oil.

Again in 1997, rulemaking action was taken to reorganize and reduce the number of regions within the Far West production area from four to three. This revision had the effect of reducing the number of new producers that were issued additional allotment bases each year from four to three for each class of spearmint oil. The Committee recommended the revision with the purpose of distributing additional allotment bases within the production area, and to increase the size of allotment bases issued to new producers to correspond to the size of the MEE. The Committee had determined that the size of the MEE for spearmint oil production had increased to a point where there was insufficient additional allotment base to issue economically sufficient quantities of base to new producers in all four regions. By reorganizing and reducing the number of regions to three, there was adequate additional allotment base to issue base to three new producers of each class of spearmint oil. In reaching its recommendation, the Committee weighed the importance of issuing as many additional allotment bases as possible against the need to issue such bases at levels considered economically viable to each recipient.

In 2000, the three regions of the Far West production area were further reduced to two regions through the rulemaking process. However, the number of new producers issued additional allotment bases each year was maintained at three for each class of spearmint oil. As before, the Committee recommended the revision with the purpose of distributing additional allotment bases to new spearmint oil producers throughout the production area.

The proposal to reduce the number of new producers issued additional allotment base each year from three to two for each class of spearmint oil is consistent with previous rulemaking. The Committee's purpose, then and now, is to ensure that a maximum number of eligible new producers are issued additional allotment bases each year at levels that are economically viable to produce each class of spearmint oil.

Consistent with actions taken in the past, the Committee made the recommendation after carefully considering information available from its management records, Federal and state government sources, and industry participants. The Committee also considered the size of the MEE required for the production of each class of spearmint oil, historical statistics relating to the locations of the producers applying for the annual additional allotment base, and other factors, such as number of producers in the regulated production area and the amount of allotment base held by such producers. Based on its review, the Committee believes that the recommended action is the most effective option available in order to continue fulfilling the order's objectives.

Initial Regulatory Flexibility Analysis

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

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

There are eight spearmint oil handlers subject to regulation under the order. In addition, there are approximately 36 producers of Scotch spearmint oil and approximately 91 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as

those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the manufacture and trade of essential oils and the products of essential oils in the international market. In addition, the Committee estimates that 19 of the 36 Scotch spearmint oil producers and 29 of the 91 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, many handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for purposes of weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and, as such, are more at risk from market fluctuations. Such small producers generally need to market their entire annual allotment and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable market and price provides small producing entities with the ability to maintain sufficient cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit small producers more than such provisions benefit large producers.

This proposal would revise the procedure for issuing additional allotment base by reducing the number of additional allotment bases issued to new producers from three to two, for each class of spearmint oil. In addition, this action would increase the required retention period prior to transferability of additional allotment base issued to new producers from two years to five years following issuance.

This proposal would also temporarily change the procedures for the allocation of additional allotment base by class to take into account existing producers that are below the MEE threshold. This revision is intended to help existing small spearmint oil producers by increasing their individual allotment bases to a level that approximates the MEE required for spearmint oil production. The action would help ensure that small existing spearmint oil producers have sufficient allotment base to remain economically viable in the future. Also, this proposal would provide that additional allotment base issued to existing small producers could not be used to replace allotment base which has been previously transferred away. Finally, this action would provide that additional allotment base issued under the revised procedure could not be transferred for at least five years following issuance. The proposed procedure revising the method by which additional allotment base is allocated to existing producers would be in effect temporarily through May 31, 2017, for Scotch spearmint oil, and May 31, 2018, for Native spearmint oil, or until all producers who are eligible and apply have received enough allotment base to bring them up to the respective MEE level for each class of oil. Authority for this action is provided in § 985.53(d)(3) of the order.

At the meeting on November 6, 2013, the Committee discussed the impact of the proposed revisions on handlers and producers in terms of costs and returns. Under the order, the Committee is responsible for determining the size of the MEE required to produce each class of spearmint oil. The Committee determined the MEE size for the 2014–2015 and subsequent marketing years to be 5,121 pounds for Scotch spearmint oil and 5,812 pounds for Native spearmint oil. Taking this information into consideration, the Committee calculated that the number of new producers issued additional allotment bases each year would need to be reduced from three to two for each class of oil. While this action would reduce the number of new producers issued additional allotment bases each year, each new producer would have a larger initial allotment base, thereby enhancing their long term economic viability in the spearmint oil industry.

Additionally, the Committee estimates there are 21 producers of Scotch spearmint oil whose allotment bases are below the MEE threshold and it would take a total of 21,913 pounds of additional allotment base to raise these producers' allotment bases up to the Scotch spearmint oil MEE threshold. Likewise, the Committee estimates there are also 30 producers of Native spearmint oil whose allotment bases are below the MEE level, and it would take a total of 43,456 pounds of additional allotment base to raise these producers' allotment bases to the size of the MEE required to produce Native spearmint oil.

While the amount of additional allotment base necessary to bring all spearmint oil producers' allotment bases up to the MEE threshold is a fraction of the total allotment base, the benefits of the proposed revision would be significant to these small producers, because it would improve their economic viability into the future. Without the revision, small spearmint oil producers are at a greater risk of not being able to continue to produce spearmint oil. Therefore, the benefits of this proposed rule are expected to be greater for small producers than for larger entities.

The Committee discussed several alternatives to the recommendations contained in this proposed rule, including not making any changes to the procedures as currently prescribed in the order. However, the Committee determined that not taking the MEE threshold into consideration when issuing additional base would have negative impacts primarily affecting new and existing small producers. The Committee concluded that the most effective option was to revise the procedure for issuing additional allotment base in order to improve the economic viability of new and existing producers whose allotment bases are below the MEE threshold.

The Committee also considered alternative MEE thresholds before deciding on the levels that were most representative of the production economics for each class of spearmint oil. The Committee considers the size of the MEE for the production of each class of spearmint oil is accurate and appropriate given the information available.

In addition, the Committee considered the length of time that new and existing producers should be expected to hold onto additional allotment base issued under the proposed revised procedure before such allotment base could be transferred. The Committee considered other retention

periods other than the proposed five years, including maintaining the current two year retention period. However, it concluded that a five year retention requirement prior to transfer of additional allotment base issued under the proposed revised procedure was a sufficient period for new and existing producers to demonstrate viability in spearmint oil production and should not present an undue hardship on the producers being issued the additional allotment base.

In its deliberations, the Committee considered all available information, including its determination of the size of the MEE required for spearmint oil production, historical statistics relating to the locations of the producers applying for the annual additional allotment base, and other factors such as the number of producers in the regulated production area and the amount of allotment base held by such producers. Based on those determinations, the full eight-member Committee unanimously recommended revising the procedure for issuing additional allotment base to new and existing spearmint oil producers, for each class of oil, as proposed herein.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements is currently approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Generic Vegetable and Specialty Crops. Upon publication of the final rule, we will submit a Justification of Change to make minor modifications changing the appearance of two forms and adjusting the burden, accordingly.

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

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

In addition, the Committee meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the March 6, 2013, and the November 6, 2013, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because: (1) The 2014–2015 fiscal period begins on June 1, 2014; (2) affected spearmint oil producers need to be informed as soon as possible of any changes in base allotment allocation in order to plan their plantings accordingly; and (3) spearmint oil producers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to previous actions recommended by the Committee and approved by the Secretary.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 985.153, redesignate and revise paragraphs (c)(1)(ii) as (c)(1)(iii) and (c)(2)(ii) as (c)(2)(iv), add new paragraphs (c)(1)(ii), (c)(2)(ii) and (c)(2)(iii), and revise paragraph (d) to read as follows:

§ 985.153 Issuance of additional allotment base to new and existing producers.

* * * * *

(c) * * *

(1) * * *

(ii) The Committee shall review all requests from new producers for additional allotment base made available pursuant to § 985.53(d)(1).

(iii) Each year, the Committee shall determine the size of the minimum economic enterprise required to produce each class of oil. The Committee shall thereafter calculate the number of new producers who will receive allotment base under this section for each class of oil. The Committee shall include that information in its announcements to new producers in each region informing them when to submit requests for allotment base. The Committee shall determine whether the new producers requesting additional base have the ability to produce spearmint oil. The names of all eligible new producers from each region shall be placed in separate lots per class of oil. For each class of oil, separate drawings shall be held from a list of all applicants from Region A and from a list of all applicants from Region B. If, in any marketing year, there are no requests for additional base in a class of oil from eligible new producers in a region, such unallocated additional allotment base shall be issued to an eligible new producer whose name is selected by drawing from a list containing the names of all remaining eligible new producers from the other region for that class of oil. The Committee shall immediately notify each new producer whose name was drawn and issue that producer an allotment base in the appropriate amount. Allotment base issued to new producers under this section shall not be transferred for at least five years following issuance.

(2) * * *

(ii) *Class 1 base.* With respect to the issuance of additional Class 1 allotment base to existing producers for the 2014–2015 through the 2016–2017 marketing years, existing producers with less than 5,121 pounds of allotment base as of October 17, 2012, who request additional allotment base and who have the ability to produce additional quantities of Class 1 spearmint oil, shall be issued additional allotment base sufficient to bring them up to a level not to exceed 5,121 pounds: *Provided,* That such additional Class 1 allotment base shall be allocated to eligible producers on a pro-rata basis from available additional Class 1 allotment base: *Provided further,* That additional allotment base shall not be issued to any person if such additional allotment base would replace all or part of an allotment base that such person has previously transferred to another producer. Additional allotment base in excess of the amount needed to bring eligible producers up to 5,121 pounds of Class 1 allotment base shall be distributed on a prorated basis among all existing producers who apply and who have the ability to produce additional quantities of spearmint oil.

(iii) *Class 3 base.* With respect to the issuance of additional Class 3 allotment base for existing producers for the 2014–2015 through the 2017–2018 marketing years, existing producers with less than

5,812 pounds of allotment base as of October 17, 2012, who request additional allotment base and who have the ability to produce additional quantities of Class 3 spearmint oil, shall be issued additional allotment base sufficient to bring them up to a level not to exceed 5,812 pounds: *Provided,* That such additional Class 3 allotment base shall be allocated to eligible producers on a pro-rata basis from available additional Class 3 allotment base: *Provided further,* That additional allotment base shall not be issued to any person if such additional allotment base would replace all or part of an allotment base that such person has previously transferred to another producer. Additional allotment base in excess of the amount needed to bring eligible producers up to 5,812 pounds of Class 3 allotment base shall be distributed on a prorated basis among all existing producers who apply and who have the ability to produce additional quantities of spearmint oil.

(iv) For each marketing year after 2016–2017 for Class 1 oil and 2017–2018 for Class 3 oil, each existing producer of a class of spearmint oil who requests additional allotment base, and who has the ability to produce additional quantities of that class of spearmint oil, shall be eligible to receive a share of the additional allotment base issued for that class of oil. Additional allotment base issued by the Committee for a class of oil shall be distributed on a prorated basis among the eligible producers for that class of oil. The Committee shall immediately notify each producer who is to receive additional allotment base by issuing that producer an allotment base in the appropriate amount. Allotment base issued to existing producers under this section shall not be transferred for at least two years following issuance, except that additional allotment base allocated pursuant to paragraph (c)(2)(ii) and (c)(2)(iii) of this section shall not be transferred for at least five years following issuance.

(d) The person receiving additional allotment base pursuant to this section shall submit to the Committee evidence of an ability to produce and sell oil from such allotment base in the first marketing year following issuance of such base.

Dated: April 29, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–10132 Filed 5–5–14; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

[NRC–2010–0135]

RIN 3150–AI85

ESBWR Design Certification

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to certify the Economic Simplified Boiling-Water Reactor (ESBWR) standard plant design. The proposed ESBWR design certification rule was published for public comment on March 24, 2011. The NRC is publishing this supplemental proposed rule to provide an opportunity for the public to comment on two matters. The first is proposed changes related to the analysis methodology supporting the ESBWR steam dryer design that were made after the close of the public comment period for the proposed ESBWR design certification rule. The second is the NRC's proposed clarification of its intent to treat 50 referenced documents within Revision 10 of the ESBWR design control document (DCD) as requirements and matters resolved in subsequent licensing and enforcement actions for plants referencing the ESBWR design certification. In addition, the supplemental proposed rule clarifies that the NRC intends to obtain approval for incorporation by reference from the Director of the Office of the Federal Register for the generic DCD and 20 publicly-available documents that are referenced in the DCD that are intended by the NRC to be requirements. The supplemental proposed rule does not offer an opportunity for public comment on this clarification of the NRC's intent. Finally, the supplemental proposed rule updates the version of the DCD (from Revision 9 to Revision 10) which the NRC proposes to obtain approval for incorporation by reference from the Office of the Federal Register. Revision 10 of the DCD was needed to address the previously described matters. The applicant for certification of the ESBWR design is GE-Hitachi Nuclear Energy (GEH).

DATES: Submit comments by June 5, 2014. The NRC will not address any comments received after this date, except as discussed in Section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

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–2010–0135. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals 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 obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: George M. Tartal, telephone: 301–415–0016, email: *George.Tartal@nrc.gov;* or David Misenhimer, telephone: 301–415–6590, email: *David.Misenhimer@nrc.gov.* Both of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2010–0135 when contacting the NRC about the availability of information for this action. You may access publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0135.
- *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.

1. Documents Related To Changes Associated With the Analysis Methodology Supporting the ESBWR Steam Dryer Design

The documents identified in Table 1, relating to the changes associated with the analysis methodology supporting the ESBWR steam dryer design, are available to interested persons who wish to comment on the proposed changes. Some of the documents in Table 1 have two versions: a version which is publicly-available, and the (original and complete) version which is not publicly available because it contains information which is proprietary. If you need to obtain access to the non-public version of a document in order to provide comments on the proposed changes to the analysis methodology supporting the ESBWR steam dryer design, please follow the process described in Section X of the **SUPPLEMENTARY INFORMATION** section of this document. Before requesting access to the non-public version of any document, please obtain the publicly-available version of the document to verify if the information in the publicly-available version of a document is sufficient to allow you to comment on the proposed changes to the analysis methodology supporting the ESBWR steam dryer design.

TABLE 1—DOCUMENTS RELATING TO THE CHANGES ASSOCIATED WITH THE ANALYSIS METHODOLOGY SUPPORTING THE ESBWR STEAM DRYER DESIGN

Document No.	Document title	Publicly-available ADAMS accession No.	Non-publicly available ADAMS accession No.
Supplemental proposed rule documents			
Supplemental Final Safety Evaluation Report	Advanced Supplemental Safety Evaluation Report For The Economic Simplified Boiling-Water Reactor Standard Plant Design.	ML14043A134	ML13330A950
ESBWR DCD, Rev. 10	ESBWR Design Control Document, Revision 10	ML14104A929 (package)	ML14104A153 (package)
NEDO–33312, Rev. 5, NEDE–33312P, Rev. 5	GE Hitachi Nuclear Energy, ''ESBWR Steam Dryer Acoustic Load Definition,'' NEDE–33312P, Class III (Proprietary), Revision 5, December 2013, and NEDO–33312, Class I (Non-proprietary), Revision 5, December 2013.	ML13344B157	ML13344B163
NEDO–33313, Rev. 5 NEDE–33313P, Rev. 5	GE Hitachi Nuclear Energy, ''ESBWR Steam Dryer Structural Evaluation,'' NEDE–33313P, Class III (Proprietary), Revision 5, December 2013, and NEDO–33313, Class I (Non-proprietary), Revision 5, December 2013.	ML13344B158	ML13344B164
NEDO–33408, Rev. 5, NEDE–33408P, Rev. 5	GE Hitachi Nuclear Energy, ''ESBWR Steam Dryer—Plant Based Load Evaluation Methodology, PBLE01 Model Description,'' NEDE–33408P, Class III (Proprietary), Revision 5, December 2013, and NEDO–33408, Class I (Non-proprietary), Revision 5, December 2013.	ML13344B159	ML13344B176 (part 1) ML13344B175 (part 2)

TABLE 1—DOCUMENTS RELATING TO THE CHANGES ASSOCIATED WITH THE ANALYSIS METHODOLOGY SUPPORTING THE ESBWR STEAM DRYER DESIGN—Continued

Document No.	Document title	Publicly-available ADAMS accession No.	Non-publicly available ADAMS accession No.
Other NRC documents relevant to the safety review of the ESBWR steam dryer analysis methodology			
N/A	Letter from Michael E. Mayfield, NRC, to Gerald G. Head, GEH, ''Economic Simplified Boiling Water Reactor Design Certification Rulemaking Schedule,'' January 19, 2012.	ML120170304	N/A
N/A	NRC Staff Audit of Steam Dryer Design Methodology Supporting Chapter 3 of the Economic Simplified Boiling Water Reactor Design Certification Document, Revision #1 (Audit Plan), March 20, 2012 (PUBLIC), March 20, 2012 (PROPRIETARY).	ML120790454	ML120760509
N/A	Audit Report of ESBWR Steam Dryer Design Methodology Supporting Chapter 3 of ESBWR Design Control Document (Audit Report), June 14, 2012 (PUBLIC), May 17, 2012 (PROPRIETARY).	ML12166A127	ML12137A497
N/A	Letter from Kerri Kavanagh, NRC, to Gerald G. Head, GEH, ''Quality Assurance Implementation Inspection of Economic Simplified Boiling Water Reactor,'' March 14, 2012.	ML12073A165	N/A
NRC Inspection Report 052010/2012–201	NRC Inspection Report 05200010/2012–201 and Notice of Violation, July 6, 2012 (PUBLIC), May 31, 2012 (PROPRIETARY).	ML12187A102	ML12129A438

Table 1 Note: Documents whose document number contains ''NEDC'' or ''NEDE'' are non-public and documents whose document number contains ''NEDO'' are public.

2. 50 Non-Public Documents Which the NRC Regards as Requirements and Are Matters Resolved

In addition to Revision 10 of the ESBWR DCD, the non-public versions of the 50 documents identified in Table 2 are documents which the NRC regards as requirements and are matters resolved under Paragraph VI, ISSUE RESOLUTION, of the ESBWR Design Certification Rule. The documents in Table 2 are available to interested persons who wish to comment on the NRC's proposed clarification of its intent to treat these non-public documents as requirements and matters resolved in subsequent licensing and enforcement actions for plants referencing the ESBWR design certification. The NRC notes that three of the documents in Table 2 related to the ESBWR steam dryer are the same documents described in Section III.A and listed in Table 1 of the **SUPPLEMENTARY INFORMATION** section of this document. Accordingly, the NRC regards these three documents as requirements and are matters resolved under Paragraph VI, ISSUE RESOLUTION, of the ESBWR Design Certification Rule.

All of the documents in Table 2 have two versions: A version which is publicly-available, and the (original and complete) version which is not publicly available because it contains information which is either Sensitive Unclassified Non-Safeguards Information (SUNSI) (including SUNSI constituting ''proprietary information'' [1]), or Safeguards Information (SGI) under Section 147 of the Atomic Energy Act of 1954, as amended. If you need to obtain access to the non-public document in order to provide comments on the NRC's proposed clarification of its intent to treat the 50 documents in Table 2 as matters resolved in subsequent licensing and enforcement actions for plants referencing the ESBWR design certification, please follow the process described in Section X of the **SUPPLEMENTARY INFORMATION** section of this document. Before requesting access to any non-public document, please obtain the publicly-available version of the document to verify if the information in the publicly-available version of a document is sufficient to allow you to comment on the NRC's proposed clarification of its intent to treat the 50 documents in Table 2 as matters resolved in subsequent licensing and enforcement actions for plants referencing the ESBWR design certification.

[1] For purposes of this discussion, ''proprietary information'' constitutes trade secrets or commercial or financial information that are privileged or confidential, as those terms are used under the Freedom of Information Act and the NRC's implementing regulation at part 9 of Title 10 of the *Code of Federal Regulations.*

TABLE 2—50 NON-PUBLIC DOCUMENTS WHICH THE NRC REGARDS AS REQUIREMENTS AND ARE MATTERS RESOLVED UNDER PARAGRAPH VI, ISSUE RESOLUTION, OF THE ESBWR DESIGN CERTIFICATION RULE

Document No.	Document title	Publicly-available ADAMS accession No.	Non-publicly available ADAMS accession No.
NEDE–33391, NEDO–33391	GE Hitachi Nuclear Energy, ''ESBWR Safeguards Assessment Report,'' NEDE–33391, Class III (Safeguards, Security-Related, and Proprietary), Revision 3, March 2010, and NEDO–33391, Class I (Non-safeguards, Non-security related, and Non-proprietary), Revision 3, March 2014.	ML14093A138	N/A (Safeguards information cannot be placed in ADAMS)
NEDC–31959P, NEDO–31959	GE Nuclear Energy, ''Fuel Rod Thermal-Mechanical Analysis Methodology (GSTRM),'' NEDC–31959P (Proprietary), April 1991, and NEDO–31959 (Non-proprietary), April 1991.	ML14093A145	ML14093A146
NEDC–32992P–A, NEDO–32992–A.	GE Nuclear Energy, J. S. Post and A. K. Chung, ''ODYSY Application for Stability Licensing Calculations,'' NEDC–32992P–A, Class III (Proprietary), July 2001, and NEDO–32992–A, Class I (Non-proprietary), July 2001.	ML14093A250	ML012610605
NEDC–33139P–A, NEDO–33139–A.	Global Nuclear Fuel, ''Cladding Creep Collapse,'' NEDC–33139P–A, Class III (Proprietary), July 2005, and NEDO–33139–A, Class I (Non-proprietary), July 2005.	ML14094A227	ML14094A228
NEDE–31758P–A, NEDO–31758–A.	GE Nuclear Energy, ''GE Marathon Control Rod Assembly,'' NEDE–31758P–A (Proprietary), October 1991, and NEDO–31758–A (Non-proprietary), October 1991.	ML14093A142	ML14093A143
NEDC–32084P–A, NEDO–32084–A.	GE Nuclear Energy, ''TASC–03A, A Computer Program for Transient Analysis of a Single Channel,'' NEDC–32084P–A, Revision 2, Class III (Proprietary), July 2002, and NEDO–32084–A, Class 1 (Non-proprietary), Revision 2, September 2002.	ML100220484	ML100220485
NEDC–32601 P–A, NEDO–32601–A.	GE Nuclear Energy, ''Methodology and Uncertainties for Safety Limit MCPR Evaluations,'' NEDC–32601P–A, Class III (Proprietary), and NEDO–32601–A, Class I (Non-proprietary), August 1999.	ML14093A216	ML003740145
NEDC–32983P–A, NEDO–32983–A.	GE Nuclear Energy, ''GE Methodology for Reactor Pressure Vessel Fast Neutron Flux Evaluations,'' Licensing Topical Report NEDC–32983P–A, Class III (Proprietary), Revision 2, January 2006, and NEDO–32983–A, Class I (Non-proprietary), Revision 2, January 2006.	ML072480121	ML072480125
NEDC–33075P–A, NEDO–33075–A.	GE Hitachi Nuclear Energy, ''General Electric Boiling Water Reactor Detect and Suppress Solution—Confirmation Density,'' NEDC–33075P–A, Class III (Proprietary), and NEDO–33075–A, Class I (Non-proprietary), Revision 6, January 2008.	ML080310396	ML080310402
NEDC–33079P, NEDO–33079	GE Nuclear Energy, ''ESBWR Test and Analysis Program Description,'' NEDC–33079P, Class III (Proprietary), Revision 1, March 2005, and NEDO–33079, Class I (Non-proprietary), Revision 1, November 2005.	ML053460471	ML051390233
NEDC–33083P–A, NEDO–33083–A.	GE Nuclear Energy, ''TRACG Application for ESBWR,'' NEDC–33083P–A, Revision 1, Class III (Proprietary), September 2010, and NEDO–33083–A, Revision 1, Class I (Non-proprietary), September 2010.	ML102770606	ML102770608
NEDC–33237P–A, NEDO–33237–A.	Global Nuclear Fuel, ''GE14 for ESBWR—Critical Power Correlation, Uncertainty, and OLMCPR Development,'' NEDC–33237P–A, Revision 5, Class III (Proprietary), and NEDO–33237–A, Revision 5, Class I (Non-proprietary), September 2010.	ML102770246	ML102770244
NEDC–33238P, NEDO–33238	Global Nuclear Fuel, ''GE14 Pressure Drop Characteristics,'' NEDC–33238P, Class III (Proprietary), and NEDO–33238, Class I (Non-proprietary), December 2005.	ML060050328	ML060050330
NEDC–33239P–A, NEDO–33239P–A.	Global Nuclear Fuel, ''GE14 for ESBWR Nuclear Design Report,'' NEDC–33239P–A, Class III (Proprietary), and NEDO–33239–A, Class I (Non-proprietary), Revision 5, October 2010.	ML102800405	ML102800408 (part 1) ML102800425 (part 2)
NEDC–33240P–A, NEDO–33240–A.	Global Nuclear Fuel, ''GE14E Fuel Assembly Mechanical Design Report,'' NEDC–33240P–A, Revision 1, Class III (Proprietary), and NEDO–33240–A, Revision 1, Class I (Non-proprietary), September 2010.	ML102770060	ML102770061
NEDC–33242P–A, NEDO–33242–A.	Global Nuclear Fuel, ''GE14 for ESBWR Fuel Rod Thermal-Mechanical Design Report,'' NEDC–33242P–A, Revision 2, Class III (Proprietary), and NEDO–33242–A, Revision 2, Class I (Non-proprietary), September 2010.	ML102730885	ML102730886
NEDC–33326P–A, NEDO–33326–A.	Global Nuclear Fuel, ''GE14E for ESBWR Initial Core Nuclear Design Report,'' NEDC–33326P–A, Revision 1, Class III (Proprietary), and NEDO–33326–A, Revision 1, Class I (Non-proprietary), September 2010.	ML102740191	ML102740193 (part 1) ML102740194 (part 2)

TABLE 2—50 NON-PUBLIC DOCUMENTS WHICH THE NRC REGARDS AS REQUIREMENTS AND ARE MATTERS RESOLVED UNDER PARAGRAPH VI, ISSUE RESOLUTION, OF THE ESBWR DESIGN CERTIFICATION RULE—Continued

Document No.	Document title	Publicly-available ADAMS accession No.	Non-publicly available ADAMS accession No.
NEDC–33374P–A, NEDO–33374–A.	GE-Hitachi Nuclear Energy, ''Safety Analysis Report for Fuel Storage Racks Criticality Analysis for ESBWR Plants,'' NEDC–33374P–A, Revision 4, Class III (Proprietary), September 2010, and NEDO–33374–A, Revision 4, Class I (Non-proprietary), September 2010.	ML102860687	ML102860688
NEDC–33456P, NEDO–33456	Global Nuclear Fuel, ''Full-Scale Pressure Drop Testing for a Simulated GE14E Fuel Bundle,'' NEDC–33456P, Class III (Proprietary), and NEDO–33456, Class I (Non-proprietary), Revision 0, March 2009.	ML090920867	ML090920868
NEDE–10958–PA, NEDO–10958–A.	General Electric Company, ''General Electric Thermal Analysis Basis Data, Correlation and Design Application,'' NEDE–10958–PA, Class III (Proprietary), and ''General Electric BWR Thermal Analysis Basis (GETAB): Data, Correlation and Design Application,'' NEDO–10958–A, Class I (Non-proprietary), January 1977.	ML102290144	ML092820214
NEDE–24011–P–A–16, NEDO–24011–A–16.	Global Nuclear Fuel, ''GESTAR II General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–16, Class III (Proprietary), and NEDO–24011–A–16, Class I (Non-proprietary), Revision 16, October 2007.	ML091340077	ML091340081
NEDE–24011–P–A–US–16, NEDO–24011–A–US–16.	Global Nuclear Fuel, ''GESTAR II General Electric Standard Application for Reactor Fuel, Supplement for United States,'' NEDE–24011–P–A–US–16, Class III (Proprietary), and NEDO–24011–A–US–16, Class I (Non-proprietary), Revision 16, October 2007.	ML091340080	ML091340082
NEDE–30130–P–A, NEDO–30130–A.	General Electric Company, ''Steady State Nuclear Methods,'' NEDE–30130–P–A, Class III (Proprietary), April 1985, and NEDO–30130–A, Class I (Non-proprietary), May 1985.	ML14104A064	ML070400570
NEDE–31152P, NEDO–31152	Global Nuclear Fuel, ''Global Nuclear Fuels Fuel Bundle Designs,'' NEDE–31152P, Revision 9, Class III (Proprietary), May 2007, and NEDO–33152, Revision 9, Class I (Non-proprietary), May 2007.	ML071510287	ML071510289
NEDE–32176P, NEDO–32176	GE Hitachi Nuclear Energy, J. G. M. Andersen, et al., ''TRACG Model Description,'' NEDE–32176P, Revision 4, Class III (Proprietary), January 2008, and NEDO–32176, Class I (Non-proprietary), Revision 4, January 2008.	ML080370271	ML080370276
NEDE–33083 Supplement 1P–A, NEDO–33083 Supplement 1–A.	GE Hitachi Nuclear Energy, B.S. Shiralkar, et al, ''TRACG Application for ESBWR Stability Analysis,'' NEDE–33083, Supplement 1P–A, Revision 2, Class III (Proprietary), September 2010, and NEDO–33083, Supplement 1–A, Revision 2, Class I (Non-proprietary), September 2010.	ML102770552	ML102770550
NEDE–33083 Supplement 2P–A, NEDO–33083 Supplement 2–A.	GE Hitachi Nuclear Energy, ''TRACG Application for ESBWR Anticipated Transient Without Scram Analyses,'' NEDE–33083, Supplement 2P–A, Revision 2, Class III (Proprietary), October 2010 and NEDO–33083, Supplement 2–A, Revision 2, Class I (Non-proprietary), October 2010.	ML103000353	ML103000355
NEDE–33083 Supplement 3P–A, NEDO–33083 Supplement 3–A.	GE Hitachi Nuclear Energy, ''TRACG Application for ESBWR Transient Analysis,'' NEDE–33083, Supplement 3P–A, Revision 1, Class III (Proprietary), and NEDO–33083, Supplement 3–A, Revision 1, Class I (Non-proprietary), September 2010.	ML102770606	ML102770608
NEDE–33197P–A, NEDO–33197–A.	GE Hitachi Nuclear Energy, ''Gamma Thermometer System for LPRM Calibration and Power Shape Monitoring,'' NEDE–33197P–A, Revision 3, Class III (Proprietary), and NEDO–33197–A, Revision 3, Class I, (Non-proprietary), October 2010.	ML102810320	ML102810341
NEDE–33217P, NEDO–33217	GE Hitachi Nuclear Energy, ''ESBWR Man-Machine Interface System and Human Factors Engineering Implementation Plan,'' NEDE–33217P, Class III (Proprietary), and NEDO–33217, Class I (Non-proprietary), Revision 6, February 2010.	ML100480284	ML100480285
NEDE–33220P, NEDO–33220	GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Allocation of Function Implementation Plan,'' NEDE–33220P, Class III (Proprietary), and NEDO–33220, Class I (Non-proprietary), Revision 4, February 2010.	ML100480209	ML100480202
NEDE–33221P, NEDO–33221	GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Task Analysis Implementation Plan,'' NEDE–33221P, Class III (Proprietary), and NEDO–33221, Class I (Non-proprietary), Revision 4, February 2010.	ML100480212	ML100480213
NEDE–33226P, NEDO–33226	GE Hitachi Nuclear Energy, ''ESBWR—Software Management Program Manual,'' NEDE–33226P, Class III (Proprietary), Revision 5, February 2010, and NEDO–33226, Class I (Non-proprietary), Revision 5, February 2010.	ML100550837	ML100550844

TABLE 2—50 NON-PUBLIC DOCUMENTS WHICH THE NRC REGARDS AS REQUIREMENTS AND ARE MATTERS RESOLVED UNDER PARAGRAPH VI, ISSUE RESOLUTION, OF THE ESBWR DESIGN CERTIFICATION RULE—Continued

Document No.	Document title	Publicly-available ADAMS accession No.	Non-publicly available ADAMS accession No.
NEDE–33243P–A, NEDO–33243–A.	GE Hitachi Nuclear Energy, ''ESBWR Control Rod Nuclear Design,'' NEDE–33243P–A, Revision 2, Class III (Proprietary), September 2010, and NEDO–33243- A, Revision 2, Class I (Non-proprietary), September 2010.	ML102740171	ML102740178
NEDE–33244P–A, NEDO–33244–A.	GE Hitachi Nuclear Energy, ''ESBWR Marathon Control Rod Mechanical Design Report,'' NEDE–33244P–A, Class III (Proprietary), Revision 2, September 2010, and NEDO–33244–A, Revision 2, Class I (Non-proprietary), September 2010.	ML102770208	ML102770209
NEDE–33245P, NEDO–33245	GE Hitachi Nuclear Energy, ''ESBWR—Software Quality Assurance Program Manual,'' NEDE–33245P, Class III (Proprietary), Revision 5, February 2010, and NEDO–33245, Class I (Non-proprietary), Revision 5, February 2010.	ML100550839	ML100550847
NEDE–33259P–A, NEDO–33259–A.	GE Hitachi Nuclear Energy, ''Reactor Internals Flow Induced Vibration Program,'' NEDE–33259P–A, Class III (Proprietary), Revision 3, October 2010, and NEDO–33259–A, Class I (Non-proprietary), Revision 3, October 2010.	ML102920241	ML102920248
NEDE–33261P, NEDO–33261	GE Hitachi Nuclear Energy, ''ESBWR Containment Load Definition,'' NEDE–33261P, Class III (Proprietary), and NEDO–33261, Class I (Non-proprietary), Revision 2, June 2008.	ML082600720	ML082600721
NEDE–33268P, NEDO–33268	GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Human-System Interface Design Implementation Plan,'' NEDE–33268P, Class III (Proprietary), and NEDO–33268, Class I (Non-proprietary), Revision 5, February 2010.	ML100480179	ML100480180
NEDE–33276P, NEDO–33276	GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Verification and Validation Implementation Plan,'' NEDE–33276P, Class III (Proprietary), and NEDO–33276, Class I (Non-proprietary), Revision 4, February 2010.	ML100480182	ML100480183
NEDE–33295P, NEDO–33295	GE Hitachi Nuclear Energy, ''ESBWR Cyber Security Program Plan,'' NEDE–33295P, Class III (Proprietary), Revision 2, September 2010, and NEDO–33295, Class I (Non-proprietary), Revision 2, September 2010.	ML102880103	ML102880104
NEDE–33304P, NEDO–33304	GE Hitachi Nuclear Energy, ''GEH ESBWR Setpoint Methodology,'' NEDE–33304P, Class III (Proprietary), and NEDO–33304, Class I (Non-proprietary), Revision 4, May 2010.	ML101450251	ML101450253
NEDE–33312P, NEDO–33312	GE Hitachi Nuclear Energy, ''ESBWR Steam Dryer Acoustic Load Definition,'' NEDE–33312P, Class III (Proprietary), Revision 5, December 2013, and NEDO–33312, Class I (Non-proprietary), Revision 5, December 2013.	ML13344B157	ML13344B163
NEDE–33313P, NEDO–33313	GE Hitachi Nuclear Energy, ''ESBWR Steam Dryer Structural Evaluation,'' NEDE–33313P, Class III (Proprietary), Revision 5, December 2013, and NEDO–33313, Class I (Non-proprietary), Revision 5, December 2013.	ML13344B158	ML13344B164
NEDE–33408P, NEDO–33408	GE Hitachi Nuclear Energy, ''ESBWR Steam Dryer—Plant Based Load Evaluation Methodology, PBLE01 Model Description,'' NEDE–33408P, Class III (Proprietary), Revision 5, December 2013, and NEDO–33408, Class I (Non-proprietary), Revision 5, December 2013.	ML13344B159	ML13344B176 (part 1) ML13344B175 (part 2)
NEDE–33440P, NEDO–33440	GE Hitachi Nuclear Energy ''ESBWR Safety Analysis– Additional Information,'' NEDE–33440P, Class III (Proprietary), and NEDO–33440, Class I (Non-proprietary), Revision 2, March 2010.	ML100920316	ML100920317 (part 1) ML100920318 (part 2)
NEDE–33516P–A, NEDO–33516–A.	GE Hitachi Nuclear Energy, ''ESBWR Qualification Plan Requirements for a 72-Hour Duty Cycle Battery,'' NEDE–33516P–A, Revision 2, Class III (Proprietary), September 2010, and NEDO–33516–A, Revision 2, Class I (Non-proprietary), September 2010.	ML102880499	ML102880500
NEDE–33536P, NEDO–33536	GE Hitachi Nuclear Energy, ''Control Building and Reactor Building Environmental Temperature Analysis for ESBWR,'' NEDE–33536P, Class III (Security-Related and Proprietary), Revision 1, October 2010, and NEDO–33536, Class I (Non-security Related and Non-proprietary), Revision 1, October 2010.	ML102780329	ML102780330
NEDE–33572P, NEDO–33572	GE Hitachi Nuclear Energy, ''ESBWR ICS and PCCS Condenser Combustible Gas Mitigation and Structural Evaluation,'' NEDE–33572P, Class II (Proprietary), Revision 3, September 2010, and NEDO–33572, Revision 3, Class I (Non-proprietary), September 2010.	ML102740579	ML102740566

TABLE 2—50 NON-PUBLIC DOCUMENTS WHICH THE NRC REGARDS AS REQUIREMENTS AND ARE MATTERS RESOLVED UNDER PARAGRAPH VI, ISSUE RESOLUTION, OF THE ESBWR DESIGN CERTIFICATION RULE—Continued

Document No.	Document title	Publicly-available ADAMS accession No.	Non-publicly available ADAMS accession No.
Letter w/attachment	Letter from R. J. Reda (GE) to R. C. Jones, Jr. (NRC), MFN 098–96, ''Implementation of Improved Steady-State Nuclear Methods,'' Class III (Proprietary), July 2, 1996, and Letter from J. G. Head (GEH) to NRC Document Control Desk, MFN 098–96 Supplement 1, Class I (Non-proprietary), March 31, 2014.	ML14093A140	ML14094A240

Table 2 Note: Documents whose document number contains ''NEDC'' or ''NEDE'' are non-public and documents whose document number contains ''NEDO'' are public.

Throughout the development of the ESBWR design certification rule, the NRC may post additional documents related to this rule, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2010–0135. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2010–0135); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Documents that are not publicly available because they are considered to be SUNSI or SGI may be available to interested persons who may wish to comment on the changes associated with the analysis methodology supporting the ESBWR steam dryer design. Such persons shall follow the procedures described in Section X of the **SUPPLEMENTARY INFORMATION** section of this document in order to obtain access to those documents.

B. Additional Information on Submitting Comments

General Information

Please include Docket ID NRC–2010–0135 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

Comments Based Upon a Review of Non-Public Documents Obtained Under the Procedures in Section X of the **SUPPLEMENTARY INFORMATION** Section of This Document

The NRC strongly encourages commenters, submitting comments based upon a review of non-public documents to which the commenter obtained access under the procedures in Section X of the **SUPPLEMENTARY INFORMATION** section of this document, to avoid submitting comments with non-public information derived from those non-public documents. In many cases, effective arguments may be presented by referring to the location of relevant information in those documents. In other cases, a summary of the key information in the document, and a reference to the portion of the document supporting the comment, will provide adequate basis for the comment without disclosing non-public information. However, if the comment must include non-public information, the commenter must submit the comments in accordance with § 2.390 of Title 10 of the *Code of Federal Regulations* (10 CFR). The NRC recommends preparing two versions of your comment submission—one public and one non-public, and submitting an affidavit with your comment submission explaining, with specificity, why the information in your comment submission should be regarded as non-public.

Scope of Comments

The NRC is limiting the scope of the supplemental proposed rule to two areas, which are further discussed in Section III of the **SUPPLEMENTARY INFORMATION** section of this document:

- Proposed changes related to the analysis methodology supporting the ESBWR steam dryer design that were made after the close of the public comment period for the proposed ESBWR design certification rule (76 FR 16549; March 24, 2011).
- The NRC's proposed clarification of its intent to treat 50 non-public documents referenced in the ESBWR DCD as requirements and matters resolved in subsequent licensing and enforcement actions for plants referencing the ESBWR design certification.

The NRC will not address in a final rule any comments submitted that are outside the scope of this supplemental proposed rule. For example, comments on Revision 10 of the ESBWR DCD which do not relate to the changes in the analysis methodology supporting the ESBWR steam dryer design which were made after the close of the public comment period for the proposed ESBWR design certification rule, would be regarded as outside the scope of the commenting opportunity with respect to the steam dryer analysis methodology.

The NRC notes that some of the documents listed in Tables 1 and 2 in Section I.A of the **SUPPLEMENTARY INFORMATION** section of this document contain SUNSI, SGI, or proprietary information and, therefore, are not publicly available. For each of those non-publicly available documents, GEH has created a publicly-available version of the document. If a commenter needs to review the material in a non-publicly available document in order to submit comments, the commenter should first review the publicly-available version of the document. If the commenter determines, after reviewing the publicly-available version, that access to the non-public document is needed in order to provide meaningful comments within the scope of comments as previously described, then the

commenter should seek access to the non-public document in accordance with the procedures in Section X of the **SUPPLEMENTARY INFORMATION** section of this document.

Late-filed Comments

The NRC will not be obligated to address any comments received after June 5, 2014, nor will the NRC entertain any requests for extension of the public comment period unless the commenter is approved to access SUNSI or SGI as described in Section X of the **SUPPLEMENTARY INFORMATION** section of this document, because of the substantial delays in the ESBWR rulemaking. If a commenter is approved to access SUNSI or SGI, the public comment period will be extended exclusively for that commenter, but limited to the matters for which access to SUNSI or SGI is necessary to make informed comments.

II. Background

ESBWR Design Certification and March 2011 Proposed Rule

Subpart B of 10 CFR part 52 sets forth the process for obtaining standard design certifications. On August 24, 2005 (70 FR 56745; September 28, 2005), in accordance with subpart B of 10 CFR part 52, GEH submitted its application for certification of the ESBWR standard plant design to the NRC. The NRC formally accepted the application as a docketed application for design certification (Docket No. 52–010) on December 1, 2005 (70 FR 73311; December 9, 2005). The pre-application information submitted before the NRC formally accepted the application can be found in ADAMS under Docket No. PROJ0717 (Project No. 717).

The application for design certification of the ESBWR design has been referenced in the following combined license (COL) applications as of the date of this document: (1) Detroit Edison Company, Fermi Unit 3, Docket No. 52–033 (73 FR 73350; December 2, 2008); (2) Dominion Virginia Power, North Anna Unit 3, Docket No. 52–017 (73 FR 6528; February 4, 2008); (3) Entergy Operations, Inc., Grand Gulf Unit 3, Docket No. 52–024 (73 FR 22180; April 24, 2008) (APPLICATION SUSPENDED); (4) Entergy Operations, Inc., River Bend Unit 3, Docket No. 52–036 (73 FR 75141; December 10, 2008) (APPLICATION SUSPENDED); and (5) Exelon Nuclear Texas Holdings, LLC, Victoria County Station Units 1 and 2, Docket Nos. 52–31 and 52–032 (73 FR 66059; November 6, 2008) (APPLICATION WITHDRAWN).

On March 24, 2011 (76 FR 16549), the NRC published a proposed rule that would certify the ESBWR design in the Commission's regulations. The public comment period closed on June 7, 2011. The NRC received six comment submissions from members of the public. In addition, on September 9, 2011, the Commission issued a *Memorandum and Order,* CLI–11–05, 74 NRC 141, referring these comment submissions to the NRC staff for consideration as comments on the proposed ESBWR design certification rule. *Id.* at 176.

Issues on the Analytical Methodology for Design of the ESBWR Steam Dryer

Following the close of the public comment period on the proposed ESBWR design certification rule, the NRC staff identified issues applicable to the ESBWR steam dryer structural analysis. These issues were the result of NRC consideration of information obtained during the NRC's review of a license amendment request for a power uprate at an operating boiling-waterreactor (BWR) nuclear power plant. As this BWR power uprate used the same methodology for steam dryer analysis as was being proposed for the ESBWR, the NRC staff needed to resolve these issues before moving forward with the ESBWR design. The NRC informed GEH by letter dated January 19, 2012 (ADAMS Accession No. ML120170304), that it identified issues ''relevant to the conclusions in its Final Safety Evaluation Report (FSER) [ADAMS Accession No. ML103070392] issued in support of the ESBWR [design certification] rulemaking. Specifically, errors have been identified in the benchmarking GEH used as a basis for determining fluctuating pressure loads on the steam dryer, and errors have been identified in a number of GEH's modeling parameters. These errors may affect the conclusions in the staff's FSER and need to be addressed before we complete the ESBWR [design certification].'' Consequently, the NRC staff informed GEH that the rulemaking was on hold until the errors were adequately addressed.

In March 2012, the NRC staff conducted an audit of the GEH steam dryer analysis methodology at the GEH facility in Wilmington, North Carolina. In addition, in April 2012, the NRC staff performed a vendor inspection at that facility of the quality assurance program for GEH engineering methods. As a result of the audit and inspection, the NRC staff submitted requests for additional information (RAIs) to support a supplemental FSER. In addressing these RAIs, GEH made a number of significant changes in Revision 10 to the ESBWR DCD and in the supporting documentation. Those changes did not result in modifications to the overall design of the steam dryer but did result in replacing relevant sections in the DCD, withdrawing referenced licensing topical reports (LTRs) and replacing them with new engineering reports, designating the new engineering reports as Tier 2* information, and adding new Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC). References to publicly-available documents associated with the development of the supplemental FSER, including RAIs and responses, public meeting notices and summaries, etc., are listed in the NRC's supplemental FSER (ADAMS Accession No. ML14043A134). Because these changes to the ESBWR steam dryer description in the DCD and supporting documentation occurred after the close of the public comment opportunity on the proposed ESBWR design certification rule, the NRC is publishing this supplemental proposed rule to provide an opportunity for public comment on these changes.

The NRC notes that GEH made several other changes in Revision 10 to the ESBWR DCD which are not related to the ESBWR steam dryer analysis methodology. The NRC is not providing an opportunity for public comments on these other changes, and the NRC will explain in a final ESBWR design certification rule why these additional ESBWR DCD changes did not require a supplemental comment opportunity. The NRC will not be obligated to provide responses to any comments submitted in this supplemental comment opportunity which address matters unrelated to the changes to the ESBWR steam dryer analysis methodology.

III. Discussion

This section describes the changes that the NRC made to the proposed ESBWR design certification rule text and the changes GEH made to the analysis methodology supporting the ESBWR steam dryer design. A more detailed description of the changes to the analysis methodology and compliance with the NRC's regulations can be found in the NRC's supplemental FSER. This section also clarifies the NRC's intention that 50 non-public documents referenced in the ESBWR DCD are considered to be requirements and matters resolved under paragraph VI, ISSUE RESOLUTION, of the ESBWR design certification rule. This section also clarifies which documents would contain binding requirements for the ESBWR design and the NRC's intention

to clarify in the final ESBWR design certification rule that these documents would be incorporated by reference.

A. ESBWR Steam Dryer Design

1. Correction of Information Related to the Steam Dryer Design

Following the issuance of the FSER for the ESBWR design certification on March 9, 2011, the NRC staff identified issues applicable to the ESBWR steam dryer structural analysis based on information obtained during the NRC's review of a license amendment request for a power uprate at an operating BWR nuclear power plant. Consequently, the NRC staff communicated to GEH that it was concerned that the basis for its FSER on the ESBWR DCD and the safety evaluation reports on these topical reports was no longer valid. Specifically, errors were identified in the benchmarking GEH used as a basis for determining fluctuating pressure loading on the steam dryer, and errors were identified in a number of GEH's modeling parameters. The NRC staff subsequently issued RAIs and held multiple public meetings to identify issues and clarify the steam dryer analysis methodology. The NRC staff also conducted an audit of the GEH steam dryer analysis methodology at the GEH facility in Wilmington, North Carolina, in March 2012, and a vendor inspection at that facility of the quality assurance program for GEH engineering methods in April 2012.

To document the resolution of those issues, GEH revised the ESBWR DCD by removing references to the LTRs which address the ESBWR steam dryer structural evaluation and to reference new engineering reports that describe the updated ESBWR steam dryer analysis methodology. The following four LTRs were removed by GEH (public and proprietary versions cited):

- NEDE–33313 and NEDE–33313P, ''ESBWR Steam Dryer Structural Evaluation,'' all revisions;
- NEDE–33312 and NEDE–33312P, ''ESBWR Steam Dryer Acoustic Load Definition,'' all revisions;
- NEDC–33408 and NEDC–33408P, ''ESBWR Steam Dryer-Plant Based Load Evaluation Methodology,'' all revisions; and
- NEDC–33408, Supplement 1, and NEDC–33408P, Supplement 1, ''ESBWR Steam Dryer—Plant Based Load Evaluation Methodology Supplement 1,'' all revisions.

To replace the information formerly provided by the four LTRs, GEH revised the ESBWR DCD to reference three new engineering reports (public and proprietary versions cited):

- NEDO–33312 and NEDE–33312P, Rev. 5, December 2013, ''ESBWR Steam Dryer Acoustic Load Definition;''
- NEDO–33408 and NEDE–33408P, Rev. 5, December 2013, ''ESBWR Steam Dryer—Plant Based Load Evaluation Methodology—PBLE01 Model Description;'' and
- NEDO–33313 and NEDE–33313P, Rev. 5, December 2013, ''ESBWR Steam Dryer Structural Evaluation.''

The following DCD sections were revised by GEH to correct errors and provide additional information related to the design and evaluation of the structural integrity of the ESBWR reactors pressure vessel internals related to the steam dryer:

- Tier 1, Chapter 2, Section 2.1, ''Nuclear Steam Supply;''
- Tier 1, Chapter 2, Section 2.1.1, ''Reactor Pressure Vessel and Internals;''
- Tier 2, Chapter 1, Tables 1.6–1, 1.9–21, and 1D–1;
- Tier 2, Chapter 3, Section 3.9.2, ''Dynamic Testing and Analysis of Systems, Components and Equipment;''
- Tier 2, Chapter 3, Section 3.9.5, ''Reactor Pressure Vessel Internals;''
- Tier 2, Chapter 3, Section 3.9.9, ''COL Information;''
- Tier 2, Chapter 3, Section 3.9.10, ''References;'' and
- Tier 2, Chapter 3, Appendix 3L, ''Reactor Internals Flow Induced Vibration Program.''

The revisions to these documents enhance the detailed design and evaluation process related to the structural integrity of the steam dryer in several ways. For example, the source of data used to benchmark the analysis methodology was changed in Revision 10 to the ESBWR DCD to a different operating nuclear power plant for which the NRC recently authorized an extended power uprate. In addition, the details of the design methodology were made more restrictive in several respects, including limiting the analysis method for fillet welds and using more conservative data and assumptions. The changes also designate additional information as Tier 2* and clarify regulatory process steps for completing the detailed design and startup testing of the ESBWR steam dryer, including COL information items to be satisfied by a COL applicant, ITAAC to be met by a COL licensee, and model license conditions that can be proposed by a COL applicant. References to the relevant documents associated with the changes made to the steam dryer analysis methodology are listed in Section I.A of the **SUPPLEMENTARY INFORMATION** section of this document.

The NRC staff has reviewed the revised ESBWR DCD sections, new GEH engineering reports, and RAI responses and prepared a supplemental FSER. The supplemental FSER concludes that Revision 10 to the ESBWR DCD and the referenced engineering reports provide sufficient information to support the adequacy of the design basis for the ESBWR reactor internals. The supplemental FSER also concludes that the design process for reactor internals is acceptable and meets the requirements of 10 CFR part 50, appendix A, General Design Criteria 1, 2, 4, and 10; 10 CFR 50.55a; and 10 CFR part 52. Finally, the supplemental FSER concludes that the ESBWR design documentation in Revision 10 to the ESBWR DCD is acceptable and that GEH's application for design certification meets the requirements of 10 CFR part 52, subpart B, that are applicable and technically relevant to the ESBWR standard plant design. The NRC concludes, based on the review of application materials in the March 2011 FSER and the supplemental FSER, that the ESBWR steam dryer design meets all applicable NRC requirements and can be incorporated by reference in a combined license application.

This supplemental proposed rule provides an opportunity to comment on the proposed changes related to the analysis methodology supporting the ESBWR steam dryer design. Documents relevant to the proposed changes related to the analysis methodology supporting the ESBWR steam dryer design are listed in Table 1, Section I.A of the **SUPPLEMENTARY INFORMATION** section of this document. The NRC notes that three of these documents are also listed in Table 2. These three non-publicly available documents—addressing the ESBWR steam dryer analysis methodology—are intended by the NRC to be requirements and matters resolved under Paragraph VI, ISSUE RESOLUTION, of the proposed ESBWR design certification rule. The status of the non-public documents identified in Table 2 as requirements and matters resolved is discussed in Section III.B of the **SUPPLEMENTARY INFORMATION** section of this document.

*2. Designation of Revised Steam Dryer Analysis Methodology as Tier 2**

The NRC proposes to designate the revised ESBWR steam dryer analysis methodology as Tier 2* information throughout the life of any license referencing the ESBWR design certification rule. This is a change from Revision 9 of the ESBWR DCD, which identified much of this information (in its earlier form before the revisions reflected in Revision 10) as Tier 2. Therefore, the ESBWR steam dryer

analysis methodology was not identified as Tier 2* information in the proposed ESBWR design certification rule under paragraph VIII.B.6.b of appendix E of 10 CFR part 52. References to the DCD are listed in Table 1, Section I.A of the **SUPPLEMENTARY INFORMATION** section of this document.

In this supplemental proposed rule, the NRC is proposing to designate the revised ESBWR steam dryer analysis methodology as Tier 2* for two reasons. First, as described in Section III.A.1 of the **SUPPLEMENTARY INFORMATION** section of this document, the NRC's experience with other applications using this methodology highlighted the importance of the proper application of the steam dryer analysis methodology. Therefore, the NRC believes that it is necessary to review any changes a referencing applicant or licensee proposes to the methodology from that which the NRC previously reviewed and approved. Second, in Revision 10 of the ESBWR DCD, GEH revised the designation of this methodology to Tier 2* and, therefore, the rule's designation would be consistent with the GEH's designation in the DCD.

This supplemental proposed rule provides an opportunity to comment on the proposed designation as Tier 2* of certain information related to the analysis methodology supporting the ESBWR steam dryer design. Documents relevant to the proposed designation as Tier 2* of certain information related to the analysis methodology supporting the ESBWR steam dryer design are also listed in Table 1, Section I.A of the **SUPPLEMENTARY INFORMATION** section of this document.

B. Clarification of 50 Non-Public Documents Which the NRC Regards as Requirements and Are Matters Resolved Under Paragraph VI, ISSUE RESOLUTION, of the ESBWR Design Certification Rule

In Tier 2, Section 1.6 of Revision 9 of the ESBWR DCD, GEH stated that a number of referenced documents are incorporated by reference, in whole or in part, in the ESBWR DCD Tier 2. Accordingly, the NRC questioned whether these documents contain binding requirements and whether they should also be incorporated by reference in the ESBWR design certification rule. The NRC reviewed these document references and determined that, while many of these documents do contain binding requirements and should be incorporated by reference, some of those documents do not contain binding requirements and therefore should be considered as references only.

To address the NRC's concerns, GEH revised Section 1.6 of Revision 10 of the ESBWR DCD to clearly identify documents containing requirements, and which documents are references which do not contain binding requirements. Table 1.6–1 of the DCD lists the GE and GEH documents which the NRC regards as requirements for the ESBWR design, and are, therefore, incorporated by reference into the ESBWR DCD. Table 1.6–2 of the DCD lists the non-GE and non-GEH documents which the NRC regards as requirements for the ESBWR design, and are, therefore, incorporated by reference into the ESBWR DCD. The NRC notes that GEH's incorporation by reference of the documents in Tables 1.6–1 and 1.6–2 into the ESBWR DCD is *not* the same as the Director of the Office of the Federal Register's approval of incorporation by reference under 1 CFR part 51. Table 1.6–3 of the DCD lists information which is general reference material and which the NRC does not consider to be a requirement of the ESBWR design certification rule. The documents in Table 1.6–3 of the DCD are not incorporated by reference into the ESBWR DCD by GEH, and the NRC does not intend to obtain approval from the Director of the Office of the Federal Register for incorporation by reference of the documents in Table 1.6–3 of the DCD.

The NRC also notes that many of these documents containing requirements also contain either SUNSI (proprietary information, and security-related information subject to non-disclosure under 10 CFR 2.390(a)(7)(vi)) or SGI. For each of these documents containing SUNSI or SGI there is a corresponding, publicly-available version. In this supplemental proposed rule, the NRC is clarifying that the NRC intends the 50 non-public documents in Table 2 of Section I.A of the **SUPPLEMENTARY INFORMATION** section of this document to be both requirements and matters resolved under paragraph VI, ISSUE RESOLUTION, of the ESBWR design certification rule.

C. Clarification of 20 Publicly-Available Documents Which the NRC Regards As Requirements and Are Matters Resolved Under Paragraph VI, ISSUE RESOLUTION, of the ESBWR Design Certification Rule

In Section III of the proposed ESBWR design certification rule (proposed appendix E to 10 CFR part 52), the NRC proposed that Revision 9 of the ESBWR DCD be the sole document which would be incorporated by reference, as a binding requirement, into the Commission's regulations for the ESBWR design certification. However, as previously described, after the proposed rule was issued and the public comment period had expired, the NRC determined that 20 documents listed in Table 1.6–1 of Revision 9 to the ESBWR DCD, publicly available in their entirety, were regarded by the NRC as requirements and matters resolved under Paragraph VI, ISSUE RESOLUTION, of the proposed ESBWR design certification rule. However, the NRC did not clearly identify in proposed paragraph III.A of the proposed ESBWR design certification rule identifying these publicly-available documents as approved by the Director of the Office of the Federal Register for incorporation by reference. The NRC is clarifying that it intends to obtain approval for incorporation by reference from the Director of the Office of the Federal Register under 1 CFR 51.9 for the 20 documents listed in Table 3 of Section III.C of the **SUPPLEMENTARY INFORMATION** section of this document.

TABLE 3—20 PUBLICLY-AVAILABLE DOCUMENTS TO BE APPROVED FOR INCORPORATION BY REFERENCE INTO THE ESBWR DESIGN CERTIFICATION RULE (10 CFR PART 52, APPENDIX E) BY THE DIRECTOR OF THE OFFICE OF THE FEDERAL REGISTER.

Document No.	Document title	ADAMS accession No.
BC–TOP–3–A	Bechtel, "Tornado and Extreme Wind Design Criteria for Nuclear Power Plants," Topical Report BC–TOP–3–A, Revision 3, August 1974.	ML14093A218
BC–TOP–9A	Bechtel, "Design of Structures for Missile Impact," Topical Report BC–TOP–9A, Revision 2, September 1974.	ML14093A217
GEZ–4982A	General Electric Large Steam Turbine Generator Quality Control Program, GEZ–4982A, Revision 1.2, February 7, 2006.	ML14093A215

TABLE 3—20 PUBLICLY-AVAILABLE DOCUMENTS TO BE APPROVED FOR INCORPORATION BY REFERENCE INTO THE ESBWR DESIGN CERTIFICATION RULE (10 CFR PART 52, APPENDIX E) BY THE DIRECTOR OF THE OFFICE OF THE FEDERAL REGISTER.—Continued

Document No.	Document title	ADAMS accession No.
NEDO–11209–04A	GE Nuclear Energy, ''GE Nuclear Energy Quality Assurance Program Description,'' Class I (Non-proprietary), NEDO–11209–04A, Revision 8, March 31, 1989.	ML14093A209
NEDO–31960–A	GE Nuclear Energy, ''BWR Owners' Group Long-Term Stability Solutions Licensing Methodology,'' NEDO–31960–A, November 1995.	ML14093A212
NEDO–31960–A Supplement 1	GE Nuclear Energy, ''BWR Owners' Group Long-Term Stability Solutions Licensing Methodology,'' NEDO–31960–A, Supplement 1, Class I (Non-proprietary), November 1995.	ML14093A211
NEDO–32465–A	GE Nuclear Energy and BWR Owners' Group, ''Reactor Stability Detect and Suppress Solutions Licensing Basis Methodology for Reload Applications,'' NEDO–32465–A, Class I (Non-proprietary), August 1996.	ML14093A210
NEDO–33181	GE Hitachi Nuclear Energy, ''NP–2010 COL Demonstration Project Quality Assurance Program,'' NEDO–33181, Revision 6, August 2009.	ML100110150
NEDO–33219	GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Functional Requirements Analysis Implementation Plan,'' NEDO–33219, Class I (Non-proprietary), Revision 4, February 2010.	ML100350104
NEDO–33260	GE Hitachi Nuclear Energy, ''Quality Assurance Requirements for Suppliers of Equipment and Services to the GEH ESBWR Project,'' NEDO–33260, Revision 5, April 2008.	ML100110150
NEDO–33262	GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Operating Experience Review Implementation Plan,'' NEDO–33262, Class I (Non-proprietary), Revision 3, January 2010.	ML100340030
NEDO–33266	GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Staffing and Qualifications Implementation Plan,'' NEDO–33266, Class I (Non-proprietary), Revision 3, January 2010.	ML100350167
NEDO–33267	GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Human Reliability Analysis Implementation Plan,'' NEDO–33267, Class I (Non-proprietary), Revision 4, January 2010.	ML100330609
NEDO–33277	GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Human Performance Monitoring Implementation Plan,'' NEDO–33277, Class I (Non-proprietary), Revision 4, January 2010.	ML100270770
NEDO–33278	GE Hitachi Nuclear Energy, ''ESBWR Human Factors Engineering Design Implementation Plan,'' NEDO–33278, Class I (Non-proprietary), Revision 4, January 2010.	ML100270468
NEDO–33289	GE Hitachi Nuclear Energy, ''ESBWR Reliability Assurance Program,'' NEDO–33289, Class I (Non-proprietary), Revision 2, September 2008.	ML100110150
NEDO–33337	GE Hitachi Nuclear Energy, ''ESBWR Initial Core Transient Analyses,'' NEDO–33337, Class I (Non-proprietary), Revision 1, April 2009.	ML091130628
NEDO–33338	GE Hitachi Nuclear Energy, ''ESBWR Feedwater Temperature Operating Domain Transient and Accident Analysis,'' NEDO–33338, Class I (Non-proprietary), Revision 1, May 2009.	ML091380173
NEDO–33373–A	GE-Hitachi Nuclear Energy, ''Dynamic, Load-Drop, and Thermal-Hydraulic Analyses for ESBWR Fuel Racks,'' NEDO–33373–A, Revision 5, Class I (Non-proprietary), October 2010.	ML102990226 (part 1) ML102990228 (part 2)
NEDO–33411	GE Hitachi Nuclear Energy, ''Risk Significance of Structures, Systems and Components for the Design Phase of the ESBWR,'' NEDO–33411, Class I (Non-proprietary), Revision 2, February 2010.	ML100610417

The NRC would obtain approval from the Director of the Office of the Federal Register for incorporation by reference of these documents before the NRC issues a final rule for the ESBWR design certification. Consistent with the Office of the Federal Register's requirements, the NRC would, in the final rule, correct paragraph III.A of appendix E to 10 CFR part 52 by identifying in a table all of the publicly-available documents which are approved for incorporation by reference by the Director of the Office of the Federal Register. Therefore, these documents would be regarded as legally-binding requirements by virtue of publication in the **Federal Register** of the Director of the Office of the Federal Register's approval of incorporation by reference.

The NRC is not requesting public comment in this supplemental proposed rule on the additional documents (*i.e.,* those other than as described in Section I of the **SUPPLEMENTARY INFORMATION** section of this document) that would be incorporated by reference in this rulemaking. The NRC will explain in a final ESBWR design certification rule why the changes to paragraph III.A, reflecting the Director of the Office of the Federal Register's approval for incorporation by reference of these 20 additional documents, did not require a supplemental comment opportunity.

IV. Section-by-Section Analysis

The following section-by-section analysis discusses two proposed revisions to the NRC's regulations that were not part of the proposed ESBWR design certification rule published on March 24, 2011 (76 FR 16549), which address the changes related to the analysis methodology supporting the ESBWR steam dryer design that were made after the close of the public comment period for the proposed

ESBWR design certification rule. No section-by-section analysis is provided for the NRC's proposed clarification of its intent to treat 50 referenced documents within the ESBWR DCD as requirements and matters resolved in subsequent licensing and enforcement actions for plants referencing the ESBWR design certification. This is because the NRC's proposed clarification does not require any change to the revision to the language of the proposed ESBWR design certification rule which was previously published for public comment, other than the revision of the ESBWR DCD from Revision 9 to Revision 10, which includes clarifying changes in Section 1.6 of the ESBWR DCD (described in Section III.B of the **SUPPLEMENTARY INFORMATION** section of this document).

Appendix E, Paragraph III.A

This paragraph identifies the version of the ESBWR DCD which is approved for incorporation by reference by the Director of the Office of the Federal Register, and therefore is considered to be a legally-binding regulation by virtue of the rulemaking process. In this supplemental proposed rule, the NRC proposes to revise this paragraph to update the generic DCD revision number from Revision 9 to 10, provide the ADAMS accession number for Revision 10 of the DCD, and update the name and address of the GEH contact from whom a member of the public could obtain copies of the generic DCD. In addition, editorial changes were made in this paragraph to improve clarity.

Appendix E, Paragraph VIII.B.6.b

This paragraph identifies Tier 2* information which retains that status throughout the duration of a license referencing the ESBWR design certification rule. In this supplemental proposed rule, the NRC proposes to add the ESBWR steam dryer analysis methodology to paragraph VIII.B.6.b.(8). As a result, this methodology would be designated as Tier 2* and that status would continue throughout the duration of a license referencing this appendix. A licensee referencing this appendix would be subject to the change controls as specified in paragraph VIII.B.6.b with respect to the ESBWR steam dryer analysis methodology.

V. 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). The NRC requests comment on the supplemental proposed rule with respect to the clarity and effectiveness of the language used.

VI. Environmental Impact: Finding of No Significant Environmental Impact: Availability

In the proposed ESBWR design certification rule published on March 24, 2011, the NRC made available for public comment a draft Environmental Assessment (ADAMS Accession No. ML102220247) for the ESBWR design addressing various design alternatives to prevent and mitigate severe accidents. This supplemental proposed rule does not materially change the ESBWR design nor does it affect the NRC's prior evaluation of design alternatives to prevent and mitigate severe accidents. Therefore, the NRC has not prepared a supplemental environmental assessment for this supplemental proposed rule, nor is the NRC seeking additional public comment on the environmental assessment already prepared to support the proposed ESBWR design certification rule.

VII. Paperwork Reduction Act

The proposed ESBWR design certification rule, published on March 24, 2011, contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq) (PRA). The proposed rule was submitted to the Office of Management and Budget (OMB) for review and approval of the information collection requirements under clearance number 3150–0151. Public comments regarding the information collection requirements were requested in conjunction with the proposed rule.

This supplemental proposed rule does not contain any new or amended information collection requirements not already identified in the March 24, 2011, proposed rule and, therefore, is not subject to the requirements of the PRA. As a result, the supplemental proposed rule will not be submitted to OMB for approval. Further, the NRC is not seeking further public comment on the potential impact of the information collections contained in or the issues outlined in the PRA section of the ESBWR design certification proposed rule.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

VIII. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this supplemental proposed rule. As discussed in the proposed ESBWR design certification rule, the NRC does not prepare regulatory analyses for design certification rulemakings. This supplemental proposed rule does not materially change the regulatory nature of this design certification rulemaking. Accordingly, the Commission concludes that preparation of a regulatory analysis for this supplemental proposed rule to certify the ESBWR standard plant design is neither required nor appropriate.

IX. Backfitting and Issue Finality

The NRC has determined that this supplemental proposed rule does not constitute backfitting as defined in the backfit rule under 10 CFR 50.109, nor is it inconsistent with any of the finality provisions for design certifications under 10 CFR 52.63. This design certification does not impose new or changed requirements on existing 10 CFR part 50 licensees, nor does it impose new or changed requirements on existing design certification rules in appendices A through D to 10 CFR part 52. Therefore, a backfit analysis was not prepared for this supplemental proposed rule.

X. Procedures for Access to Sensitive Unclassified Non-Safeguards Information (Including Proprietary Information) and Safeguards Information for Preparation of Comments on the Supplemental Proposed ESBWR Design Certification Rule

This section contains instructions regarding how interested persons who wish to comment on the proposed design certification, with respect to any of the 50 non-publicly available documents (including the three documents addressing the analysis methodology supporting the ESBWR steam dryer design), may request access to those documents in order to prepare their comments within the scope of this supplemental proposed rule. These documents, which are listed in Table 2 of Section I.A of the **SUPPLEMENTARY INFORMATION** section of this document, contain SUNSI (including proprietary information [2] and security-related

[2] For purposes of this discussion, ''proprietary information'' constitutes trade secrets or

information [3]) and, in one case, SGI. Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. This document provides information specific to this supplemental proposed rule; however, nothing in this document is intended to conflict with the SGI regulations.

Interested persons who desire access to SUNSI information on the ESBWR design constituting proprietary information should first request access to that information from GEH, the design certification applicant. A request for access should be submitted to the NRC if the applicant does not either grant or deny access by the 10-day deadline described in the following section.

One of the 50 non-publicly available documents in Table 2, NEDE–33536P, contains proprietary information and security-related information. Another of the non-publicly available documents in Table 2, NEDE–33391, contains proprietary information, security-related information, and SGI. If you need access to proprietary information in one or both of these two documents in order to develop comments within the scope of this supplemental proposed rule, then your request for access should first be submitted to GEH in accordance with the previous paragraph. By contrast, if you need access to the security-related information and/or SGI in one or both of those documents in order to provide comments within the scope of this supplemental proposed rule, then your request for access to the security-related information and/or SGI must be submitted to the NRC as described further in this section. Therefore, if you need access to proprietary information as well as security-related information and/or SGI in one or both of those documents, then you should pursue access to the information in separate requests submitted to GEH and the NRC.

Submitting a Request to the NRC for Access

Within 10 days after publication of this supplemental proposed rule, any individual or entity who, in order to submit comments on the supplemental proposed ESBWR design certification rule, believes access to information in this rulemaking docket that the NRC has categorized as SUNSI or SGI is necessary may request access to such information. Requests for access to SUNSI or SGI submitted more than 10 days after publication of this document will not be considered absent a showing of good cause for the late filing explaining why the request could not have been filed earlier.

The individual or entity requesting access to the information (hereinafter, the ''requester'') shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. The expedited delivery or courier mail address is: Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary is *rulemaking.comments@nrc.gov.* The requester must send a copy of the request to the design certification applicant at the same time as the original transmission to the NRC using the same method of transmission. Requests to the applicant must be sent to Jerald G. Head, Senior Vice President, Regulatory Affairs, GE-Hitachi Nuclear Energy, 3901 Castle Hayne Road, MC A–18, Wilmington, North Carolina 28401, email: *jerald.head@ge.com.* For purposes of complying with this requirement, a ''request'' includes all the information required to be submitted to the NRC as set forth in this section.

The request must include the following information:

1. The name of this design certification, ESBWR Design Certification; the rulemaking identification number, RIN 3150–AI85; the rulemaking docket number, NRC–2010–0135; and a **Federal Register** citation to this supplemental proposed rule at the top of the first page of the request.

2. The name, address, email or FAX number of the requester. If the requester is an entity, the name of the individual(s) to whom access is to be provided, then the address and email or FAX number for each individual, and a statement of the authority granted by the entity to each individual to review the information and to prepare comments on behalf of the entity must be provided. If the requester is relying upon another individual to evaluate the requested SUNSI and/or SGI and prepare comments, then the name, affiliation, address and email or FAX number for that individual must be provided.

3.a. If the request is for SUNSI, the requester's need for the information in order to prepare meaningful comments on the supplemental proposed design certification must be demonstrated. Each of the following areas must be addressed with specificity:

i. The specific issue or subject matter on which the requester wishes to comment;

ii. An explanation why information which is publicly available, including the publicly-available versions of the application and design control document, and information on the NRC's docket for the design certification application is insufficient to provide the basis for developing meaningful comment on the supplemental proposed ESBWR design certification rule with respect to the issue or subject matter described in paragraph 3.a.i. of this section; and

iii. Information demonstrating that the individual to whom access is to be provided has the technical competence (demonstrable knowledge, skill, experience, education, training, or certification) to understand and use (or evaluate) the requested information for a meaningful comment on the supplemental proposed ESBWR design certification rule with respect to the issue or subject matter described in paragraph 3.a.i. of this section.

b. If the request is for SUNSI constituting proprietary information, then a chronology and discussion of the requester's attempts to obtain the information from the design certification applicant, and the final communication from the requester to the applicant and the applicant's response with respect to the request for access to proprietary information must be submitted.

4. Based on an evaluation of the information submitted under paragraph 3 of this section, the NRC staff will determine within 10 days of receipt of the written access request whether the requester has established a legitimate need for SUNSI access.

4.a. If the request is for SGI, then the requester's ''need to know'' the SGI as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1) must be demonstrated. Consistent with the definition of ''need to know'' as stated in 10 CFR 73.2 and 10 CFR 73.22(b)(1), each of the following areas must be addressed with specificity:

i. The specific issue or subject matter on which the requester wishes to comment;

ii. An explanation why information which is publicly available, including the publicly-available versions of the application and design control document, and information on the NRC's docket for the design certification

commercial or financial information that are privileged or confidential, as those terms are used under the Freedom of Information Act and the NRC's implementing regulation at 10 CFR part 9.

[3] For purposes of this discussion, ''security-related information'' means information subject to non-disclosure under 10 CFR 2.390(a)(7)(vi).

application is insufficient to provide the basis for developing meaningful comment on the proposed design certification with respect to the issue or subject matter described in paragraph 4.a.i. of this section, and that the SGI requested is indispensable in order to develop meaningful comments;[4] and

iii. Information demonstrating that the individual to whom access is to be provided has the technical competence (demonstrable knowledge, skill, experience, education, training, or certification) to understand and use (or evaluate) the requested SGI, in order to develop meaningful comments on the proposed design certification with respect to the issue or subject matter described in paragraph 4.a.i. of this section.

b. A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' must be submitted for each individual who would have access to SGI. The completed Form SF–85 will be used by the NRC's Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart G, and 10 CFR 73.22(b)(2) to determine the requester's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic Questionnaire for Investigations Processing (e-QIP) Web site, a secure Web site that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–415–7000.[5]

c. A completed Form FD–258 (fingerprint card), signed in original ink, and submitted under 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by calling 301–415–3710 or 301–492–7311; or by email to *Forms.Resource@nrc.gov.* The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for a Federal Bureau of Investigation identification and criminal history records check;

d. A check or money order in the amount of $238.00[6] payable to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted; and

e. If the requester or any individual who will have access to SGI believes they belong to one or more of the categories of individuals relieved from the criminal history records check and background check requirements, as stated in 10 CFR 73.59, the requester should also provide a statement specifically stating which relief the requester is invoking, and explaining the requester's basis (including supporting documentation) for believing that the relief is applicable. While processing the request, the NRC's Office of Administration, Personnel Security Branch, will make a final determination whether the stated relief applies. Alternatively, the requester may contact the Office of Administration for an evaluation of their status prior to submitting the request. Persons who are not subject to the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Copies of documents and materials required by paragraphs 4.b., 4.c., 4.d., and 4.e., as applicable, of this section must be sent to the following address: Office of Administration, U.S. Nuclear Regulatory Commission, Personnel Security Branch, Mail Stop TWF–03B46M, Washington, DC 20555–0012.

These documents and materials should not be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

5. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete or illegible packages to the sender without processing.

6. Based on an evaluation of the information submitted under paragraphs 3.a. and 3.b., or 4.a., 4.b., 4.c., and 4.e. of this section, as applicable, the NRC staff will determine within 10 days of receipt of the written access request whether the requester has established a legitimate need for SUNSI access or need to know the SGI requested.

7. For SUNSI access requests, if the NRC staff determines that the requester has established a legitimate need for access to SUNSI, the NRC staff will notify the requester in writing that access to SUNSI has been granted; *provided, however,* that if the SUNSI consists of proprietary information (i.e., trade secrets or confidential or financial information), the NRC staff must first notify the applicant of the NRC staff's determination to grant access to the requester not less than 10 days before informing the requester of the NRC staff's decision. If the applicant wishes to challenge the NRC staff's determination, it must follow the procedures in paragraph 12 of this section. The NRC staff will not provide the requester access to disputed proprietary information until the procedures in paragraph 12 of this section are completed.

The written notification to the requester will contain instructions on how the requester may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions will include, but are not necessarily limited to, the signing of a protective order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI. Claims that the provisions of such a protective order have not been complied with may be filed by calling the NRC's toll-free safety hotline at 1–800–695–7403. Please note: Calls to this number are not recorded between the hours of 7:00 a.m. to 5:00 p.m. Eastern Time. However, calls received outside these hours are answered by the NRC's Incident Response Operations Center on a recorded line. Claims may also be filed via email sent to *NRO_Allegations@nrc.gov,* or may be sent in writing to the U.S. Nuclear Regulatory Commission, ATTN: Timothy Frye, Mail Stop T7–D24, Washington, DC 20555–0001.

8. For requests for access to SGI, if the NRC staff determines that the requester has established a need to know the SGI, the NRC's Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the NRC's Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requester in writing.

[4] Broad SGI requests under these procedures are unlikely to meet the standard for need to know. Furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. The procedures in this notice of proposed rulemaking do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with either adjudicatory or non-adjudicatory access to SGI.

[5] The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

[6] This fee is subject to change pursuant to the Office of Personnel Management's adjustable billing rates.

The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions will include, but are not necessarily limited to, the signing of a protective order by each individual who will be granted access to SGI. Claims that the provisions of such a protective order have not been complied with may be filed by calling the NRC's toll-free safety hotline at 800–695–7403. Please note: Calls to this number are not recorded between the hours of 7:00 a.m. to 5:00 p.m. Eastern Time. However, calls received outside these hours are answered by the NRC's Incident Response Operations Center on a recorded line. Claims may also be filed via email sent to *NRO_Allegations@nrc.gov,* or may be sent in writing to the U.S. Nuclear Regulatory Commission, ATTN: Timothy Frye, Mail Stop T7–D24, Washington, DC 20555–0001. Because SGI requires special handling, initial filings with the NRC should be free from such specific information. If necessary, the NRC will arrange an appropriate setting for transmitting SGI to the NRC.

9. Release and Storage of SGI. Prior to providing SGI to the requester, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

10. Filing of Comments on the Supplemental Proposed ESBWR Design Certification Rule. Any comments in this rulemaking proceeding that are based upon the disclosed SUNSI or SGI information must be filed by the requester no later than 25 days after receipt of (or access to) that information, or the close of the public comment period, whichever is later. The commenter must comply with all NRC requirements regarding the submission of SUNSI and SGI to the NRC when submitting comments to the NRC (including marking and transmission requirements).

11. Review of Denials of Access.

a. If the request for access to SUNSI or SGI is denied by the NRC staff, the NRC staff shall promptly notify the requester in writing, briefly stating the reason or reasons for the denial.

b. Before the NRC's Office of Administration makes an adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) of SGI, the NRC's Office of Administration, as specified by 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient is provided an opportunity to correct or explain information.

c. Appeals from a denial of access must be made to the NRC's Executive Director for Operations (EDO) under 10 CFR 9.29. The decision of the EDO constitutes final agency action under 10 CFR 9.29(d).

12. Predisclosure Procedures for SUNSI Constituting Trade Secrets or Confidential Commercial or Financial Information. The NRC will follow the procedures in 10 CFR 9.28 if the NRC staff determines, under paragraph 7 of this section, that access to SUNSI constituting trade secrets or confidential commercial or financial information will be provided to the requester. However, any objection filed by the applicant under 10 CFR 9.28(b) must be filed within 15 days of the NRC staff notice in paragraph 7 of this section rather than the 30-day period provided for under that paragraph. In applying the provisions of 10 CFR 9.28, the applicant for the design certification rule will be treated as the ''submitter.''

XI. Availability of Documents

The documents related to the ESBWR steam dryer analysis methodology for which the NRC is seeking public comment are listed in Table 1, Section 1.A of the **SUPPLEMENTARY INFORMTION** section of this document. The documents which the NRC regards as requirements and are matters resolved under Paragraph VI, ISSUE RESOLUTION, of the ESBWR design certification rule, and for which the NRC is seeking public comment on the NRC's proposed clarification of its intent to treat these non-public documents as requirements and matters resolved, are listed in Table 2, Section 1.A of the **SUPPLEMENTARY INFORMATION** section of this document.

The documents to be treated by the NRC as requirements in the final ESBWR design certification rule, but the NRC is not seeking public comment, are listed in Table 3, Section III.C of the **SUPPLEMENTARY INFORMATION** section of this document. Additional documents relevant to the proposed ESBWR design certification rule, for which an opportunity for public comment was provided in the proposed ESBWR design certification rule (76 FR 16549; March 24, 2011), are listed in Table 4. These documents have not changed since the publication of the proposed ESBWR design certification rule for public comment. The NRC is not seeking public comment on these documents in this supplemental proposed rule; they are listed in Table 4 for the benefit of the reader.

TABLE 4—DOCUMENTS RELEVANT TO THE ESBWR DESIGN CERTIFICATION RULE, FOR WHICH AN OPPORTUNITY FOR PUBLIC COMMENT WAS PROVIDED IN THE ESBWR PROPOSED RULE

Document No.	Document title	Publicly available ADAMS accession No.	Non-publicly available ADAMS accession No.
Proposed Rule Documents			
SRM–SECY–11–0006	Staff Requirements Memorandum for SECY–11–0006, ''Staff Requirements—SECY–11–0006—Proposed Rule—Economic Simplified Boiling-Water Reactor Design Certification,'' dated March 8, 2011.	ML110670047	N/A
SECY–11–0006	SECY–11–0006, ''Proposed Rule-Economic Simplified Boiling-Water Reactor Design Certification,'' dated January 7, 2011.	ML102220172	N/A
Proposed Rule **Federal Register** Notice	**Federal Register** Notice—Proposed Rule—ESBWR Design Certification.	ML102220215	N/A
Proposed Rule Environmental Assessment	Draft Environmental Assessment—Proposed Rule—ESBWR Design Certification.	ML102220247	N/A

TABLE 4—DOCUMENTS RELEVANT TO THE ESBWR DESIGN CERTIFICATION RULE, FOR WHICH AN OPPORTUNITY FOR PUBLIC COMMENT WAS PROVIDED IN THE ESBWR PROPOSED RULE—Continued

Document No.	Document title	Publicly available ADAMS accession No.	Non-publicly available ADAMS accession No.
Final Safety Evaluation Report	ESBWR Final Safety Evaluation Report, dated March 9, 2011.	ML103070392 (package)	N/A

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification, Incorporation by reference.

For the reasons set out 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 proposing to adopt the following amendments to 10 CFR Part 52.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 1. The authority citation for 10 CFR part 52 continues to read as follows:

Authority: Atomic Energy Act secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2201, 2167, 2169, 2232, 2233, 2235, 2236, 2239, 2282); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

■ 2. In appendix E to 10 CFR part 52, as proposed to be added March 24, 2011 (76 FR 16549):

■ A. Revise paragraph III.A.

■ B. Add new paragraph VIII.B.6.b.(8).

The revision and addition read as follows:

Appendix E to Part 52—Design Certification Rule for the ESBWR Design.

* * * * *

III. Scope and Contents

A. Incorporation by reference approval. All Tier 1, Tier 2 (including the availability controls in Appendix 19ACM), and the generic TS in the ESBWR DCD, Revision 10, dated April 2014, ''ESBWR Design Control Document,'' are approved for incorporation by reference by the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the generic DCD from Jerald G. Head, Senior Vice President, Regulatory Affairs, GE-Hitachi Nuclear Energy, 3901 Castle Hayne Road, MC A–18, Wilmington, NC 28401, telephone: 1–910–819–5692. You can view the generic DCD online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. In ADAMS, search under ADAMS Accession No. ML14104A929. If you do not have access to ADAMS or if you have problems accessing documents located in ADAMS, contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 1–301–415–3747, or by email at *PDR.Resource@nrc.gov*. The generic DCD can also be viewed at the Federal rulemaking Web site, *http://www.regulations.gov,* by searching for documents filed under Docket ID NRC–2010–0135. A copy of the DCD is available for examination and copying at the NRC's PDR located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. A copy also is available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, telephone: 301–415–5610, email: *Library.Resource@nrc.gov*. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 1–202–741–6030 or go to *http://www.archives.gov/federal-register/cfr/ibrlocations.html*.

* * * * *

VIII. * * *

B. * * *

6. * * *

b. * * *

(8) Steam dryer pressure load analysis methodology.

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Dated at Rockville, Maryland, this 23rd day of April, 2014.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Executive Director for Operations.

[FR Doc. 2014–10246 Filed 5–5–14; 8:45 am]

BILLING CODE 7590–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2014–0009]

RIN 3170–AA43

Amendments to the 2013 Mortgage Rules Under the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) proposes amendments to certain mortgage rules issued in 2013. The proposed rule would provide an alternative small servicer definition for nonprofit entities that meet certain requirements, amend the existing exemption from the ability-to-repay rule for nonprofit entities that meet certain requirements, and provide a limited cure mechanism for the points and fees limit that applies to qualified mortgages.

DATES: Comments regarding the proposed amendments to 12 CFR 1026.41(e)(4), 1026.43(a)(3), and 1026.43(e)(3) must be received on or before June 5, 2014. For the requests for comment regarding correction or cure of debt-to-income ratio overages and the credit extension limit for the small creditor definition, comments must be received on or before July 7, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2014–0009 or RIN 3170–AA43, by any of the following methods:

• *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington,

DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Pedro De Oliveira, Counsel; William R. Corbett, Nicholas Hluchyj, and Priscilla Walton-Fein, Senior Counsels, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed Rule

In January 2013, the Bureau issued several final rules concerning mortgage markets in the United States (2013 Title XIV Final Rules), pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (2010).[1] The Bureau clarified and revised those rules through notice and comment rulemaking during the summer and fall of 2013. The purpose of those updates was to address important questions raised by industry, consumer groups, or other stakeholders. The Bureau is now proposing several additional amendments to the 2013 Title XIV Final Rules to revise regulatory provisions and official interpretations primarily relating to the Regulation Z ability-to-repay/qualified mortgage requirements and servicing rules, as well as seeking comment on additional issues. The Bureau expects to issue additional proposals to address other topics relating to the 2013 Title XIV Final Rules, such as the definition of ''rural and underserved'' for purposes of certain mortgage provisions affecting small creditors as discussed further below.

Specifically, the Bureau is proposing three amendments to the 2013 Title XIV Final Rules:

- To provide an alternative definition of the term ''small servicer,'' that would apply to certain nonprofit entities that service for a fee loans on behalf of other nonprofit chapters of the same organization. Although the Bureau is proposing this change in Regulation Z, the change will also affect several provisions of Regulation X, which cross-reference the Regulation Z small servicer exemption.
- To amend the Regulation Z ability-to-repay requirements to provide that certain interest-free, contingent subordinate liens originated by nonprofit creditors will not be counted towards the credit extension limit that applies to the nonprofit exemption from the ability-to-repay requirements.
- To provide a limited, post-consummation cure mechanism for loans that are originated with the good faith expectation of qualified mortgage status but that actually exceed the points and fees limit for qualified mortgages.

In addition to providing specific proposals on these issues, the Bureau is seeking comment on two additional topics:

- Whether and how to provide a limited, post-consummation cure or correction provision for loans that are originated with the good faith expectation of qualified mortgage status but that actually exceed the 43-percent debt-to-income ratio limit that applies to certain qualified mortgages.
- Feedback and data from smaller creditors regarding implementation of certain provisions in the 2013 Title XIV Final Rules that are tailored to account for small creditor operations and how their origination activities have changed in light of the new rules.

II. Background

A. Title XIV Rulemakings Under the Dodd-Frank Act

In response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression, Congress passed the Dodd-Frank Act, which was signed into law on July 21, 2010. In the Dodd-Frank Act, Congress established the Bureau and generally consolidated the rulemaking authority for Federal consumer financial laws, including the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA), in the Bureau.[2] At the same time, Congress significantly amended the statutory requirements governing mortgage practices, with the intent to restrict the practices that contributed to and exacerbated the crisis.[3] Under the statute, most of these new requirements would have taken effect automatically on January 21, 2013, if the Bureau had not issued implementing regulations by that date.[4] To avoid uncertainty and potential disruption in the national mortgage market at a time of economic vulnerability, the Bureau issued several final rules in a span of less than two weeks in January 2013 to implement these new statutory provisions and provide for an orderly transition.

On January 10, 2013, the Bureau issued the 2013 Escrows Final Rule, the January 2013 ATR Final Rule, and the 2013 HOEPA Final Rule. 78 FR 4725 (Jan. 22, 2013); 78 FR 6407 (Jan. 30, 2013); 78 FR 6855 (Jan. 31, 2013). On January 17, 2013, the Bureau issued the 2013 Mortgage Servicing Final Rules. 78 FR 10695 (Feb. 14, 2013); 78 FR 10901 (Feb. 14, 2013). On January 18, 2013, the Bureau issued the 2013 ECOA Valuations Final Rule and, jointly with

[1] Specifically, on January 10, 2013, the Bureau issued Escrow Requirements Under the Truth in Lending Act (Regulation Z), 78 FR 4725 (Jan. 22, 2013) (2013 Escrows Final Rule), High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X), 78 FR 6855 (Jan. 31, 2013) (2013 HOEPA Final Rule), and Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 FR 6407 (Jan. 30, 2013) (January 2013 ATR Final Rule). The Bureau concurrently issued a proposal to amend the January 2013 ATR Final Rule, which was finalized on May 29, 2013. *See* 78 FR 6621 (Jan. 30, 2013) (January 2013 ATR Proposal) and 78 FR 35429 (June 12, 2013) (May 2013 ATR Final Rule). On January 17, 2013, the Bureau issued the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules, 78 FR 10901 (Feb. 14, 2013) (Regulation Z) and 78 FR 10695 (Feb. 14, 2013) (Regulation X) (2013 Mortgage Servicing Final Rules). On January 18, 2013, the Bureau issued the Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B), 78 FR 7215 (Jan. 31, 2013) (2013 ECOA Valuations Final Rule) and, jointly with other agencies, issued Appraisals for Higher-Priced Mortgage Loans (Regulation Z), 78 FR 10367 (Feb. 13, 2013) (2013 Interagency Appraisals Final Rule). On January 20, 2013, the Bureau issued the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 FR 11279 (Feb. 15, 2013) (2013 Loan Originator Final Rule).

[2] *See, e.g.,* sections 1011 and 1021 of the Dodd-Frank Act, 12 U.S.C. 5491 and 5511 (establishing and setting forth the purpose, objectives, and functions of the Bureau); section 1061 of the Dodd-Frank Act, 12 U.S.C. 5581 (consolidating certain rulemaking authority for Federal consumer financial laws in the Bureau); section 1100A of the Dodd-Frank Act (codified in scattered sections of 15 U.S.C.) (similarly consolidating certain rulemaking authority in the Bureau). *But see* Section 1029 of the Dodd-Frank Act, 12 U.S.C. 5519 (subject to certain exceptions, excluding from the Bureau's authority any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both).

[3] *See* title XIV of the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010) (codified in scattered sections of 12 U.S.C., 15 U.S.C., and 42 U.S.C.).

[4] *See* section 1400(c) of the Dodd-Frank Act, 15 U.S.C. 1601 note.

other agencies, the 2013 Interagency Appraisals Final Rule. 78 FR 7215 (Jan. 31, 2013); 78 FR 10367 (Feb. 13, 2013). On January 20, 2013, the Bureau issued the 2013 Loan Originator Final Rule. 78 FR 11279 (Feb. 15, 2013).[5] Pursuant to the Dodd-Frank Act, which permitted a maximum of one year for implementation, most of these rules became effective on January 10, 2014.

Concurrent with the January 2013 ATR Final Rule, on January 10, 2013, the Bureau issued proposed amendments to the rule (*i.e.,* the January 2013 ATR Proposal), which the Bureau finalized on May 29, 2013 (*i.e.,* the May 2013 ATR Final Rule). 78 FR 6621 (Jan. 30, 2013); 78 FR 35429 (June 12, 2013). The Bureau issued additional corrections and clarifications to the 2013 Mortgage Servicing Final Rules and the May 2013 ATR Final Rule in the summer and fall of 2013.[6]

B. Implementation Plan for New Mortgage Rules

On February 13, 2013, the Bureau announced an initiative to support implementation of its new mortgage rules (the Implementation Plan),[7] under which the Bureau would work with the mortgage industry and other stakeholders to ensure that the new rules could be implemented accurately and expeditiously. The Implementation Plan included: (1) Coordination with other agencies, including the development of consistent, updated examination procedures; (2) publication of plain-language guides to the new rules; (3) publication of additional corrections and clarifications of the new rules, as needed; (4) publication of readiness guides for the new rules; and (5) education of consumers on the new rules.

This proposal concerns additional revisions to the new rules. The purpose of these updates is to address important questions raised by industry, consumer groups, or other stakeholders. As discussed below, the Bureau contemplates issuing additional updates on additional topics.

III. Legal Authority

The Bureau is issuing this proposed rule pursuant to its authority under TILA, RESPA, and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board of Governors of the Federal Reserve System (Board). The term ''consumer financial protection function'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines. Section 1061 of the Dodd-Frank Act also transferred to the Bureau all of the Department of Housing and Urban Development's (HUD) consumer protection functions relating to RESPA. Title X of the Dodd-Frank Act, including section 1061 of the Dodd-Frank Act, along with TILA, RESPA, and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[8]

A. TILA

Section 105(a) of TILA authorizes the Bureau to prescribe regulations to carry out the purposes of TILA. 15 U.S.C. 1604(a). Under section 105(a), such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' TILA section 102(a), 15 U.S.C. 1601(a). In particular, it is a purpose of TILA section 129C, as added by the Dodd-Frank Act, to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, and abusive. 15 U.S.C. 1639b(a)(2).

Section 105(f) of TILA authorizes the Bureau to exempt from all or part of TILA a class of transactions if the Bureau determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). That determination must consider:

- The loan amount and whether TILA's provisions ''provide a benefit to the consumers who are parties to such transactions'';
- The extent to which TILA requirements ''complicate, hinder, or make more expensive the credit process'';
- The borrowers' ''status,'' including their ''related financial arrangements,'' their financial sophistication relative to the type of transaction, and the importance to the borrowers of the credit, related supporting property, and TILA coverage;
- Whether the loan is secured by the consumer's principal residence; and
- Whether consumer protection would be undermined by such an exemption. 15 U.S.C. 1604(f)(2).

TILA section 129C(b)(3)(B)(i) provides the Bureau with authority to prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are: necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of the ability-to-repay requirements; necessary and appropriate to effectuate the purposes of the ability-to-repay and residential mortgage loan origination requirements; to prevent circumvention or evasion thereof; or to facilitate compliance with TILA sections 129B and 129C. 15 U.S.C. 1639c(b)(3)(B)(i). In addition, TILA section 129C(b)(3)(A) requires the Bureau to prescribe regulations to carry out such purposes. 15 U.S.C. 1639c(b)(3)(A).

B. RESPA

Section 19(a) of RESPA authorizes the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to

[5] Each of these rules was published in the **Federal Register** shortly after issuance.

[6] 78 FR 44685 (July 24, 2013) (clarifying which mortgages to consider in determining small servicer status and the application of the small servicer exemption with regard to servicer/affiliate and master servicer/subservicer relationships); 78 FR 45842 (July 30, 2013); 78 FR 60381 (Oct. 1, 2013) (revising exceptions available to small creditors operating predominantly in ''rural'' or ''underserved'' areas); 78 FR 62993 (Oct. 23, 2013) (clarifying proper compliance regarding servicing requirements when a consumer is in bankruptcy or sends a cease communication request under the Fair Debt Collection Practice Act).

[7] Press Release, Consumer Financial Protection Bureau, *Consumer Financial Protection Bureau Lays Out Implementation Plan for New Mortgage Rules* (Feb. 13, 2013), *available at http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-lays-out-implementation-plan-for-new-mortgage-rules/.*

[8] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws,'' the provisions of title X of the Dodd-Frank Act, and the laws for which authorities are transferred under title X subtitles F and H of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include TILA); Dodd-Frank section 1400(b), 12 U.S.C. 5481(12) note (defining ''enumerated consumer laws'' to include certain subtitles and provisions of Dodd-Frank Act title XIV); Dodd-Frank Act section 1061(b)(7), 12 U.S.C. 5581(b)(7) (transferring to the Bureau all of HUD's consumer protection functions relating to RESPA).

achieve the purposes of RESPA, which include RESPA's consumer protection purposes. 12 U.S.C. 2617(a). In addition, section 6(j)(3) of RESPA authorizes the Bureau to establish any requirements necessary to carry out section 6 of RESPA, and section 6(k)(1)(E) of RESPA authorizes the Bureau to prescribe regulations that are appropriate to carry out RESPA's consumer protection purposes. 12 U.S.C. 2605(j)(3) and (k)(1)(E). The consumer protection purposes of RESPA include responding to borrower requests and complaints in a timely manner, maintaining and providing accurate information, helping borrowers avoid unwarranted or unnecessary costs and fees, and facilitating review for foreclosure avoidance options.

C. The Dodd-Frank Act

Section 1405(b) of the Dodd-Frank Act provides that, ''in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures,'' the Bureau may exempt from disclosure requirements, ''in whole or in part . . . any class of residential mortgage loans'' if the Bureau determines that such exemption ''is in the interest of consumers and in the public interest.'' 15 U.S.C. 1601 note.[9] Notably, the authority granted by section 1405(b) applies to ''disclosure requirements'' generally, and is not limited to a specific statute or statutes. Accordingly, Dodd-Frank Act section 1405(b) is a broad source of authority for exemptions from the disclosure requirements of TILA and RESPA.

Moreover, section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' 12 U.S.C. 5512(b)(1). Accordingly, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to propose rules that carry out the purposes and objectives of TILA, RESPA, title X of the Dodd-Frank Act, and certain enumerated subtitles and provisions of title XIV of the Dodd-Frank Act, and to prevent evasion of those laws.

The Bureau is proposing to amend rules that implement certain Dodd-Frank Act provisions. In particular, the Bureau is proposing to amend provisions of Regulation Z (and, by reference, Regulation X) adopted by the 2013 Mortgage Servicing Final Rules (including July 2013 amendments thereto), the January 2013 ATR Final Rule, and the May 2013 ATR Final Rule.

IV. Proposed Effective Date

The Bureau proposes that all of the changes proposed herein take effect thirty days after publication of a final rule in the **Federal Register**. The proposed changes would expand exemptions and provide relief from regulatory requirements; therefore the Bureau believes an effective date of 30 days after publication may be appropriate. The Bureau seeks comment on whether the proposed effective date is appropriate, or whether the Bureau should adopt an alternative effective date.

V. Section-by-Section Analysis

Section 1026.41 Periodic Statements for Residential Mortgage Loans

41(e) Exemptions

41(e)(4) Small Servicers

The Bureau is proposing to revise the scope of the exemption for small servicers that is set forth in § 1026.41 of Regulation Z and incorporated by cross-reference in certain provisions of Regulation X. The proposal would add an alternative definition of small servicer which would apply to certain nonprofit entities that service for a fee only loans for which the servicer or an associated nonprofit entity is the creditor.

The Bureau's 2013 Mortgage Servicing Final Rules exempt small servicers from certain mortgage servicing requirements. Specifically, Regulation Z exempts small servicers, defined in § 1026.41(e)(4)(ii), from the requirement to provide periodic statements for residential mortgage loans.[10] Regulation X incorporates this same definition by reference to § 1026.41(e)(4) and thereby exempts small servicers from: (1) Certain requirements relating to obtaining force-placed insurance,[11] (2) the general servicing policies, procedures, and requirements,[12] and (3) certain requirements and restrictions relating to communicating with borrowers about, and evaluation of applications for, loss mitigation options.[13]

Current § 1026.41(e)(4)(ii) defines the term ''small servicer'' as a servicer that either: (A) Services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; or (B) is a Housing Finance Agency, as defined in 24 CFR 266.5. ''Affiliate'' is defined in § 1026.32(b)(5) as any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.* (BHCA).[14]

Generally, under § 1026.41(e)(4)(ii)(A), a servicer cannot be a small servicer if it services any loan for which the servicer or its affiliate is not the creditor or assignee. However, current § 1026.41(e)(4)(iii) excludes from consideration certain types of mortgage loans for purposes of determining whether a servicer qualifies as a small servicer: (A) Mortgage loans voluntarily serviced by the servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees; (B) reverse mortgage transactions; and (C) mortgage loans secured by consumers' interests in timeshare plans. In the 2013 Mortgage Servicing Final Rules, the Bureau concluded that a separate exemption for nonprofits was not necessary because the Bureau believed that nonprofits would likely fall within the small servicer exemption. *See* 78 FR 10695, 10720 (Feb. 14, 2013).

As part of the Bureau's Implementation Plan, the Bureau has learned that certain nonprofit entities may, for a fee, service loans for another nonprofit entity that is the creditor on

[9] ''Residential mortgage loan'' is generally defined as any consumer credit transaction (other than open-end credit plans) that is secured by a mortgage (or equivalent security interest) on ''a dwelling or on residential real property that includes a dwelling'' (except, in certain instances, timeshare plans). 15 U.S.C. 1602(cc)(5).

[10] 12 CFR 1026.41(e) (requiring delivery each billing cycle of a periodic statement, with specific content and form). For loans serviced by a small servicer, a creditor or assignee is also exempt from the Regulation Z periodic statement requirements. 12 CFR 1026.41(e)(4)(i).

[11] 12 CFR 1024.17(k)(5) (prohibiting purchase of force-placed insurance in certain circumstances).

[12] 12 CFR 1024.30(b)(1) (exempting small servicers from §§ 1024.38 through 41, except as otherwise provided under 41(j), as discussed in note 13, *infra*). Sections 1024.38 through 40 respectively impose general servicing policies, procedures, and requirements; early intervention requirements for delinquent borrowers; and policies and procedures to maintain continuity of contact with delinquent borrowers).

[13] *See* 12 CFR 1024.41 (loss mitigation procedures). Though exempt from most of the rule, small servicers are subject to the prohibition of foreclosure referral before the loan obligation is more than 120 days delinquent and may not make the first notice or filing for foreclosure if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option. 12 CFR 1024.41(j).

[14] Under the BHCA, a company has ''control'' over another company if it (i) ''directly or indirectly . . . owns, controls, or has power to vote 25 per centum or more of any class of voting securities'' of the other company; (ii) ''controls . . . the election of a majority of the directors or trustees'' of the other company; or (iii) ''directly or indirectly exercises a controlling influence over the management or policies'' of the other company (based on a determination by the Board). 12 U.S.C. 1841(a)(2).

the loan. The Bureau understands that, in some cases, these nonprofit entities are part of a larger association of nonprofits that are separately incorporated but operate under mutual contractual obligations to serve the same charitable mission, and that use a common name, trademark, or servicemark. These entities likely do not meet the definition of ''affiliate'' under the BHCA due to the limits imposed on nonprofits with respect to ownership and control. Accordingly, these nonprofits likely do not qualify for the small servicer exemption because they service, for a fee, loans on behalf of an entity that is not an affiliate as defined under the BHCA (and because the servicer is neither the creditor for, nor an assignee of, those loans).

The Bureau understands that groups of nonprofit entities that are associated with one another may consolidate servicing activities to achieve economies of scale necessary to service loans cost-effectively, and that such costs savings may reduce the cost of credit or enable the nonprofit to extend a greater number of loans overall. However, because of their corporate structures, such groups of nonprofit entities have a more difficult time than related for-profit servicers qualifying for the small servicer exemption. For the reasons discussed below, the Bureau believes that the ability of such nonprofit entities to consolidate servicing activities may be beneficial to consumers—*e.g.,* to the extent servicing cost savings are passed on to consumers and/or lead to increased credit availability—and may outweigh the consumer protections provided by the servicing rules to those consumers affected by this proposal.

Accordingly, the Bureau is proposing an alternative definition of small servicer that would apply to nonprofit entities that service loans on behalf of other nonprofits within a common network or group of nonprofit entities. Specifically, proposed § 1026.41(e)(4)(ii)(C) provides that a small servicer is a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor. Proposed § 1026.41(e)(4)(ii)(C)(*1*) provides that, for purposes of proposed § 1026.41(e)(4)(ii)(C), the term ''nonprofit entity'' means an entity having a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986. *See* 26 U.S.C. 501(c)(3); 26 CFR 1.501(c)(3)–1. Proposed § 1026.41(e)(4)(ii)(C)(*2*) defines ''associated nonprofit entities'' to mean nonprofit entities that by agreement operate using a common name, trademark, or servicemark to further and support a common charitable mission or purpose.

The Bureau is also proposing technical changes to § 1026.41(e)(4)(iii), which addresses the timing of the small servicer determination and also excludes certain loans from the 5,000-loan limitation. The proposed changes would add language to the existing timing requirement to limit its application to the small servicer determination for purposes of § 1026.41(e)(4)(ii)(A) and insert a separate timing requirement for purposes of determining whether a nonprofit servicer is a small servicer pursuant to § 1026.41(e)(4)(ii)(C). Specifically, that requirement would provide that the servicer is evaluated based on the mortgage loans serviced by the servicer as of January 1 and for the remainder of the calendar year.

The Bureau is proposing technical changes to comment 41(e)(4)(ii)–2 in light of proposed § 1026.41(e)(4)(ii)(C). In addition, the Bureau is proposing to add a comment to parallel existing comment 41(e)(4)(ii)–2 (that addresses the requirements to be a small servicer under the existing definition in § 1026.41(e)(4)(ii)(A)). Specifically, new comment 41(e)(4)(ii)–4 would clarify that there are two elements to satisfying the nonprofit small creditor definition in proposed § 1026.41(e)(4)(ii)(C). First, the comment would clarify that a nonprofit entity must service 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities. For each associated nonprofit entity, the small servicer determination is made separately without consideration of the number of loans serviced by another associated nonprofit entity. Second, the comment would further explain that the nonprofit entity must service only mortgage loans for which the servicer (or an associated nonprofit entity) is the creditor. To be the creditor, the servicer (or an associated nonprofit entity) must have been the entity to which the mortgage loan obligation was initially payable (that is, the originator of the mortgage loan). The comment would explain that a nonprofit entity is not a small servicer under § 1026.41(e)(4)(ii)(C) if it services any mortgage loans for which the servicer or an associated nonprofit entity is not the creditor (that is, for which the servicer or an associated nonprofit entity was not the originator). The comment would provide two examples to demonstrate the application of the small servicer definition under § 1026.41(e)(4)(ii)(C).

The Bureau is also proposing to revise existing comment 41(e)(4)(iii)–3 to specify that it explains the application of § 1026.41(e)(4)(iii) to the small servicer determination under § 1026.41(e)(4)(ii)(A) specifically. As revised, comment 41(e)(4)(iii)–3 would explain that mortgage loans that are not considered pursuant to § 1026.41(e)(4)(iii) for purposes of the small servicer determination under § 1026.41(e)(4)(ii)(A) are not considered either for determining whether a servicer (together with any affiliates) services 5,000 or fewer mortgage loans or whether a servicer is servicing only mortgage loans that it (or an affiliate) owns or originated. The proposal would also make clarifying changes to the example provided in comment 41(e)(4)(iii)–3 and would move language in existing comment 41(e)(4)(iii)–3 regarding the limited role of voluntarily serviced mortgage loans to new proposed comment 41(e)(4)(iii)–5. The Bureau is also proposing technical changes to comment 41(e)(4)(iii)–2 in light of proposed § 1026.41(e)(4)(ii)(C).

In addition, the Bureau is proposing a new comment 41(e)(4)(iii)–4 to explain the application of § 1026.41(e)(4)(iii) to the nonprofit small servicer determination under proposed § 1026.41(e)(4)(ii)(C) specifically. The proposed comment would explain that mortgage loans that are not considered pursuant to § 1026.41(e)(4)(iii) for purposes of the small servicer determination under § 1026.41(e)(4)(ii)(C) are not considered either for determining whether a nonprofit entity services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, or whether a nonprofit entity is servicing only mortgage loans that it or an associated nonprofit entity originated. The comment would provide an example of a nonprofit entity that services 5,400 mortgage loans. Of these mortgage loans, it originated 2,800 mortgage loans and associated nonprofit entities originated 2,000 mortgage loans. The nonprofit entity receives compensation for servicing the loans originated by associated nonprofits. The nonprofit entity also voluntarily services 600 mortgage loans that were originated by an entity that is not an associated nonprofit entity, and receives no compensation or fees for servicing these loans. The voluntarily serviced mortgage loans are not considered in determining whether the servicer qualifies as a small servicer. Thus,

because only the 4,800 mortgage loans originated by the nonprofit entity or associated nonprofit entities are considered in determining whether the servicer qualifies as a small servicer, the servicer qualifies for the small servicer exemption pursuant to § 1026.41(e)(4)(ii)(C) with regard to all 5,400 mortgage loans it services.

The Bureau believes that nonprofit entities are an important source of credit, particularly for low- and moderate-income consumers. The Bureau understands that nonprofit entities, while they may operate under a common name, trademark, or servicemark, are not typically structured to meet the definition of affiliate under the BHCA. However, nonprofit entities derive less revenue than other creditors or servicers from their lending activities, and therefore the Bureau believes associated nonprofit entities may seek to coordinate activities—including loan servicing—as a means of achieving economies of scale.

Under the existing rule, a servicer qualifies for the small servicer exemption if it services for a fee a loan for which another entity is the creditor or assignee, so long as both entities are affiliates under the BHCA and the servicer and its affiliates together service 5,000 or fewer mortgage loans. Since nonprofit entities are not typically structured to meet the definition of affiliate under the BHCA, a nonprofit entity that services, for a fee, even a single loan of an associated nonprofit entity likely would not qualify as a small servicer under the current rule. The Bureau is proposing an alternative small servicer definition for nonprofits to permit associated nonprofit entities to enter into the type of servicing arrangements, such as consolidation of servicing activities, that are available to affiliates under the current rule.

The limitation in the current rule to BHCA affiliates may discourage consolidation of servicing among associated nonprofits, even though such consolidation may benefit consumers by increasing access to credit and reducing the cost of credit for low- and moderate-income consumers for whom nonprofits are an important source of credit. In addition, consolidating servicing in one entity within the associated nonprofit structure may enhance the nonprofit's ability to promptly credit payments, administer escrow account obligations, or handle error requests or other requirements under Regulations X and Z, which are applicable regardless of small servicer status. In addition, though small servicers are exempt from the requirements of §§ 1024.38 through 1024.40, as well as most of the loss mitigation provisions under § 1024.41, the Bureau believes that delinquent borrowers may nonetheless benefit from consolidated nonprofit servicers' enhanced ability to devote trained staff to their situation.

The Bureau is concerned that if nonprofit servicers are subject to all of the servicing rules, low- and moderate-income consumers may face increased costs or reduced access to credit. Although the Bureau believes the servicing rules provide important protections for consumers, the Bureau is concerned that these protections may not outweigh the risk of reduction in credit access for low- and moderate-income consumers served by nonprofit entities that qualify for the proposed § 1026.41(e)(4)(ii)(C) exemption. Furthermore, the Bureau believes these nonprofit entities, because of their scale and community-focused lending programs, already have incentives to provide high levels of customer contact and information—incentives that warrant exempting those servicers from complying with the periodic statement requirements under Regulation Z and certain requirements of Regulation X discussed above.

The Bureau has narrowly tailored the proposed small servicer definition for nonprofits to prevent evasion of the servicing rules. For example, the proposed definition contains restrictions on nonprofits and requires that a substantial relationship exist among the associated nonprofits to qualify for the exemption. As noted above, the definition would be limited to groups of nonprofits that share a common name, trademark, or servicemark to further and support a common charitable mission or purpose. The Bureau believes that requiring such commonality reduces the risk that the small servicer definition will be used to circumvent the servicing rules. However, the Bureau seeks comment on whether the proposed definition of ''associated nonprofit entities'' is appropriate.

The Bureau has further limited the scope of the proposed nonprofit small servicer definition to entities designated with an exemption under 501(c)(3) of the Internal Revenue Code. As the Bureau noted in the January 2013 ATR Proposal, the Bureau believes that 501(c)(3)-designated entities face particular constraints on resources that other tax-exempt organizations may not. *See* 78 FR 6621, 6644–45 (Jan. 30, 2013). As a result, these entities may have fewer resources to comply with additional rules. In addition, tax-exempt status under section 501(c)(3) requires a formal determination by the government, in contrast to other types of tax-exempt status. Accordingly, limiting the proposed nonprofit small servicer provision to those entities with IRS tax exempt determinations for wholly charitable organizations may help to ensure that the nonprofit small servicer status is not used to evade the servicing rules. However, the Bureau solicits comment on whether limitation of the definition of ''nonprofit entity'' for purposes of § 1026.41(e)(4)(ii)(C) to entities with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code is appropriate. The Bureau also seeks comment on whether it is appropriate to include additional criteria regarding the nonprofit entity's activities or the loans' features or purposes, such as those in the nonprofit exemption from the ability to repay requirements in § 1026.43(a)(3)(v)(D) or in other statutory or regulatory schemes.

As noted above, the proposed alternative small servicer definition in § 1026.41(e)(4)(ii)(C) would apply to nonprofit entities that service 5,000 or fewer mortgage loans. The Bureau believes that it is necessary, in general, to limit the number of loans serviced by small servicers to prevent evasion of the servicing rules and because the Bureau believes that entities servicing more than 5,000 mortgage loans are of a sufficient size to comply with the full set of servicing rules. However, the proposed rule would apply that loan limitation to associated nonprofit entities differently than to affiliates. Specifically, the definition of small servicer in § 1026.41(e)(4)(ii)(A) counts towards the 5,000-loan limitation all loans serviced by the servicer together with all loans serviced by any affiliates. In contrast, the proposed rule for nonprofit entities would count towards the 5,000-loan limitation only the loans serviced by a given nonprofit entity (including loans it services on behalf of associated nonprofit entities), and would not consider loans serviced by associated nonprofit entities. As noted above, the Bureau is concerned that small servicers generally lack the ability to cost-effectively comply with the full set of servicing rules, a concern that is heightened in the context of nonprofit small servicers which derive less revenue than other creditors or servicers from their lending activities. Some nonprofits may consolidate servicing activities to achieve economies of scale across associated nonprofits. However, the Bureau is also concerned that other nonprofits may be structured differently and that for these nonprofit entities

maintaining servicing at the individual nonprofit level may be more appropriate. For this reason, the Bureau does not believe it is appropriate to consider all loans serviced across the associated nonprofit enterprise towards the 5,000-loan limitation. The Bureau seeks comment on whether it is appropriate to count only loans serviced by a single nonprofit or whether the small servicer determination should be made based upon all loans serviced among a group of associated nonprofits.

The proposed exemption would also apply only to a nonprofit entity that services loans for which it or an associated nonprofit entity is the creditor. In contrast with the exemption under § 1026.41(e)(4)(ii)(A), the proposed exemption would not apply to a nonprofit entity that services loans for which it or an associated nonprofit entity is the assignee of the loans being serviced. The Bureau believes that nonprofit entities typically do not service loans for which an entity other than that nonprofit entity or an associated nonprofit is the creditor, nor does the Bureau believe that nonprofit entities typically take an assignment of a loan originated by an entity other than an associated nonprofit entity. Further, the Bureau is concerned that a rule that permits a nonprofit servicer to service for a fee loans that were originated by someone other than itself or an associated nonprofit entity while retaining the benefit of the exemption could be used to evade the servicing rules, particularly since the proposed rule would not consider loans serviced by associated nonprofit entities as counting towards the 5,000-loan limit. The Bureau seeks comment on whether limiting the exemption to loans for which the servicer or an associated nonprofit entity is the creditor is appropriate.

Legal Authority

The Bureau is proposing to exempt nonprofit small servicers from the periodic statement requirement under TILA section 128(f) pursuant to its authority under TILA section 105(a) and (f), and Dodd-Frank Act section 1405(b).

For the reasons discussed above, the Bureau believes the proposed exemption is necessary and proper under TILA section 105(a) to facilitate TILA compliance. The purpose of the periodic statement requirement is to ensure that consumers receive ongoing customer contact and account information. As discussed above, the Bureau believes that nonprofit entities that qualify for the exemption have incentives to provide ongoing consumer contact and account information that would exist absent a regulatory requirement to do so. The Bureau also believes that such nonprofits may consolidate servicing functions in an associated nonprofit entity to cost-effectively provide this high level of customer contact and otherwise comply with applicable regulatory requirements. As described above, the Bureau is concerned that the current rule may discourage consolidation of servicing functions. As a result, the current rule may result in nonprofits being unable to provide high-contact servicing or to comply with other applicable regulatory requirements due to the costs that would be imposed on each individual servicer. Accordingly, the Bureau believes the proposed nonprofit small servicer definition facilitates compliance with TILA by allowing nonprofit small servicers to consolidate servicing functions, without losing status as a small servicer, in order to cost-effectively service loans in compliance with applicable regulatory requirements.

In addition, consistent with TILA section 105(f) and in light of the factors in that provision, for a nonprofit entity servicing 5,000 or fewer loans, including those serviced on behalf of associated nonprofits, all of which that servicer or an associated nonprofit originated, the Bureau believes that requiring them to comply with the periodic statement requirement in TILA section 128(f) would not provide a meaningful benefit to consumers in the form of useful information or protection. The Bureau believes, as noted above, that these nonprofit servicers have incentives to provide consumers with necessary information, and that requiring provision of periodic statements would impose significant costs and burden. Specifically, the Bureau believes that the proposal will not complicate, hinder, or make more expensive the credit process—and is proper without regard to the amount of the loan, to the status of the consumer (including related financial arrangements, financial sophistication, and the importance to the consumer of the loan or related supporting property), or to whether the loan is secured by the principal residence of the consumer. In addition, consistent with Dodd-Frank Act section 1405(b), for the reasons discussed above, the Bureau believes that exempting nonprofit small servicers from the requirements of TILA section 128(f) would be in the interest of consumers and in the public interest.

As noted above, current Regulation X cross-references the definition of small servicer in § 1026.41(e)(4) for the purpose of exempting small servicers from several mortgage servicing requirements. Accordingly, in proposing to amend that definition, the Bureau is also proposing to amend the current Regulation X exemptions for small servicers. For this purpose, the Bureau is relying on the same authorities on which it relied in promulgating the current Regulation X small servicer exemptions. Specifically, the Bureau is proposing to exempt nonprofit small servicers from the requirements of Regulation X §§ 1024.38 through 41, except as otherwise provided in § 1024.41(j), *see* § 1024.30(b)(1), as well as certain requirements of § 1024.17(k)(5), pursuant to its authority under section 19(a) of RESPA to grant such reasonable exemptions for classes of transactions as may be necessary to achieve the consumer protection purposes of RESPA. The consumer protection purposes of RESPA include helping borrowers avoid unwarranted or unnecessary costs and fees. The Bureau believes that the proposed rule would ensure consumers avoid unwarranted and unnecessary costs and fees by encouraging nonprofit small servicers to consolidate servicing functions.

In addition, the Bureau relies on its authority pursuant to section 1022(b) of the Dodd-Frank Act to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial law, including the purposes and objectives of Title X of the Dodd-Frank Act. Specifically, the Bureau believes that the proposed rule is necessary and appropriate to carry out the purpose under section 1021(a) of the Dodd-Frank Act of ensuring that all consumers have access to markets for consumer financial products and services that are fair, transparent, and competitive, and the objective under section 1021(b) of the Dodd-Frank Act of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

With respect to §§ 1024.17(k)(5), 39, and 41 (except as otherwise provided in § 1024.41(j)), the Bureau is also proposing the nonprofit small servicer definition pursuant to its authority in section 6(j)(3) of RESPA to set forth requirements necessary to carry out section 6 of RESPA and in section 6(k)(1)(E) of RESPA to set forth obligations appropriate to carry out the consumer protection purposes of RESPA.

Section 1026.43 Minimum Standards for Transactions Secured by a Dwelling

43(a) Scope

43(a)(3)

The Bureau is proposing to amend the nonprofit small creditor exemption from the ability-to-repay rule that is set forth in § 1026.43(a)(3)(v)(D) of Regulation Z. To qualify for this exemption, a creditor must have extended credit secured by a dwelling no more than 200 times during the calendar year preceding receipt of the consumer's application. The proposal would exclude certain subordinate-lien transactions from this credit extension limit.

Section 129C(a)(1) of TILA states that no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination (based on verified and documented information) that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments. 15 U.S.C. 1639c(a)(1). Section 1026.43 of Regulation Z implements the ability-to-repay provisions of section 129C of TILA.

The January 2013 ATR Final Rule implemented statutory exemptions from the ability-to-repay provisions for home equity lines of credit subject to 12 CFR 1026.40, and for mortgage transactions secured by a consumer's interest in a timeshare plan, as defined in 11 U.S.C. 101(53D). *See* 12 CFR 1026.43(a). The rule also exempted from the ability-to-repay requirements (1) a transaction that is a reverse mortgage subject to 12 CFR 1026.33, (2) temporary or ''bridge'' loans with a term of 12 months or less, and (3) a construction phase of 12 months or less of a construction-to-permanent loan.

The January 2013 ATR Final Rule did not provide additional exemptions sought by certain commenters in response to an earlier proposal published by the Board in 2011. *See* 76 FR 27389 (May 11, 2011) (2011 ATR Proposal). However, the January 2013 ATR Proposal sought additional input on some of those exemptions, and contained a specific proposal to exempt certain nonprofit creditors from the ability-to-repay requirements. The Bureau believed that limiting the proposed exemption to creditors designated as nonprofits was appropriate because of the difference in lending practices between nonprofit and other creditors. The proposed exemption was premised on the belief that the additional costs imposed by the ability-to-repay requirements might prompt some nonprofit creditors to cease extending credit, or substantially limit their credit activities, thereby possibly harming low- to moderate-income consumers. The Bureau further stated that for-profit creditors derive more revenue from mortgage lending activity than nonprofit creditors, and therefore presumably are more likely to have the resources to comply with the ability-to-repay requirements.

The Bureau was concerned that an exemption for *all* nonprofit creditors could allow irresponsible creditors to intentionally circumvent the ability-to-repay requirements and harm consumers. Thus, under the January 2013 ATR Proposal, the exemption would have been available only if the creditor and the loan met certain criteria. First, the creditor would have been required to have a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 to be eligible for the proposed exemption. Second, the creditor could not have extended credit secured by a dwelling more than 100 times in the calendar year preceding receipt of the consumer's application. Third, the creditor, in the calendar year preceding receipt of the consumer's application, must have extended credit only to consumers whose income did not exceed the low- and moderate-income household limit established by HUD. Fourth, the extension of credit must have been to a consumer with income that does not exceed HUD's low- and moderate-income household limit. Fifth, the creditor must have determined, in accordance with written procedures, that the consumer has a reasonable ability to repay the extension of credit.

The Bureau believed that, in contrast to for-profit creditors and other nonprofit creditors, the nonprofit creditors identified in § 1026.43(a)(3)(v)(D) appeared to elevate long-term community stability over the creditor's economic considerations and to have stronger incentives to determine whether a consumer has the ability to repay a mortgage loan. The Bureau solicited comment regarding whether the proposed exemption was appropriate. The Bureau also specifically requested feedback on whether the proposed credit extension limit of 100 transactions was appropriate or should be increased or decreased. The Bureau also requested comment on the costs that would be incurred by nonprofit creditors that exceed that limit; the extent to which these additional costs would affect the ability of nonprofit creditors to extend responsible, affordable credit to low- and moderate-income consumers; and whether consumers could be harmed by the proposed exemption.

Comments Concerning the 100-Credit Extension Limit

The Bureau received many comments regarding the proposed nonprofit exemption. *See* 78 FR 35429, 35466–67 (June 12, 2013). Most commenters who supported the proposed exemption urged the Bureau to adopt conditions to prevent creditors from using the exemption to circumvent the rule. While many industry representatives, consumer advocates, and nonprofits believed that a 100-credit extension limit would discourage sham nonprofit creditors from exploiting the exemption, several of these commenters asked the Bureau to raise the limit. The commenters were primarily concerned that, in response to the proposed limit, nonprofit creditors would limit certain types of lending. Specifically, a few commenters stated that nonprofit creditors that offer both home-purchase mortgage loans and small-dollar mortgage loans, such as for home energy improvement, would limit small-dollar lending to remain under the 100-credit extension limitation.

The Nonprofit Exemption as Adopted

The May 2013 ATR Final Rule finalized the nonprofit exemption substantially as proposed, but raised the credit extension limit from 100 to 200 credit extensions in the calendar year preceding receipt of the consumer's application. *See* 78 FR 35429, 35467–69 (June 12, 2013). In finalizing the exemption, the Bureau noted that most commenters believed a credit extension limitation was necessary to prevent unscrupulous creditors from exploiting the exemption. The Bureau concluded that the risks of evasion warranted adopting the limit. The Bureau was concerned, however, that the proposed 100-credit extension limit would effectively restrict nonprofits to 50 home-purchase transactions per year, because nonprofits frequently provide simultaneous primary- and subordinate-lien financing for such transactions. Also, the Bureau was concerned that the proposed limit would reduce certain types of small-dollar lending by nonprofits, including financing home energy improvements.

Accordingly, the Bureau included a 200-credit extension limit in the final rule to address the concerns raised by commenters regarding access to credit. Some commenters had suggested limits as high as 500 credit extensions per

year; however, the Bureau believed that creditors originating more than 200 dwelling-secured credit extensions per year generally have the resources to bear the implementation and compliance burden associated with the ability-to-repay requirements, such that they can continue to lend without negative impacts on consumers. The final rule did not distinguish between first- and subordinate-liens for purposes of the exemption, as some commenters suggested. The Bureau believed that such a distinction would be needlessly restrictive and it would be more efficient to allow nonprofit creditors to determine the most efficient allocation of funds between primary- and subordinate-lien financing.

Response to the May 2013 ATR Final Rule and Further Proposal

Since the adoption of the May 2013 ATR Final Rule, the Bureau has heard concerns from some nonprofit creditors about the treatment of certain subordinate-lien programs under the nonprofit exemption from the ability-to-repay requirements. These creditors are concerned that they may be forced to curtail these subordinate-lien programs or more generally limit their lending activities to avoid exceeding the 200-credit extension limit. In particular, these entities have indicated concern with the treatment of subordinate-lien transactions that charge no interest and for which repayment is generally either forgivable or of a contingent nature. The Bureau understands that, absent an amended nonprofit exemption from the May 2013 ATR Final Rule, these nonprofit creditors may not have the resources to comply with the rule and therefore are likely to curtail their lending to stay within the 200-credit extension limit.

In light of these concerns, the Bureau is proposing to exclude certain deferred or contingent, interest-free subordinate liens from the 200-credit extension limit for purposes of the nonprofit exemption in § 1026.43(a)(3)(v)(D). Specifically, proposed § 1026.43(a)(3)(vii) would provide that consumer credit transactions that meet the following criteria are not considered in determining whether a creditor meets the requirements of § 1026.43(a)(3)(v)(D)(*1*): (A) The transaction is secured by a subordinate lien; (B) the transaction is for the purpose of downpayment, closing costs, or other similar home buyer assistance, such as principal or interest subsidies, property rehabilitation assistance, energy efficiency assistance, or foreclosure avoidance or prevention; (C) the credit contract does not require payment of interest; (D) the credit contract provides that the repayment of the amount of credit extended is (*1*) forgiven incrementally or in whole, at a date certain, and subject only to specified ownership and occupancy conditions, such as a requirement that the consumer maintain the property as the consumer's principal dwelling for five years, (*2*) deferred for a minimum of 20 years after consummation of the transaction, (*3*) deferred until sale of the property securing the transaction, or (*4*) deferred until the property securing the transaction is no longer the principal dwelling of the consumer; (E) the total of costs payable by the consumer in connection with the transaction at consummation is less than 1 percent of the amount of credit extended and includes no charges other than fees for recordation of security instruments, deeds, and similar documents; a bona fide and reasonable application fee; and a bona fide and reasonable fee for housing counseling services; and (F) in connection with the transaction, the creditor complies with all other applicable requirements of Regulation Z.

Proposed comment 43(a)(3)(vii)–1 would provide that the terms of the credit contract must satisfy the conditions that the transaction not require the payment of interest under § 1026.43(a)(3)(vii)(C) and that repayment of the amount of credit extended be forgiven or deferred in accordance with § 1026.43(a)(3)(vii)(D). The comment would further provide that the other requirements of § 1026.43(a)(3)(vii) need not be reflected in the credit contract, but the creditor must retain evidence of compliance with those provisions, as required by the record retention provisions of § 1026.25(a). In particular, the creditor must have information reflecting that the total of closing costs imposed in connection with the transaction are less than 1 percent of the amount of credit extended—and include no charges other than recordation, application, and housing counseling fees, in accordance with § 1026.43(a)(3)(vii)(E). Unless an itemization of the amount financed sufficiently details this requirement, the creditor must establish compliance with § 1026.43(a)(3)(vii)(E) by some other written document and retain it in accordance with § 1026.25(a).

Proposed § 1026.43(a)(3)(vii) and the accompanying comment largely mirror a provision that was finalized as part of the Bureau's December 2013 TILA–RESPA Final Rule. *See* 78 FR 79729 (Dec. 31, 2013). That provision, which was finalized in both Regulation X, at § 1024.5(d), and Regulation Z, at § 1026.3(h)—and which will take effect on August 1, 2015, provides a partial exemption from the integrated disclosure requirements for loans that meet the above-described criteria. The Bureau finalized this partial exemption in the December 2013 TILA–RESPA Final Rule to preserve an existing exemption from Regulation X issued by HUD and to facilitate compliance with TILA and RESPA. *See* 78 FR 79729, 79758 and 79772 (Dec. 31, 2013). In proposing that exemption, the Bureau explained that the exemption was intended to describe criteria associated with certain housing assistance loan programs for low- and moderate-income persons. *See* 77 FR 51115, 51138 (Aug. 23, 2012). The Bureau believes the same criteria describe the class of transactions that may appropriately be excluded from the 200-credit extension limit in the ability-to-repay exemption for nonprofits. The Bureau also believes that defining a single class of transactions for purposes of § 1024.5(d), § 1026.3(h), and § 1026.43(a)(3)(vii) may facilitate compliance for creditors.

The Bureau believes the § 1026.43(a)(3)(v)(D) exemption as amended by the proposal would be limited to creditors with characteristics that ensure consumers are offered responsible, affordable credit on reasonably repayable terms. The Bureau also believes that subordinate-lien transactions meeting the proposed exclusion's criteria pose low risk to consumers, and that excluding these transactions from the credit extension limit is consistent with TILA's purposes. For example, in transactions that would be covered by proposed § 1026.43(a)(3)(vii), consumers often benefit from a reduction in their repayment obligations on an accompanying first-lien mortgage and often control the triggering of any subordinate-lien repayment requirement for at least a twenty-year period. Therefore, the subordinate-lien transactions may enhance the consumer's ability to repay their monthly mortgage obligations. Further, the prohibition against charging interest and strict limitation on fees reduces the likelihood that borrowers will be misled about the extent of their financial obligations, as the amounts of their obligations (if at all repayable) remain essentially fixed. The Bureau believes that limiting the exclusion to loans with these characteristics may also reduce the likelihood that the provision would be used to evade the ability-to-repay requirements.

The Bureau also believes the proposed exclusion would facilitate access to credit for low- and moderate-

income consumers. As noted above, the proposed exclusion would apply to subordinate-lien financing extended only for specified purposes, including home buyer assistance, property rehabilitation, or foreclosure avoidance. The Bureau believes that such financing plays a critical role in nonprofit lending to low- and moderate-income consumers, and in particular homeownership programs designed for such consumers. In purchase-money transactions, subordinate-lien financing may reduce the amortizing payment on first-lien mortgages, improving low- and moderate-income consumers' ability to repay, especially in jurisdictions where housing costs are high. Similarly, the Bureau believes such financing may play a critical role in nonprofit creditors' efforts to provide property-rehabilitation, energy-efficiency, and foreclosure-avoidance assistance.

The Bureau believes that, without the proposed exclusion for these transactions, nonprofit creditors may limit such extensions of credit, or may limit their overall credit activity. As a result, low- and moderate-income consumers who would otherwise qualify for a nonprofit creditor's program may be denied credit. As noted in the January 2013 ATR Proposal, the current exemption for nonprofit creditors was premised on the belief that the additional costs imposed by the ability-to-repay requirements might prompt certain nonprofit creditors to cease extending credit, or substantially limit their credit activities, thereby possibly harming low- and moderate-income consumers. *See* 78 FR 6621, 6645 (Jan. 30, 2013). Because of their limited resources to bear the compliance burden of the ability-to-repay rule, the Bureau believes at least some nonprofit creditors may limit lending activity to maintain their exemption. The proposed amendment to the § 1026.43(a)(3)(v)(D) exemption is intended to minimize this effect by allowing nonprofit creditors to originate subordinate-lien transactions meeting the proposed § 1026.43(a)(3)(vii) criteria without the risk of losing that exemption.

In addition, the Bureau believes that excluding these subordinate-lien transactions from the transaction-count limitation may be appropriate because the origination of these loans is not necessarily indicative of a creditor's capacity to comply with the ability-to-repay requirements. As noted above, the Bureau believes that creditors extending credit in more than 200 dwelling-secured transactions per year are likely to have the resources and capacity to comply with the ability-to-repay requirements. However, subordinate-lien transactions typically involve small loan amounts and, as limited by the proposed exclusion's criteria, would generate little revenue to support a creditor's capacity to comply. Absent the exclusion, those creditors might curtail lending—with potential negative impacts for consumer's access to credit. Particularly when such a subordinate-lien transaction is originated in connection with a first-lien transaction, counting both transactions towards the 200-credit extension limit may not provide the appropriate indication of a creditor's capacity to comply.

As noted above, in adopting the current nonprofit exemption in § 1026.43(a)(3)(v)(D), the Bureau did not distinguish between first- and subordinate-lien transactions for purposes of the credit extension limit out of concerns that doing so would affect creditors' allocations of loans. However, the Bureau does not believe the proposed exclusion is likely to significantly affect such allocations. As noted above, the proposed exclusion permits nonprofit creditors to allocate resources to subordinate-lien transactions without risking their exemption from the ability-to-repay rule. To the extent the proposed exclusion encourages origination of these subordinate-lien transactions, the Bureau believes that the limitations on the borrower's repayment obligations as well as on the creditor's ability to charge interest and fees may minimize the risk that, as a result of the exclusion, creditors would allocate greater amounts of their lending to these transactions. In fact, to the extent many affordable homeownership programs use such subordinate-lien transactions in tandem with first-lien mortgages, excluding these subordinate-lien transactions from the credit extension limit count may reduce the current § 1026.43(a)(3)(v)(D) exemption's impact on nonprofit creditors' allocation of financing between first- and subordinate-lien transactions.

To address nonprofit creditor concerns, the Bureau also considered whether it would be appropriate to remove the credit extension limitation from the § 1026.43(a)(3)(v)(D) nonprofit exemption altogether. The Bureau believes that nonprofit creditors who originate 200 or more dwelling-secured transactions in a year generally have the resources necessary to comply with TILA ability-to-repay requirements. The Bureau believes that the exemption properly balances relevant considerations, including the nature of credit extended, safeguards and other factors that may protect consumers from harm, and the extent to which application of the regulatory requirements would affect access to responsible, affordable credit. Accordingly, the Bureau continues to believe that the credit extension limit is necessary to prevent evasion, but is proposing to exclude from the 200-credit extension limit a narrow class of subordinate-lien transactions to address concerns expressed by nonprofit creditors and avoid potential negative impacts on access to credit, particularly for low- and moderate-income consumers.

Legal Authority

The current § 1026.43(a)(3)(v)(D) exemption from the ability-to-repay requirements was adopted pursuant to the Bureau's authority under section 105(a) and (f) of TILA. Pursuant to section 105(a) of TILA, the Bureau generally may prescribe regulations that provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate, among other things, the purposes of TILA. For the reasons discussed in more detail above, the Bureau believes that the proposed amendment of the current § 1026.43(a)(3)(v)(D) exemption from the TILA ability-to-repay requirements is necessary and proper to effectuate the purposes of TILA, which include the purposes of TILA section 129C. The Bureau believes that the proposed amendment of the exemption ensures that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay by helping to ensure the viability of the mortgage market for low- and moderate-income consumers. The Bureau believes that the mortgage loans originated by nonprofit creditors identified in § 1026.43(e)(4)(v)(D) generally account for a consumer's ability to repay. Without the proposed amendment to the exemption, the Bureau believes that low- and moderate-income consumers might be at risk of being denied access to the responsible and affordable credit offered by these creditors, which is contrary to the purposes of TILA. The proposed amendment to the exemption is consistent with the purposes of TILA by ensuring that consumers are able to obtain responsible, affordable credit from the nonprofit creditors discussed above.

The Bureau has considered the factors in TILA section 105(f) and believes that, for the reasons discussed above, the proposed amendment of the exemption is appropriate under that provision. For the reasons discussed above, the Bureau believes that the proposed amendment to § 1026.43(a)(3)(v)(D) would exempt

extensions of credit for which coverage under the ability-to-repay requirements does not provide a meaningful benefit to consumers (in the form of useful information or protection) in light of the protection that the Bureau believes the credit extended by these creditors already provides to consumers. The Bureau believes that the proposed amendment to the § 1026.43(a)(3)(v)(D) exemption is appropriate for all affected consumers, regardless of their other financial arrangements and financial sophistication and the importance of the loan and supporting property to them. Similarly, the Bureau believes that the proposed amendment to the § 1026.43(a)(3)(v)(D) exemption is appropriate for all affected loans covered under the exemption, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed amendment to the § 1026.43(a)(3)(v)(D) exemption will simplify the credit process without undermining the goal of consumer protection, denying important benefits to consumers, or increasing the expense of (or otherwise hindering) the credit process.

43(e) Qualified Mortgages

43(e)(3) Limits on Points and Fees for Qualified Mortgages

The Dodd-Frank Act provides that ''qualified mortgages'' are entitled to a presumption that the creditor making the loan satisfied the ability-to-repay requirements. The qualified mortgage provisions are implemented in § 1026.43(e). Current § 1026.43(e)(3)(i) provides that a covered transaction is not a qualified mortgage if the transaction's total points and fees exceed certain limits set forth in § 1026.43(e)(3)(i)(A) through (E). For the reasons set forth below, the Bureau is proposing to permit a creditor or assignee to cure an inadvertent excess over the qualified mortgage points and fees limits by refunding to the consumer the amount of excess, under certain conditions. As discussed in part VI.A. below, the Bureau is also requesting comment on issues related to inadvertent debt-to-income ratio overages, but at this time is not proposing a specific change to the regulation. For purposes of these discussions, ''cure'' means a procedure to reduce points and fees or debt-to-income ratios after consummation when the qualified mortgage limits have been inadvertently exceeded, while ''correction'' means post-consummation revisions to documentation or calculations, or both, to reflect conditions as they actually existed at consummation.

43(e)(3)(i)

As discussed below, the Bureau is proposing a new § 1026.43(e)(3)(iii) to establish a cure procedure where a creditor inadvertently exceeds the qualified mortgage points and fees limits, under certain conditions. As a conforming change, the Bureau is also proposing to amend § 1026.43(e)(3)(i), to add the introductory phrase ''Except as provided in paragraph (e)(3)(iii) of this section'' to § 1026.43(e)(3)(i), to specify that the cure provision in proposed § 1026.43(e)(3)(iii) is an exception to the general rule that a covered transaction is not a qualified mortgage if the transaction's total points and fees exceed the applicable limit set forth in § 1026.43(e)(3)(i)(A) through (E).

43(e)(3)(iii)

Section 1411 of the Dodd-Frank Act added new TILA section 129C to require a creditor making a residential mortgage loan to make a reasonable and good faith determination (based on verified and documented information) that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan. 15 U.S.C. 1639c. TILA section 129C(b) further provides that the ability-to-repay requirements are presumed to be met if the loan is a qualified mortgage. TILA section 129C(b)(2) sets certain product-feature and underwriting requirements for qualified mortgages, including a 3-percent limit on points and fees, but gives the Bureau authority to revise, add to, or subtract from these requirements.[15] Those requirements are implemented by the January 2013 ATR Final Rule, as amended by the May 2013 ATR Final Rule.

The current ability-to-repay rule provides for four categories of qualified mortgages: a ''general'' qualified mortgage definition that is available to any creditor;[16] a temporary qualified mortgage definition for loans eligible for sale to or guarantee by a government sponsored enterprise (GSE) or eligible for guarantee by or insurance under certain Federal agency programs;[17] and two qualified mortgage definitions available to small creditors.[18] The current rule provides that for all types of qualified mortgages, the up-front points and fees charged in connection with the mortgage must not exceed 3 percent of the total loan amount, with higher thresholds specified for various categories of loans below $100,000.[19] Pursuant to § 1026.32(b)(1), points and fees are the ''fees or charges that are known at or before consummation.''

The calculation of points and fees is complex and can involve the exercise of judgment that may lead to inadvertent errors with respect to charges imposed at or before consummation. For example, discount points may be mistakenly excluded from, or included in, the points and fees calculation as bona fide third-party charges, or bona fide discount points, under § 1026.32(b)(1)(i)(D) or (E). Mortgage insurance premiums under § 1026.32(b)(1)(i)(C) or loan originator compensation under § 1026.32(b)(1)(ii) may also mistakenly be excluded from, or included in, the points and fees calculation. A rigorous post-consummation review by the creditor or assignee of loans originated with the good faith expectation of qualified mortgage status may uncover such inadvertent errors. However, the current rule does not provide a mechanism for curing such inadvertent points and fees overages that are discovered after consummation.

Based on information received in the course of outreach in connection with the Bureau's Implementation Plan, the Bureau understands that some creditors

[15] *See* TILA section 129C(b)(3)(B)(i). TILA section 129C(b)(2)(D) requires the Bureau to prescribe rules adjusting the 3-percent points and fees limit to ''permit lenders that extend smaller loans to meet the requirements of the presumption of compliance.''

[16] 12 CFR 1026.43(e)(2). Under the general qualified mortgage definition, the loan must meet certain restrictions on loan features, points and fees, and underwriting.

[17] Section 1026.43(e)(4). The temporary GSE/agency qualified mortgage definition will sunset on the earlier of January 10, 2021, or, with respect to GSE-eligible loans, when the GSEs exit government conservatorship, or, with respect to agency-eligible loans, when those agencies' qualified mortgage definitions take effect.

[18] Section 1026.43(e)(5) contains a special qualified mortgage definition for small creditors that hold loans in portfolio, while § 1026.43(f) permits small creditors that operate predominantly in rural or underserved areas to originate qualified mortgages with balloon-payment features, despite the general prohibition on qualified mortgages containing balloon payments. For a two-year transitional period, § 1026.43(e)(6) permits all small creditors, regardless of their areas of operation, to originate qualified mortgages with balloon-payment features. ''Small creditor'' is defined in § 1026.35(b)(2)(iii)(B) and (C), and generally includes creditors that, in the preceding calendar year, originated 500 or fewer covered transactions, including transactions originated by affiliates, and had less than $2 billion in assets.

[19] *See* § 1026.43(e)(2) and (3). For loans of $60,000 up to $100,000, § 1026.43(e)(3)(i) allows points and fees of no more than $3,000. For loans of $20,000 up to $60,000, § 1026.43(e)(3)(i) allows points and fees of no more than 5 percent of the total loan amount. For loans of $12,500 up to $20,000, § 1026.43(e)(3)(i) allows points and fees of no more than $1,000. For loan amounts less than $12,500, § 1026.43(e)(3)(i) allows points and fees of no more than 8 percent of the total loan amount.

may not originate, and some secondary market participants may not purchase, mortgage loans that are near the qualified mortgage limits on points and fees because of concern that the limits may be inadvertently exceeded at the time of consummation. Specifically, the Bureau understands that some creditors seeking to originate qualified mortgages may establish buffers, set at a level below the points and fees limits in § 1026.43(e)(3)(i), to avoid exceeding those limits. Those creditors may simply refuse to extend mortgage credit to consumers whose loans would exceed the buffer threshold, either due to the creditors' concerns about the potential liability attending loans originated under the general ability-to-repay standard or the risk of repurchase demands from the secondary market if the qualified mortgage points and fees limit is later found to have been exceeded. Where such buffers are established, the Bureau is concerned that access to credit for consumers seeking loans at the margins of the limits might be negatively affected. The Bureau is also concerned that creditors may increase the cost of credit for consumers seeking loans at the margins of the limits due to compliance or secondary market repurchase risk.

In light of these concerns, the Bureau is proposing to permit a creditor or assignee to cure an inadvertent excess over the qualified mortgage points and fees limit under certain defined conditions, including the requirement that the loan was originated in good faith as a qualified mortgage and that the cure be provided in the form of a refund to the consumer within 120 days after consummation. The Bureau notes that, where the loan was originated in good faith as a qualified mortgage, consumers likely received the benefit of qualified mortgage treatment by receiving lower overall loan pricing. For this reason, the Bureau believes that a cure provision, if appropriately limited, would reflect the expectations of both consumers and creditors at the time of consummation, would not result in significant consumer harm, and may increase access to credit by encouraging creditors to extend credit to consumers seeking loans at the margins of the points and fees limits. In addition, the Bureau believes that a limited cure provision may promote consistent pricing within the qualified mortgage range by decreasing the market's perceived need for higher pricing (due to compliance or secondary market repurchase risk) at the margins of the points and fees limits. The Bureau also believes this would promote stability in the market by limiting the need for repurchase demands that may otherwise be triggered without the proposed cure option.

The Bureau expects that, over time, creditors will develop greater familiarity with, and capabilities for, originating loans that are not qualified mortgages under the general ability-to-repay requirements, as well as greater confidence in general compliance systems. As they do so, creditors may relax internal buffers regarding points and fees that are predicated on the qualified mortgage threshold. However, the Bureau believes the impacts on access to credit may make a points and fees cure provision appropriate at this time. In addition, the Bureau believes that the cure provision will encourage post-consummation quality control review of loans, which will improve the origination process over time.

Accordingly, proposed § 1026.43(e)(3)(iii) would provide that if the creditor or assignee determines after consummation that the total points and fees payable in connection with a loan exceed the applicable limit under § 1026.43(e)(3)(i), the loan is not precluded from being a qualified mortgage if certain conditions, discussed below, are met.

43(e)(3)(iii)(A)

First, new § 1026.43(e)(3)(iii)(A) would require that the creditor originated the loan in good faith as a qualified mortgage and the loan otherwise meets the requirements of § 1026.43(e)(2), (e)(4), (e)(5), (e)(6), or (f), as applicable. Comment 43(e)(3)(iii)–1 would provide examples of circumstances that may be evidence that a loan was or was not originated in good faith as a qualified mortgage. First, the comment would provide that maintaining and following policies and procedures designed to ensure that points and fees are correctly calculated and do not exceed the applicable limit under § 1026.43(e)(3)(i) may be evidence that the creditor originated the loan in good faith as a qualified mortgage. In addition, the comment would provide that if the pricing on the loan is consistent with pricing on qualified mortgages originated contemporaneously by the same creditor, that may be evidence that the loan was originated in good faith as a qualified mortgage. The comment would also provide examples of circumstances that may be evidence that the loan was not originated in good faith as a qualified mortgage. Specifically, the comment would provide that, if a creditor does not maintain—or has but does not follow—policies and procedures designed to ensure that points and fees are correctly calculated and do not exceed the applicable limit described in § 1026.43(e)(3)(i), that may be evidence that the creditor did not originate the loan in good faith as a qualified mortgage. If the pricing on the loan is not consistent with pricing on qualified mortgages originated contemporaneously by the same creditor, that may also be evidence that a loan was not originated in good faith as a qualified mortgage.

The Bureau is proposing to allow for a post-consummation cure of points and fees overages only where the loan was originated in good faith as a qualified mortgage to ensure that the cure provision is available only to creditors who make inadvertent errors in the origination process and to prevent creditors from exploiting the cure provision by intentionally exceeding the points and fees limits. However, the Bureau seeks comment on whether the good faith element of § 1026.43(e)(3)(iii)(A) is necessary in light of the other proposed limitations on the cure provision. The Bureau also seeks comment on the proposed examples in comment 43(e)(3)(iii)–1, specifically including whether additional guidance regarding the term ''contemporaneously'' in comments 43(e)(3)–1.i.B and 43(e)(3)–1.ii.B is necessary, and whether additional examples would be useful.

43(e)(3)(iii)(B)

Second, to cure a points and fees overage, proposed § 1026.43(e)(3)(iii)(B) would require that within 120 days after consummation, the creditor or assignee refunds to the consumer the dollar amount by which the transaction's points and fees exceeded the applicable limit under § 1026.43(e)(3)(i) at consummation.

The Bureau believes that requiring a refund to occur within a short period after consummation is consistent with the requirement that the loan be originated in good faith as a qualified mortgage. The Bureau understands that many creditors and secondary market purchasers conduct audits or quality control reviews of loan files in the period immediately following consummation to ensure, among other things, compliance with regulatory requirements. During this review phase, a creditor that originated a loan in good faith as a qualified mortgage (or the creditor's assignee) may discover an inadvertent points and fees overage. Indeed, providing a reasonable but limited time period for cure may actually promote strong post-consummation quality control efforts,

which may, in turn, improve a creditor's origination procedures and compliance, thereby reducing the use of the cure mechanism over time. Strong post-consummation quality control and improved origination procedures may also reduce costs over time and decrease the incidence of repurchase demands after a loan is sold into the secondary market.

The Bureau believes that the proposed 120-day period would result in reasonably prompt refunds to affected consumers and provide sufficient time to accommodate communication with the consumer. A 120-day period should also allow sufficient time for creditors and secondary market participants to conduct post-consummation reviews that may uncover inadvertent points and fees overages. In contrast, a longer period would not result in prompt refunds and would provide less incentive for rigorous review immediately after consummation. In outreach to industry stakeholders prior to this proposal, the Bureau learned that 120 days is a time period within which post-consummation quality control reviews generally are completed. The Bureau specifically requests comment more broadly, however, on whether 120 days is an appropriate time period for post-consummation cure of a points and fees overage, or whether a longer or shorter period should be provided; what factors would support any recommended time period; and, if the cure were available for a longer period, whether additional conditions should be applied beyond those in this proposal.

The Bureau considered whether the cure provision should run from the date of discovery of the points and fees overage or within a limited number of days after transfer of the loan, rather than the time of consummation, but the Bureau believes that such alternative provisions would be inappropriate. The Bureau is concerned that allowing an extended period of time for cure would create incentives for bad faith actors to intentionally violate the points and fees limit and selectively wait for discovery to cure the violation only when it would be to their advantage to do so. Such actions would not be consistent with the statutory requirement of making a good faith determination of a consumer's ability-to-repay. Similarly, the Bureau is concerned that, particularly later in the life of the loan, giving the creditor a unilateral option to change the status of the loan to a qualified mortgage, thereby providing the creditor with enhanced protection from liability, would facilitate evasion of regulatory requirements by the creditor.

The Bureau also considered whether it would be appropriate to limit a creditor's or assignee's ability to cure points and fees overages for qualified mortgage purposes to the time prior to the receipt of written notice of the error from or the institution of any action by the consumer. The Bureau believes that such a requirement may not be necessary because the points and fees cure must occur within 120 days after consummation such that it is unlikely that the consumer would provide such notice or institute such action during that period. Further, the Bureau believes that such a requirement might undercut the purposes of the cure provision—to encourage both lending up to the points and fees limits and post-consummation quality control review of loans—since creditors and assignees could not be certain of their ability to review the loan post-consummation and provide a refund, if appropriate. However, the Bureau solicits comment on whether cure should be permitted only prior to receipt of written notice of the error from or the institution of any action by the consumer.

The Bureau recognizes that, where points and fees have been financed as part of the loan amount and an overage is refunded to the consumer after consummation, the consumer will continue to pay interest on a loan amount that includes the overage. As a result, the consumer may pay more interest over the life of the loan than would have been paid absent the inadvertent points and fees overage. Although the Bureau believes such circumstances will be limited, the Bureau acknowledges that a post-consummation refund of the amount of points and fees overage alone would not make the consumer whole in most such cases.[20] For this reason, the Bureau considered whether the cure provision should require other means of restitution to the consumer, such as restructuring the loan to provide a lower loan amount commensurate with deducting the points and fees overage, or requiring any refund to the consumer to include the present value of excess interest that the consumer would pay over the life of the loan. However, the Bureau believes there are complications to these approaches. For example, the Bureau expects that creditors would have difficulty systematically restructuring loans within a short time after consummation, especially where the loan has already been, or shortly will be, securitized. The Bureau also notes potential difficulties in determining the period over which excess interest should be calculated, since few consumers hold their loans for the entire loan term. In light of these considerations, the Bureau is not proposing that the cure provision require any means of restitution other than a refund of the actual overage amount to the consumer. However, the Bureau solicits comment on other appropriate means of restitution and in what circumstances they may be appropriate.

43(e)(3)(iii)(C)

The third criteria for a cure is set forth in proposed § 1026.43(e)(3)(iii)(C), which would provide that the creditor or assignee must maintain and follow policies and procedures for post-consummation review of loans and for refunding to consumers amounts that exceed the applicable limit under § 1026.43(e)(3)(i). Comment 43(e)(3)(iii)-2 would provide that a creditor or assignee satisfies § 1026.43(e)(3)(iii) if it maintains and follows policies and procedures for post-consummation quality control loan review and for curing (by providing a refund) errors in points and fees calculations that occur at or before consummation.

The Bureau believes this requirement will provide an incentive for creditors to maintain rigorous quality control measures on a consistent and continuing basis. The Bureau believes that conditioning a cure on a consistently applied policy promotes and incentivizes good faith efforts to identify and minimize errors that may occur at or before consummation, with resulting benefits to consumers, as well as creditors and assignees.

The Bureau requests comment on all aspects of the proposal to permit creditors to cure inadvertent excesses over the points and fees limit, including whether a post-consummation cure should be permitted, and whether different, additional, or fewer conditions should be imposed upon its availability, such as whether the consumer must be current on loan payments at the time of the cure.

Legal Authority

The Bureau proposes § 1026.43(e)(3)(iii) pursuant to its authority under TILA section 129C(b)(3)(B)(i) to promulgate regulations that revise, add to, or subtract from the criteria that define a qualified mortgage. For the reasons discussed above, the Bureau believes

[20] There may be circumstances where the consumer pays discount points to obtain a lower interest rate and the post-consummation review determines the payments do not qualify as bona fide discount points. In such cases, a refund of the discount points, without additional changes to the loan, may result in a net benefit to the consumer.

that the proposed provision is warranted under TILA section 129C(b)(3)(B)(i) because the proposal is necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with purposes of section 129C of TILA, and also necessary and appropriate to facilitate compliance with section 129C of TILA. For example, the Bureau believes the proposed limited post-consummation cure provision will facilitate compliance with TILA section 129C by encouraging strict, post-consummation quality control loan reviews that will, over time, improve the origination process.

In addition, because proposed § 1026.43(e)(3)(iii) permits creditors to cure inadvertent non-compliance with the general qualified mortgage points and fees limitation up to 120 days after consummation, the Bureau also proposes § 1026.43(e)(3)(iii) pursuant to its authority under section 105(a) and (f) of TILA. Pursuant to section 105(a) of TILA, the Bureau generally may prescribe regulations that provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to, among other things, effectuate the purposes of TILA. For the reasons discussed above, the Bureau believes that exempting the class of qualified mortgages that involve a post-consummation points and fees cure from the statutory requirement that the creditor make a good faith determination that the consumer has the ability to repay ''at the time the loan is consummated'' is necessary and proper to effectuate the purposes of TILA. The Bureau believes that limited post-consummation cure of points and fees overages will preserve access to credit to the extent it encourages creditors to extend credit to consumers seeking loans with points and fees up to the 3-percent limit. Without a points and fees cure provision, the Bureau believes that some consumers might be at risk of being denied access to responsible, affordable credit, which is contrary to the purposes of TILA. The Bureau also believes a limited post-consummation cure provision will facilitate compliance with TILA section 129C by encouraging strict, post-consummation quality control loan reviews that will, over time, improve the origination process.

The Bureau has considered the factors in TILA section 105(f) and believes that a limited points and fees cure provision is appropriate under that provision. The Bureau believes that the exemption, with the specific conditions required by the proposal, is appropriate for all affected consumers; specifically, those seeking loans at the margins of the points and fees limit whose access to credit may be affected adversely without the exemption. Similarly, the Bureau believes that the exemption is appropriate for all affected loans covered under the exemption, *i.e.* those made in good faith as qualified mortgages, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the exemption would not undermine the goal of consumer protection or increase the complexity or expense of (or otherwise hinder) the credit process, because costs may actually decrease, as noted above. While the exemption may result in consumers in affected transactions losing some of TILA's benefits, potentially including some aspects of a foreclosure legal defense, the Bureau believes such potential losses are outweighed by the potentially increased access to responsible, affordable credit, an important benefit to consumers. The Bureau believes that is the case for all affected consumers, regardless of their other financial arrangements, their financial sophistication, and the importance of the loan and supporting property to them.

VI. Other Requests for Comment

A. Request for Comment on Cure or Correction of Debt-to-Income Overages

To satisfy the general qualified mortgage definition in § 1026.43(e)(2), the consumer's total monthly debt-to-income ratio—verified, documented, and calculated in accordance with § 1026.43(e)(2)(vi)(B) and appendix Q—cannot exceed 43 percent at the time of consummation.[21] Similar to an error made in calculating points and fees, errors made in calculating debt-to-income ratios could jeopardize a loan's qualified mortgage status under § 1026.43(e)(2). Some industry stakeholders have suggested that creditors seeking to originate § 1026.43(e)(2) qualified mortgages may establish buffers that relate to debt-to-income ratios—*i.e.,* buffers set at a level below the rule's 43-percent debt-to-income ratio limit. Some creditors may, in turn, refuse to extend mortgage credit to consumers whose loans would exceed the buffer threshold, either due to concerns about potential liability associated with loans originated under the general ability-to-repay standard or the risk of repurchase demands from the secondary market, if the debt-to-income ratio limit is exceeded. Such practices may reduce access to credit to consumers at the margins of the debt-to-income ratio limit.

As explained above, the Bureau is proposing § 1026.43(e)(3)(iii) to permit cure of inadvertent points and fees overages by refunding to the consumer the dollar amount that exceeds the applicable points and fees limit, under certain defined conditions. The Bureau is also considering whether a similar cure provision may be appropriate in the context of debt-to-income overages. As discussed above, the proposed points and fees cure procedure may benefit consumers and the market in various ways. A debt-to-income cure provision has the potential to benefit consumers and the market in a similar manner. However, as discussed below, the Bureau believes that miscalculations of debt-to-income ratios are fundamentally different in nature than errors in calculating points and fees, and may be less suitable to a cure provision similar to proposed § 1026.43(e)(3)(iii).

The Bureau is also considering whether it may be appropriate to address the more limited scenario where debt-to-income overages result from errors in calculation or documentation, or both, of debt or income. Specifically, the Bureau is considering whether, in such situations, it would be feasible to permit post-consummation corrections to the documentation, which would result in a corresponding recalculation of the debt-to income ratio. While such a correction mechanism has the potential to benefit consumers and the market, there are a number of reasons, discussed below, why it may be inappropriate and impracticable.

In light of these difficulties and concerns, the Bureau is not proposing a specific debt-to-income ratio cure or correction provision at this time. However, to aid its ongoing consideration of these options, the Bureau is requesting comment on any and all aspects of potential cure and correction provisions for debt-to-income overages described below.

Debt-to-Income Cure

As noted, the Bureau recognizes that a debt-to-income cure mechanism has the potential to benefit consumers and the market. However, the Bureau is concerned that such a procedure may be inappropriate because a miscalculation of debt-to-income ratios cannot be remedied in a manner similar to, or as equally practicable as, remedying a

[21] In contrast to the 3-percent cap on points and fees, which applies to all qualified mortgages, the 43-percent debt-to-income ratio limit applies only to the ''general'' qualified mortgage category (§ 1026.43(e)(2)), and not to the temporary GSE/agency category (§ 1026.43(e)(4)) or the small creditor categories (§ 1026.43(e)(5), (e)(6), and (f)).

miscalculation of points and fees. The Bureau believes that debt-to-income overages commonly would result from creditors incorrectly, but inadvertently, including income or failing to consider debts in accordance with the rule—*i.e.,* understating the numerator or overstating the denominator in the mathematical equation that derives the debt-to-income ratio. In these situations, a creditor or secondary market purchaser would need to alter the consumer's debts and/or income to bring the debt-to-income ratio within the 43-percent limit or the ratio would exceed qualified mortgage limits.

It is unclear how creditors could raise consumers' incomes or lower their debts systematically to bring the ratio within the 43-percent limit. Of course, creditors cannot increase a consumer's income. It may be possible in some situations for creditors to modify the underlying mortgage and lower the consumer's monthly payment on the loan so that the ''debt'' is low enough to bring the ratio back within the 43-percent limit—or to pay down other debts of the consumer to achieve the same result. However, the Bureau believes this approach would require a complex restructuring of the loan, which may itself trigger a repurchase demand from the secondary market, and possibly require a refund of excess payments collected from the time of consummation.

For any such cure provision to be considered, creditors would need to maintain and follow policies and procedures of post-consummation review of loans to restructure them and refund amounts as necessary to bring the debt-to-income ratio within the 43-percent limit. However, based on the Bureau's current information, the Bureau does not believe creditors could realistically meet such a requirement, and expects that creditors would have difficulty systematically restructuring loans, or systematically paying down debts on the consumer's behalf, within a short time after consummation. Moreover, in some cases the consumer's other debts (when properly considered) could be too substantial, or the corrected income too low, for any viable modification of the mortgage to reduce the debt-to-income ratio below the prescribed limit.

Debt-to-Income Correction

The Bureau is also considering whether it may be appropriate to address the more limited scenario where debt-to-income overages result solely from errors in documentation of debt or income. For example, a creditor may have considered but failed to properly document certain income in accordance with the rule. Such an error may feasibly be remedied by submission of corrected documentation (and a corresponding recalculation of the debt-to-income ratio) without the need for a monetary cure or loan restructuring. A correction also could be effective in situations in which the creditor erred in calculating the consumer's debts and as a result verified and documented only certain income if that income alone appeared sufficient to satisfy the 43-percent limit.

Certain sources of income (*e.g.,* salary) are generally considered easier to document than others (*e.g.,* rental or self-employment income), and satisfaction of the general qualified mortgage definition does not require creditors to document and consider every potential source of income, so long as the debt-to-income ratio based on the income considered (and calculated in accordance with the rule) does not exceed 43 percent. Creditors may, for the sake of expediency, only consider easy-to-document income when that income alone satisfies the debt-to-income ratio—a practice permitted under the regulation.[22] Where a creditor or secondary market purchaser later discovers that income relied upon was overstated or additional debts existed that were not considered, it may be feasible for a creditor to correct a resulting debt-to-income ratio overage by collecting documentation and considering the additional income it knew about at the time of consummation but chose not to consider for the sake of expediency.

While these means of correcting debt-to-income ratio overages may be feasible, the Bureau is concerned that a provision tailored toward these situations may be inappropriate and believes any such provision could result in unintended consequences. The Bureau is concerned about the risk of creating any disincentives for creditors to exercise due diligence in carrying out their statutory obligations. In addition, the Bureau is concerned that allowing creditors to supplement required documentation after consummation could raise factual questions of what income and documentation the creditor was aware of at the time of consummation, and what income and documentation were discovered only after an intensive investigation following discovery of a debt-to-income overage. The Bureau is also concerned that, in some instances a correction provision could allow loans to be deemed qualified mortgages based on post hoc documentation, notwithstanding that the creditor, in fact, would not have made the loan had it correctly calculated the consumer's debt-to-income ratio.

Although the Bureau has received requests from industry noting that it would be useful to permit corrections in situations where a creditor did not document all known income at the time of consummation, it is not clear how often this will happen in practice. Furthermore, the Bureau believes that amending the rule to allow for correction in those instances may be unnecessary because creditors could avoid such debt-to-income ratio overages by verifying additional sources of income prior to consummation, at least in loans where the debt-to-income ratio would otherwise be near the 43-percent limit.

As discussed above with respect to points and fees, the Bureau expects that, over time, creditors will develop greater familiarity with, and capabilities for, originating loans that are not qualified mortgages under the ability-to-repay requirements, as well as greater confidence in general compliance systems. As they do so, the Bureau believes creditors may relax internal debt-to-income ratio buffers that are predicated on the qualified mortgage threshold. Although the Bureau is considering whether the impacts on access to credit during the interim period (when such capabilities are being developed) may make a debt-to-income cure provision appropriate, the 43-percent debt-to-income ratio limit applies only to one category of qualified mortgages, unlike the points and fees limit, which applies to all qualified mortgages. Small creditors making qualified mortgages under § 1026.43(e)(5), (e)(6), and (f) are not subject to the 43-percent debt-to-income limit. Further, creditors of any size currently have the option of originating GSE/agency-eligible loans under the temporary qualified mortgage definition without regard to the 43-percent debt-to-income limit.[23] For this reason, the Bureau believes that a relatively small number of loans are currently affected by the debt-to-income limit.

[22] *See* comment 43(c)(2)(i)–5; *see also* Appendix Q (noting that a creditor may always ''exclude the income or include the debt'' when unsure if the debt or the income should be considered).

[23] Pursuant to § 1026.43(e)(4)(ii) and (iii), the temporary GSE/agency qualified mortgage definition will sunset on the earlier of January 10, 2021 or, with respect to GSE-eligible loans, when the GSEs (or any limited-life regulatory entity succeeding the charters of the GSEs) exit government conservatorship, or, with respect to agency-eligible loans, when those agencies' qualified mortgage definitions take effect.

For these reasons, the Bureau is not proposing a specific cure or correction provision related to the 43-percent debt-to-income limit for qualified mortgages under § 1026.43(e)(2) at this time. However, to aid its ongoing consideration of such provisions, the Bureau requests comment on all aspects of the debt-to-income cure or correction approaches discussed above and, in particular, requests commenters to provide specific and practical examples of where such approaches may be applied and how they may be implemented. The Bureau also requests comment on what conditions should appropriately apply to cure or correction of the qualified mortgage debt-to-income limits, including the time periods (such as the 120-day period included in the proposed points and fees cure provision) when such provisions may be available. The Bureau also requests comment on whether or how a debt-to-income cure or correction provision might be exploited by unscrupulous creditors to undermine consumer protections and undercut incentives for strict compliance efforts by creditors or assignees.

B. Request for Comment on the Credit Extension Limit for the Small Creditor Definition

Under the Bureau's 2013 Title XIV Final Rules, there are four types of exceptions and special provisions available only to small creditors:

- A qualified mortgage definition for certain loans made and held in portfolio, which are not subject to a bright-line debt-to-income ratio limit and are subject to a higher annual percentage rate (APR) threshold for defining which first-lien qualified mortgages receive a safe harbor under the ability-to-repay rule (§ 1026.43(e)(5)); [24]
- Two qualified mortgage definitions (*i.e.,* a temporary and an ongoing definition) for certain loans made and held in portfolio that have balloon-payment features, which are also subject to the higher APR threshold for defining which first-lien qualified mortgages receive a safe harbor under the ability-to-repay rule (§ 1026.43(e)(6) and (f));
- An exception from the requirement to establish escrow accounts for certain higher-priced mortgage loans (HPMLs) for small creditors that operate predominantly in rural or underserved areas (§ 1026.35(b)(2)(iii)); [25] and
- An exception from the prohibition on balloon-payment features for certain high-cost mortgages (§ 1026.32(d)(1)(ii)(C)).[26]

These special rules and exceptions recognize that small creditors are an important source of non-conforming mortgage credit. Small creditors' size and relationship lending model often provide them with better ability than large institutions to assess ability-to-repay. At the same time, small creditors lack economies of scale necessary to offset the cost of certain regulatory burdens. To be a small creditor for purposes of these exceptions and special provisions, the creditor must have (1) together with its affiliates, originated 500 or fewer covered transactions [27] secured by a first lien in the preceding calendar year; and (2) had total assets of less than $2 billion at the end of the preceding calendar year. As discussed in more detail below, the Bureau is requesting comment on certain aspects of the annual first-lien origination limit under the small creditor test.

These special rules for small creditors are largely based on TILA sections 129D(c) and 129C(b)(2)(E), respectively. TILA section 129D(c) authorizes the Bureau to exempt a creditor from the higher-priced mortgage loan escrow requirement if the creditor operates predominantly in rural or underserved areas, retains its mortgage loans in portfolio, and meets certain asset size and annual mortgage loan origination thresholds set by the Bureau. TILA section 129C(b)(2)(E) permits certain balloon-payment mortgages originated by small creditors to receive qualified mortgage status, even though qualified mortgages are otherwise prohibited from having balloon-payment features. The creditor qualifications under TILA section 129C(b)(2)(E) generally mirror the criteria for the higher-priced mortgage loan escrow exemption, including meeting certain asset size and annual mortgage loan origination thresholds set by the Bureau.

The Board proposed to implement TILA sections 129D(c) and 129C(b)(2)(E) before TILA rulemaking authority transferred to the Bureau. Although the creditor qualification criteria under these provisions are similar, the Board proposed to implement the provisions in slightly different ways.

To implement TILA section 129D(c), the exemption from the higher-priced mortgage loan escrow requirements, the Board proposed to limit the exemption to creditors that (1) during either of the preceding two calendar years, together with affiliates, originated and retained servicing rights to 100 or fewer loans secured by a first lien on real property or a dwelling; and (2) together with affiliates, do not maintain escrow accounts for loans secured by real property or a dwelling that the creditor or its affiliates currently service.[28] The Board interpreted the escrow provision as intending to exempt creditors that do not possess economies of scale to escrow cost-effectively. In proposing the transaction count limit, the Board estimated that a minimum servicing portfolio size of 500 is necessary to escrow cost-effectively, and assumed that the average life expectancy of a mortgage loan is about five years. Based on this reasoning, the Board believed that creditors would no longer need the benefit of the exemption if they originated and serviced more than 100 first-lien transactions per year. The Board proposed a two-year coverage test to afford an institution sufficient time after first exceeding the threshold to acquire an escrowing capacity. The Board did not propose an asset-size threshold to qualify for the escrow exemption, but sought comment on whether such a threshold should be established and, if so, what it should be.

For the balloon-payment qualified mortgage definition to implement TILA section 129C(b)(2)(E), the Board proposed an asset-size limit of $2 billion and two alternative annual originations thresholds. The Board interpreted the qualified mortgage provision as being designed to ensure access to credit in areas where consumers may be able to obtain credit only from community banks offering balloon-payment

[24] For purposes of determining whether a loan has a safe harbor with TILA's ability-to-repay requirements (or instead is categorized as ''higher-priced'' with only a rebuttable presumption of compliance with those requirements), for first-lien covered transactions, the special qualified mortgage definitions in § 1026.43(e)(5), (e)(6) and (f) receive an APR threshold of the average prime offer rate plus 3.5 percentage points, rather than plus 1.5 percentage points.

[25] To meet the ''rural'' or ''underserved'' requirement, during any of the preceding three calendar years, the creditor must have extended more than 50 percent of its total covered transactions, as defined by § 1026.43(b)(1) and secured by a first lien, on properties that are located in counties that are either ''rural'' or ''underserved,'' as defined by § 1026.35(b)(2)(iv). *See* § 1026.35(b)(2)(iii)(A).

[26] For loans made on or before January 10, 2016, small creditors may originate high-cost mortgages with balloon-payment features even if the creditor does not operate predominantly in rural or underserved areas, under certain conditions. *See* §§ 1026.32(d)(1)(ii)(C) and 1026.43(e)(6).

[27] ''Covered transaction'' is defined in § 1026.43(b)(1) to mean a consumer credit transaction that is secured by a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other than a transaction exempt from coverage under § 1026.43(a).

[28] 76 FR 11597 (Mar. 2, 2011) (2011 Escrows Proposal). The proposed exemption also would have required that, during the preceding calendar year, the creditor extended more than 50 percent of its total first-lien higher-priced mortgage loans in counties designated as rural or underserved, among other requirements.

mortgages. Accordingly, the Board proposed two alternatives for the total annual originations portion of the test: Under alternative 1, the creditor, together with all affiliates, extended covered transactions of some dollar amount or less during the preceding calendar year, whereas under alternative 2, the creditor, together with all affiliates, extended some number of covered transactions or fewer during the preceding calendar year. The Board did not propose a specific annual originations threshold in connection with TILA section 129C(b)(2)(E), but the Board sought comment on the issue.

Rulemaking authority for TILA passed to the Bureau in July 2011, before the Board finalized the above-described proposals. The Bureau considered the Board's proposals and responsive public comments before finalizing those rules in January 2013. The Bureau also conducted further analysis to try to determine the appropriate thresholds, although such effort was significantly constrained by data limitations. The Bureau ultimately adopted an annual originations limit of 500 or fewer first-lien covered transactions in the preceding calendar year and an asset-size limit of less than $2 billion, adjusted annually for inflation.[29] The Bureau believed that it would be preferable to use the same annual originations and asset-size thresholds for the qualified mortgage and escrow provisions to reflect the consistent statutory language, to facilitate compliance by not requiring institutions to track multiple metrics, and to promote consistent application of the two exemptions. The Bureau also applied these limits to the exception from the balloon-payment prohibition for high-cost loans, to the qualified mortgage definition for small portfolio creditors, and to the qualified mortgage definition for loans with balloon-payment features.

The Bureau adopted a threshold of 500 or fewer annual originations of first-lien transactions to provide flexibility and reduce concerns that the threshold in the Board's 2011 Escrows Proposal would reduce access to credit by excluding creditors that need special accommodations in light of their capacity constraints.[30] The Bureau believed that an originations limit is the most accurate means of limiting the special provisions to the class of small creditors with a business model the Bureau believes will best facilitate access to responsible, affordable credit. The Bureau also believed that an asset limit is important to preclude a very large creditor with relatively modest mortgage operations from taking advantage of a provision designed for much smaller creditors with much different characteristics and incentives, and that lack the scale to make compliance less burdensome.

Based on estimates from publicly available Home Mortgage Disclosure Act (HMDA) and call report data, the Bureau understood that the small creditor provisions as finalized would include approximately 95 percent of creditors with less than $500 million in assets, approximately 74 percent of creditors with assets between $500 million and $1 billion, and approximately 50 percent of creditors with assets between $1 billion and $2 billion. The Bureau believed these percentages were consistent with the rationale for providing special accommodation for small creditors and would be appropriate to ensure that consumers have access to responsible, affordable mortgage credit.

Consistent with the Bureau's ongoing Implementation Plan, the Bureau is seeking comment on the 500 total first-lien originations limit—and the requirement that the limit be determined for any given calendar year based upon results during the immediately prior calendar year. Specifically, the Bureau solicits feedback and data from (1) creditors designated as small creditors under the Bureau's 2013 Title XIV Final Rules; and (2) creditors with assets that are not at or above the $2 billion limitation but that do not qualify for small creditor treatment under the Bureau's 2013 Title XIV Final Rules because of their total annual first-lien mortgage originations. For such creditors, the Bureau requests data on the number and type of mortgage products offered and originated to be held in portfolio during the years prior to the effective date of the 2013 Title XIV Final Rules and subsequent to that date. In particular, the Bureau is interested in how such creditors' origination mix changed in light of the Bureau's 2013 Title XIV Final Rules (including, but not limited to, the percentage of loans that are fixed-rate, are adjustable-rate, or have a balloon-payment feature) and, similarly, how such creditors' origination mix changed when only considering loans originated for the purposes of keeping them in portfolio. The Bureau also solicits feedback on such small creditors' implementation efforts with respect to the Bureau's 2013 Title XIV Final Rules. The Bureau is interested in detailed descriptions of the challenges that creditors might face when transitioning from originating balloon-payment loans to originating adjustable-rate loans. Finally, the Bureau solicits comment on whether the 500 total first-lien originations limit is sufficient to serve the above-described purposes of the provision and, to the extent it may be insufficient, the reasons why it is insufficient and the range of appropriate limits.

As noted above, certain of the special provisions applicable to small creditors are limited to small creditors in ''rural'' or ''underserved'' areas. The Bureau finalized a definition of ''rural'' or ''underserved'' in the 2013 Escrows Final Rule. 78 FR 4725 (Jan. 22, 2013). The Bureau recognizes that concerns have been raised by some stakeholders that the Bureau's definition is under-inclusive and fails to cover certain counties or portions of counties that are typically thought of as rural or underserved in nature. The Bureau is considering whether to propose modifications to the definition of ''rural'' or ''underserved'' at a later date and is not requesting comment at this time on this issue.

VII. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

In developing the proposed rule, the Bureau has considered potential

[29] The higher-priced mortgage loan escrows exemption also requires that the creditor operate predominantly in rural or underserved areas. *See* § 1026.35(b)(2)(iii)(A). For loans made on or before January 10, 2016, small creditors may originate qualified mortgages, and high-cost mortgages, with balloon-payment features even if the creditor does not operate predominantly in rural or underserved areas, under certain conditions. *See* §§ 1026.32(d)(1)(ii)(C) and 1026.43(e)(6).

[30] The preamble to the January 2013 Escrows Final Rule noted that the increased threshold was likely not very dramatic because the Bureau's analysis of HMDA data suggested that even small creditors are likely to sell a significant number of their originations in the secondary market and, assuming that most mortgage transactions that are retained in portfolio are also serviced in-house, the Bureau estimated that a creditor originating no more than 500 first-lien transactions per year would maintain and service a portfolio of about 670 mortgage obligations over time (assuming an average obligation life expectancy of five years). Thus, the Bureau believed the higher threshold in the January 2013 Escrows Final Rule would help to ensure that creditors that are subject to the escrow requirement would in fact maintain portfolios of sufficient size to maintain the escrow accounts on a cost-efficient basis over time, in the event that the Board's 500-loan estimate of a minimum cost-effective servicing portfolio size was too low. At the same time, however, the Bureau believed that the 500 annual originations threshold in combination with the other requirements would still ensure that the balloon-payment qualified mortgage and escrow exemptions are available only to small creditors that focus primarily on a relationship lending model and face significant systems constraints.

benefits, costs, and impacts.[31] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. The Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

There are three main provisions in this rulemaking proposal. The first provision extends the small servicer exemption from certain provisions of the 2013 Mortgage Servicing Final Rules to nonprofit servicers that service 5,000 or fewer loans on behalf of themselves and associated nonprofits, all of which were originated by the nonprofit or an associated nonprofit. The second provision excludes certain non-interest bearing, contingent subordinate liens that meet the requirements of proposed § 1026.43(a)(3)(v)(D) (''contingent subordinate liens'') from the 200-loan limit calculation for purposes of qualifying for the nonprofit exemption from the ability-to-repay requirements. The third provision affords creditors an option, in limited circumstances, to cure certain mistakes in cases where a creditor originated a loan with an expectation of qualified mortgage status, but the loan actually exceeded the points and fees limit for qualified mortgages at consummation (''points and fees cure'').

The Bureau has chosen to evaluate the benefits, costs, and impacts of these proposed provisions against the current state of the world. That is, the Bureau's analysis below considers the benefits, costs, and impacts of the three proposed provisions relative to the current regulatory regime, as set forth primarily in the January 2013 ATR Final Rule, the May 2013 ATR Final Rule, and the 2013 Mortgage Servicing Final Rules.[32] The baseline considers economic attributes of the relevant market and the existing regulatory structure.

The main benefit of each of these proposed provisions to consumers is a potential increase in access to credit and a potential decrease in the cost of credit. It is possible that, but for these provisions, (1) financial institutions would stop or curtail originating or servicing in particular market segments or would increase the cost of credit or servicing in those market segments in numbers sufficient to adversely impact those market segments, (2) the financial institutions that would remain in those market segments would not provide a sufficient quantum of mortgage loan origination or servicing at the non-increased price, and (3) there would not be significant new entry into the market segments left by the departing institutions. If, but for these proposed provisions, all three of these scenarios would be realized, then the three proposed provisions will increase access to credit. The Bureau does not possess any data, aside from anecdotal comments, to refute or confirm any of these scenarios for any of the proposed exemptions. However, the Bureau notes that, at least in some market segments, these three scenarios could be realized by just one creditor or servicer stopping or curtailing originating or servicing or increasing the cost of credit. This would occur, for example, if that creditor or servicer is the only one willing to extend credit or provide servicing to this market segment (for example, to low- and moderate-income consumers), no other creditor or servicer would enter the market even if the incumbent exits, and the incumbent faces higher costs that would lead it to either increase the cost of credit or curtail access to credit.

The main cost to consumers of the proposed small nonprofit servicer and small nonprofit originator provisions is that, for some transactions, creditors or servicers will not have to provide consumers some of the protections provided by the ability-to-repay and mortgage servicing rules. The main cost of the points and fees cure provision to consumers is that a creditor could reimburse a consumer for a points and fees overage after consummation—with the creditor thereby obtaining the safe harbor or rebuttable presumption of TILA ability-to-repay compliance afforded by a qualified mortgage, and the consumer having less ability to challenge the mortgage on ability-to-repay grounds. As noted above, the Bureau does not possess data to provide a precise estimate of the number of transactions affected. However, the Bureau believes that the number will be relatively small.

The main benefit of each of these proposed provisions to covered persons is that the affected covered persons do not have to incur certain expenses associated with the ability-to-repay and mortgage servicing rules, or will not be forced either to exit the market or to curtail origination or servicing activities to maintain certain regulatory exemptions. Given the currently available data, it is impossible for the Bureau to estimate the number of transactions affected with any useful degree of precision; that is also the case for estimating the amount of monetary benefits for such covered persons.

There is no major cost of these proposed provisions to covered persons—each of the provisions is an option that a financial institution is free to undertake or not to undertake. The only potential costs for covered persons is that other financial institutions that would have complied with the ability-to-repay and mortgage servicing rules with or without the proposed provisions may lose profits to the institutions that are able to continue operating in a market segment by virtue of one of the proposed provisions. However, these losses are likely to be small and are difficult to estimate.

B. Potential Benefits and Costs to Consumers and Covered Persons

Small Servicer Exemption Extension for Servicing Associated Nonprofits' Loans

The Bureau's 2013 Mortgage Servicing Final Rules were designed to address the market failure of consumers not choosing their servicers and of servicers not having sufficient incentives to invest in quality control and consumer satisfaction. The demand for larger loan servicers' services comes from originators, not from consumers. Smaller servicers, however, have an additional incentive to provide ''high-touch'' servicing that focuses on ensuring consumer satisfaction. 78 FR 10695, 10845–46 (Feb. 14, 2013); 78 FR 10901, 10980–82 (Feb. 14, 2013).

The Bureau's 2013 Mortgage Servicing Final Rules provide many benefits to consumers: for example, detailed periodic statements. These benefits tend to present potential costs to servicers: for example, changing their software systems to include additional information on the periodic statements to consumers. These benefits and costs are further described in the ''Dodd-Frank Act Section 1022(b)(2) Analysis'' sections of the 2013 Mortgage Servicing

[31] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[32] The Bureau has discretion in future rulemakings to choose the relevant provisions to discuss and to choose the most appropriate baseline for that particular rulemaking.

Final Rules. 78 FR 10695, 10842–61 (Feb. 14, 2013); 78 FR 10901, 10978–94 (published concurrently).

Smaller servicers are generally community banks and credit unions that have a built-in incentive to manage their reputation with consumers carefully because they are servicing loans in communities in which they also originate loans. This incentive is reinforced if they are servicing only loans that they originate. Under current § 1026.41(e)(4)(ii), a small servicer is a servicer that either (A) services, together with any affiliates, 5,000 or fewer mortgage loans for all of which the servicer (or an affiliate) is the creditor or assignee; or (B) is a Housing Finance Agency, as defined in 24 CFR 266.5. The definition of the term ''affiliate'' is the definition provided in the Bank Holding Company Act (BHCA). The rationale for the small servicer exemption is provided in the Bureau's 2013 Mortgage Servicing Final Rules. 78 FR 10695, 10845–46 (Feb. 14, 2013); 78 FR 10901, 10980–82 (published concurrently).

The proposed revision of the exemption allows a nonprofit servicer to service loans on behalf of ''associated nonprofit entities'' that do not meet the BHCA ''affiliate'' definition and still qualify as a ''small servicer,'' as long as certain other conditions are met (for example, it has no more than 5,000 loans in its servicing portfolio). The Bureau believes nonprofit servicers typically follow the same ''high-touch'' servicing model followed by the small servicers described in the Dodd-Frank Act Section 1022(b)(2) Analysis in the 2013 Mortgage Servicing Final Rules. While these nonprofit servicers are not motivated by the profit incentive that motivates community banks and small credit unions, they nonetheless have a reputation incentive and a mission incentive to provide ''high-touch'' servicing, neither of which is diminished when they service associated nonprofits' loans. Because it is limited to entities sharing a common name, trademark, or servicemark, proposed § 1026.41(e)(4)(ii)(C) further ensures that the reputation incentive remains intact. In addition, the 5,000-loan servicing portfolio limit ensures that nonprofit servicers are still sufficiently small to provide ''high-touch'' servicing. Another rationale for the proposed revision of the exemption is that it would create a more level playing field for nonprofits. Currently, for-profit affiliates can take advantage of economies of scale to service their loans together, but related nonprofits cannot because they typically are not ''affiliates'' as defined by the BHCA.

Overall, the primary benefit to consumers of the proposed amendment to the small servicer definition is a potential increase in access to credit and a potential decrease in the cost of credit. The primary cost to consumers is losing some of the protections of the Bureau's 2013 Mortgage Servicing Final Rules. The primary benefit to covered persons is exemption from certain provisions of those rules, and the attendant cost savings of not having to comply with those provisions while still being able to achieve a certain degree of scale by taking on servicing for associated nonprofits. *See also* 78 FR 10695, 10842–61 (Feb. 14, 2013); 78 FR 10901, 10978–94 (published concurrently). There are no significant costs to covered persons.

Finally, the Bureau does not possess any data that would enable it to report the number of transactions affected, but from anecdotal evidence and taking into account the size of the nonprofit servicers that are the most likely to take advantage of this exemption, it is unlikely that there will be a significant number of loans affected each year. Several nonprofit servicers might be affected as well.

Ability-to-Repay Exemption for Contingent Subordinate Liens

The Bureau's ability-to-repay rule was designed to address the market failure of mortgage loan originators not internalizing the effects of consumers not being able to repay their loans: effects both on the consumers themselves and on the consumers' neighbors, whose houses drop in value due to foreclosures nearby.

The May 2013 ATR Final Rule added a nonprofit exemption from the ability-to-repay requirements. The rationale of that exemption is preserving low- and moderate-income consumers' access to credit available from nonprofit organizations, which might have stopped or curtailed originating loans but for this exemption. The main benefit of the exemption for consumers is in potential expansion of access to credit and a potential decrease in the cost of credit; the main cost for consumers is not receiving protections provided by the ability-to-pay rule. The May 2013 ATR Final Rule exempted only nonprofit creditors that originated 200 or fewer loans a year, based on the Bureau's belief that these institutions do internalize the effects of consumers not being able to repay their loans and that the loan limitation is necessary to prevent the exemption from being exploited by unscrupulous creditors seeking to harm consumers.

Proposed § 1026.43(a)(3)(vii) excludes contingent subordinate liens from the 200-credit extension limit for purposes of the May 2013 ATR Final Rule's nonprofit exemption. Given the numerous limitations on contingent subordinate liens, including but not limited to the 1-percent cap on upfront costs payable by the consumer—and given the 200-loan limit for other loans, the Bureau believes that the potential for creditors to improperly exploit the amended rule is low. The Bureau also believes that this exemption will allow a greater number of nonprofit creditors to originate more loans than under the current rule, or to remain in the low- and moderate-income consumer market without passing through cost increases to consumers.

Overall, the primary benefit to consumers of the proposed exclusion is a potential increase in access to credit and a potential decrease in the cost of credit. The primary cost to consumers is losing some of the protections provided by the Bureau's ability-to-repay rule. The primary benefit to covered persons is exemption from that same rule. *See* 78 FR 6407, 6555–75 (Jan. 30, 2013); (''Dodd-Frank Act Section 1022(b)(2) Analysis'' part in the January 2013 ATR Final Rule); 78 FR 35429, 35492–97 (June 12, 2013) (similar part in the May 2013 ATR Final Rule). There are no significant costs to covered persons.

Finally, the Bureau does not possess any data that would enable it to report the number of transactions affected, but from anecdotal evidence and taking into account the size of the nonprofit creditors that are most likely to take advantage of this exemption, it is unlikely that there will be a significant number of loans affected each year, and it is possible that virtually no loans will be affected in the near future. Several nonprofit creditors might be affected as well, but it is possible that no nonprofit creditors will be affected in the near future.

Cure for Points and Fees Over the Qualified Mortgage Threshold

To originate a qualified mortgage, a creditor must satisfy various conditions, including the condition of charging at most 3 percent of the total loan amount in points and fees, not including up to two bona-fide discount points, and with higher thresholds for lower loan amounts. However, origination processes are not perfect and creditors might be concerned about any potential unintended errors that result in a loan that the creditor believed to be a qualified mortgage at origination but that actually was over the 3-percent

points and fees threshold upon further, post-consummation review.

The three most likely responses by a creditor concerned about such inadvertent errors would be either to originate loans with points and fees well below TILA's 3-percent limit, to insert additional quality control in its origination process, or to charge a premium for the risk of a loan being deemed not to be a qualified mortgage, especially on loans with points and fees not well below TILA's 3-percent limit. The first solution is not what the Bureau, or presumably Congress, intended; otherwise the statutory limit would have been set lower than 3 percent. The second solution could result in more than the socially optimal amount of effort expended on quality control, especially since most loans will be securitized and thus re-examined shortly after origination. The savings from forgoing additional quality control might be passed through to consumers, to the extent that costs saved are marginal (as opposed to fixed) and the markets are sufficiently competitive. The third solution is, effectively, a less stark version of the first solution, with loans close to TILA's 3-percent limit still being originated, albeit at higher prices simply due to being close to the limit. Like the first potential solution, this would be an unintended consequence of the limit.

The primary potential drawback of the proposal to allow creditors to cure inadvertent points and fees errors is the risk of inappropriate exploitation by creditors. However, the conditions the Bureau has placed on the proposed cure mechanism help to ensure that creditors will not abuse this mechanism and thus that consumers are unlikely to experience negative side-effects.

One such potential gaming scenario involves a creditor originating risky loans with high points and fees while hoping to avoid a massive wave of foreclosures. In this case, the possibility of cure could be thought of as an option that the creditor could exercise to strengthen its position for foreclosure litigation, but only if the creditor foresees the wave of foreclosures. The elements of proposed § 1026.43(e)(3)(iii) requiring that the loan be originated in good faith as a qualified mortgage and that the overage be cured within 120 days after consummation should discourage this type of gaming. Another gaming scenario is a creditor that only cures overages on loans that go into foreclosure. This possibility is limited by the proposed 120-day cure window, as well as by the proposed requirement that the creditor or assignee, as applicable, maintains and follows policies and procedures for post-consummation review and refunding overages.

The primary benefit to consumers of the proposed cure provision is a potential increase in access to credit and a potential decrease of the cost of credit. Another potential benefit is that, when a creditor discovers the inadvertent points and fees overage, the creditor may reimburse the consumer for the overage. However, this is a benefit only for consumers who place greater value on being reimbursed than on the additional legal protections that a non-qualified mortgage would afford them. The primary cost to consumers is that, without the consumer's consent, a creditor could reimburse the consumer for a points and fees overage after consummation—with the creditor thereby obtaining the safe harbor (or rebuttable presumption) of TILA ability-to-repay compliance. However, the Bureau believes that the safeguards included in the proposed rule will mitigate this potential concern as creditors are unlikely to be able to game the system and thereby deprive consumers of the protections provided by the ability-to-pay rule.

The primary benefit to covered persons is being able to originate qualified mortgages without engaging in inefficient additional quality control processes, with the attendant reduction in legal risk. Some larger creditors might have sufficiently robust compliance procedures that largely prevent inadvertent points and fees overages. These creditors might lose some market share to creditors for whom this provision will be more useful. The Bureau cannot meaningfully estimate the magnitude of this effect.

Finally, the Bureau does not possess any data that would enable it to report the number of transactions affected. For some creditors, the proposed provision might save additional verification and quality control in the loan origination process for every qualified mortgage transaction that they originate [33] and/or allow them to originate loans with points and fees close to the 3-percent threshold at lower prices that do not reflect the risk of the loan inadvertently turning out not to be a qualified mortgage. The Bureau seeks comment on this issue and, in particular, any detailed descriptions regarding the processes that might be simplified due to the proposed cure provision and monetary and time savings involved.

C. Impact on Covered Persons With No More Than $10 Billion in Assets

Covered persons with no more than $10 billion in assets likely will be the only covered persons affected by the two proposed exemptions regarding associated nonprofits and contingent subordinate liens: The respective loan limits of each provision virtually ensure that any creditor or servicer with over $10 billion in assets would not qualify for these two exemptions. For the third proposed provision, regarding points and fees, smaller creditors might benefit more than larger creditors. Larger creditors are more likely to have sufficiently robust compliance procedures that largely prevent inadvertent points and fees overages. Thus, this proposed provision might not benefit them as much. The third proposed provision may lead smaller creditors to extend a greater number of qualified mortgages near the 3-percent points and fees limit, to extend them for a lower price, and/or to forgo inefficient pre-consummation quality control. To the extent that possibility is realized, smaller creditors would benefit from the liability protection afforded by qualified mortgages.

D. Impact on Access to Credit

The Bureau does not believe that there will be an adverse impact on access to credit resulting from any of the three provisions. Moreover, it is possible that there will be an expansion of access to credit.

E. Impact on Rural Areas

The Bureau believes that rural areas might benefit from these three provisions more than urban areas, to the extent that there are fewer active creditors or servicers operating in rural areas than in urban areas. Thus, any creditors or servicers exiting the market or curtailing lending or servicing in rural areas—or restricting originating loans with points and fees close to the TILA 3-percent limit—might negatively affect access to credit more than similar behavior by creditors or servicers operating in more urban areas. A similar argument applies to any increases in the cost of credit.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (the RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact

[33] While a result of the proposed points and fees cure is that creditors have less of an incentive to perform rigorous quality control before consummation, there is also an alleviating effect. Any errors uncovered in the post-consummation review might help creditors improve their pre-consummation review by immediately pointing out areas to focus on.

of its regulations on small entities, including small businesses, small governmental units, and small nonprofit organizations. The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on any small entities. The Bureau does not expect the proposal to impose costs on covered persons. All methods of compliance under current law will remain available to small entities if the proposal is adopted. Thus, a small entity that is in compliance with current law need not take any additional action if the proposal is adopted. Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The collections of information related to Regulations Z and X have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3170–0015 (Regulation Z) and 3170–0016 (Regulation X). Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this Proposed Rule would not impose any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA. The Bureau welcomes comments on this determination or any other aspect of this proposal for purposes of the PRA. Comments should be submitted as outlined in the **ADDRESSES** section above. All comments will become a matter of public record.

List of Subjects in 12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend 12 CFR part 1026 as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 2. Section 1026.41 is amended by revising paragraphs (e)(4)(ii) and (iii) to read as follows:

§ 1026.41 Periodic statements for residential mortgage loans.

* * * * *

(e) * * *

(4) * * *

(ii) *Small servicer defined.* A small servicer is a servicer that:

(A) Services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee;

(B) Is a Housing Finance Agency, as defined in 24 CFR 266.5; or

(C) Is a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor. For purposes of this paragraph (e)(4)(ii)(C), the following definitions apply:

(*1*) The term ''nonprofit entity'' means an entity having a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3); 26 CFR 1.501(c)(3)–1), and;

(*2*) The term ''associated nonprofit entities'' means nonprofit entities that by agreement operate using a common name, trademark, or servicemark to further and support a common charitable mission or purpose.

(iii) *Small servicer determination.* In determining whether a servicer is a small servicer pursuant to paragraph (e)(4)(ii)(A) of this section, the servicer is evaluated based on the mortgage loans serviced by the servicer and any affiliates as of January 1 and for the remainder of the calendar year. In determining whether a servicer is a small servicer pursuant to paragraph (e)(4)(ii)(C) of this section, the servicer is evaluated based on the mortgage loans serviced by the servicer as of January 1 and for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer will have six months from the time it ceases to qualify or until the next January 1, whichever is later, to comply with any requirements from which the servicer is no longer exempt as a small servicer. The following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer:

* * * * *

■ 3. Section 1026.43 is amended by revising paragraph (a)(3)(v)(D)(*1*) and the introductory text of paragraph (e)(3)(i) and adding new paragraphs (a)(3)(vii) and (e)(3)(iii) to read as follows:

§ 1026.43 Minimum standards for transactions secured by a dwelling.

(a) * * *

(3) * * *

(v) * * *

(D) * * *

(*1*) During the calendar year preceding receipt of the consumer's application, the creditor extended credit secured by a dwelling no more than 200 times, except as provided in paragraph (a)(3)(vii) of this section;

* * * * *

(vii) Consumer credit transactions that meet the following criteria are not considered in determining whether a creditor exceeds the credit extension limitation in paragraph (a)(3)(v)(D)(*1*) of this section:

(A) The transaction is secured by a subordinate lien;

(B) The transaction is for the purpose of:

(*1*) Downpayment, closing costs, or other similar home buyer assistance, such as principal or interest subsidies;

(*2*) Property rehabilitation assistance;

(*3*) Energy efficiency assistance; or

(*4*) Foreclosure avoidance or prevention;

(C) The credit contract does not require payment of interest;

(D) The credit contract provides that repayment of the amount of the credit extended is:

(*1*) Forgiven either incrementally or in whole, at a date certain, and subject only to specified ownership and occupancy conditions, such as a requirement that the consumer maintain the property as the consumer's principal dwelling for five years;

(*2*) Deferred for a minimum of 20 years after consummation of the transaction;

(*3*) Deferred until sale of the property securing the transaction; or

(*4*) Deferred until the property securing the transaction is no longer the principal dwelling of the consumer;

(E) The total of costs payable by the consumer in connection with the transaction at consummation is less than 1 percent of the amount of credit extended and includes no charges other than:

(*1*) Fees for recordation of security instruments, deeds, and similar documents;

(*2*) A bona fide and reasonable application fee; and

(*3*) A bona fide and reasonable fee for housing counseling services; and

(F) The creditor complies with all other applicable requirements of this part in connection with the transaction.

* * * * *

(e) * * *

(3) * * *. (i) Except as provided in paragraph (e)(3)(iii) of this section, a covered transaction is not a qualified mortgage unless the transaction's total points and fees, as defined in § 1026.32(b)(1), do not exceed:

* * * * *

(iii) If the creditor or assignee determines after consummation that the total points and fees payable in connection with a loan exceed the applicable limit under paragraph (e)(3)(i) of this section, the loan is not precluded from being a qualified mortgage, provided:

(A) The creditor originated the loan in good faith as a qualified mortgage and the loan otherwise meets the requirements of paragraphs (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section, as applicable;

(B) Within 120 days after consummation, the creditor or assignee refunds to the consumer the dollar amount by which the transaction's points and fees exceeded the applicable limit under paragraph (e)(3)(i) of this section at consummation; and

(C) The creditor or assignee, as applicable, maintains and follows policies and procedures for post-consummation review of loans and refunding to consumers amounts that exceed the applicable limit under paragraph (e)(3)(i) of this section.

* * * * *

■ 4. In Supplement I to part 1026:

■ a. Under *Section 1026.41—Periodic Statements for Residential Mortgage Loans:*

■ i. Under *Paragraph 41(e)(4)(ii) Small servicer defined,* paragraph 2 is revised and paragraph 4 is added.

■ ii. Under *Paragraph 41(e)(4)(iii) Small servicer determination,* paragraphs 2 and 3 are revised and paragraphs 4 and 5 are added.

■ b. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling:*

■ i. New subheading *Paragraph 43(a)(3)(vii)* and paragraph 1 under that subheading are added.

■ ii. New subheading *Paragraph 43(e)(3)(iii)* and paragraphs 1 and 2 under that subheading are added.

The revisions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.41—Periodic Statements for Residential Mortgage Loans

* * * * *

41(e)(4)(ii) Small servicer defined.

* * * * *

2. *Services, together with affiliates, 5,000 or fewer mortgage loans.* To qualify as a small servicer under § 1026.41(e)(4)(ii)(A), a servicer must service, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee. There are two elements to satisfying § 1026.41(e)(4)(ii)(A). First, a servicer, together with any affiliates, must service 5,000 or fewer mortgage loans. Second, a servicer must service only mortgage loans for which the servicer (or an affiliate) is the creditor or assignee. To be the creditor or assignee of a mortgage loan, the servicer (or an affiliate) must either currently own the mortgage loan or must have been the entity to which the mortgage loan obligation was initially payable (that is, the originator of the mortgage loan). A servicer is not a small servicer under § 1026.41(e)(4)(ii)(A) if it services any mortgage loans for which the servicer or an affiliate is not the creditor or assignee (that is, for which the servicer or an affiliate is not the owner or was not the originator). The following two examples demonstrate circumstances in which a servicer would not qualify as a small servicer under § 1026.41(e)(4)(ii)(A) because it did not meet both requirements under § 1026.41(e)(4)(ii)(A) for determining a servicer's status as a small servicer:

* * * * *

4. *Nonprofit entity that services 5,000 or fewer mortgage loans.* To qualify as a small servicer under § 1026.41(e)(4)(ii)(C), a servicer must be a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor. There are two elements to satisfying § 1026.41(e)(4)(ii)(C). First, a nonprofit entity must service 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities. For each associated nonprofit entity, the small servicer determination is made separately, without consideration of the number of loans serviced by another associated nonprofit entity. Second, a nonprofit entity must service only mortgage loans for which the servicer (or an associated nonprofit entity) is the creditor. To be the creditor, the servicer (or an associated nonprofit entity) must have been the entity to which the mortgage loan obligation was initially payable (that is, the originator of the mortgage loan). A nonprofit entity is not a small servicer under § 1026.41(e)(4)(ii)(C) if it services any mortgage loans for which the servicer (or an associated nonprofit entity) is not the creditor (that is, for which the servicer or an associated nonprofit entity was not the originator). The first of the following two examples demonstrates circumstances in which a nonprofit entity would qualify as a small servicer under § 1026.41(e)(4)(ii)(C) because it meets both requirements for determining a nonprofit entity's status as a small servicer under § 1026.41(e)(4)(ii)(C). The second example demonstrates circumstances in which a nonprofit entity would not qualify as a small servicer under § 1026.41(e)(4)(ii)(C) because it does not meet both requirements under § 1026.41(e)(4)(ii)(C).

i. Nonprofit entity A services 3,000 of its own mortgage loans, and 1,500 mortgage loans on behalf of associated nonprofit entity B. All 4,500 mortgage loans were originated by A or B. Associated nonprofit entity C services 2,500 mortgage loans, all of which it originated. Because the number of mortgage loans serviced by a nonprofit entity is determined by counting the

number of mortgage loans serviced by the nonprofit entity (including mortgage loans serviced on behalf of associated nonprofit entities) but not counting any mortgage loans serviced by an associated nonprofit entity, A and C are both small servicers.

ii. A nonprofit entity services 4,500 mortgage loans—3,000 mortgage loans it originated, 1,000 mortgage loans originated by associated nonprofit entities, and 500 mortgage loans neither it nor an associated nonprofit entity originated. The nonprofit entity is not a small servicer because it services mortgage loans for which neither it nor an associated nonprofit entity is the creditor, notwithstanding that it services fewer than 5,000 mortgage loans.

41(e)(4)(iii) Small servicer determination.

* * * * *

2. *Timing for small servicer exemption.* The following examples demonstrate when a servicer either is considered or is no longer considered a small servicer for purposes of § 1026.41(e)(4)(ii)(A) and (C):

i. Assume a servicer (that as of January 1 of the current year qualifies as a small servicer) begins servicing more than 5,000 mortgage loans on October 1, and services more than 5,000 mortgage loans as of January 1 of the following year. The servicer would no longer be considered a small servicer on January 1 of that following year and would have to comply with any requirements from which it is no longer exempt as a small servicer on April 1 of that following year.

ii. Assume a servicer (that as of January 1 of the current year qualifies as a small servicer) begins servicing more than 5,000 mortgage loans on February 1, and services more than 5,000 mortgage loans as of January 1 of the following year. The servicer would no longer be considered a small servicer on January 1 of that following year and would have to comply with any requirements from which it is no longer exempt as a small servicer on that same January 1.

iii. Assume a servicer (that as of January 1 of the current year qualifies as a small servicer) begins servicing more than 5,000 mortgage loans on February 1, but services fewer than 5,000 mortgage loans as of January 1 of the following year. The servicer is considered a small servicer for that following year.

3. *Mortgage loans not considered in determining whether a servicer is a small servicer.* Mortgage loans that are not considered pursuant to § 1026.41(e)(4)(iii) for purposes of the small servicer determination under § 1026.41(e)(4)(ii)(A) are not considered either for determining whether a servicer (together with any affiliates) services 5,000 or fewer mortgage loans or whether a servicer is servicing only mortgage loans that it (or an affiliate) owns or originated. For example, assume a servicer services 5,400 mortgage loans. Of these mortgage loans, the servicer owns or originated 4,800 mortgage loans, voluntarily services 300 mortgage loans that neither it (nor an affiliate) owns or originated and for which the servicer does not receive any compensation or fees, and services 300 reverse mortgage transactions. The voluntarily serviced mortgage loans and reverse mortgage loans are not considered in determining whether the servicer qualifies as a small servicer. Thus, because only the 4,800 mortgage loans owned or originated by the servicer are considered in determining whether the servicer qualifies as a small servicer, the servicer qualifies for the small servicer exemption pursuant to § 1026.41(e)(4)(ii)(A) with regard to all 5,400 mortgage loans it services.

4. *Mortgage loans not considered in determining whether a nonprofit entity is a small servicer.* Mortgage loans that are not considered pursuant to § 1026.41(e)(4)(iii) for purposes of the small servicer determination under § 1026.41(e)(4)(ii)(C) are not considered either for determining whether a nonprofit entity services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, or whether a nonprofit entity is servicing only mortgage loans that it or an associated nonprofit entity originated. For example, assume a servicer that is a nonprofit entity services 5,400 mortgage loans. Of these mortgage loans, the nonprofit entity originated 2,800 mortgage loans and associated nonprofit entities originated 2,000 mortgage loans. The nonprofit entity receives compensation for servicing the loans originated by associated nonprofits. The nonprofit entity also voluntarily services 600 mortgage loans that were originated by an entity that is not an associated nonprofit entity, and receives no compensation or fees for servicing these loans. The voluntarily serviced mortgage loans are not considered in determining whether the servicer qualifies as a small servicer. Thus, because only the 4,800 mortgage loans originated by the nonprofit entity or associated nonprofit entities are considered in determining whether the servicer qualifies as a small servicer, the servicer qualifies for the small servicer exemption pursuant to § 1026.41(e)(4)(ii)(C) with regard to all 5,400 mortgage loans it services.

5. *Limited role of voluntarily serviced mortgage loans.* Reverse mortgages and mortgage loans secured by consumers' interests in timeshare plans, in addition to not being considered in determining small servicer qualification, are also exempt from the requirements of § 1026.41. In contrast, although voluntarily serviced mortgage loans, as defined by § 1026.41(e)(4)(iii)(A), are likewise not considered in determining small servicer status, they are not exempt from the requirements of § 1026.41. Thus, a servicer that does not qualify as a small servicer would not have to provide periodic statements for reverse mortgages and timeshare plans because they are exempt from the rule, but would have to provide periodic statements for mortgage loans it voluntarily services.

* * * * *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

Paragraph 43(a)(3)(vii).

1. *Requirements of exclusion.* Section 1026.43(a)(3)(vii) excludes certain transactions from the credit extension limit set forth in § 1026.43(a)(3)(v)(D)(*1*), provided a transaction meets several conditions. The terms of the credit contract must satisfy the conditions that the transaction not require the payment of interest under § 1026.43(a)(3)(vii)(C) and that repayment of the amount of credit extended be forgiven or deferred in accordance with § 1026.43(a)(3)(vii)(D). The other requirements of § 1026.43(a)(3)(vii) need not be reflected in the credit contract, but the creditor must retain evidence of compliance with those provisions, as required by § 1026.25(a). In particular, the creditor must have information reflecting that the total of closing costs imposed in connection with the transaction is less than 1 percent of the amount of credit extended and include no charges other than recordation, application, and housing counseling fees, in accordance with § 1026.43(a)(3)(vii)(E). Unless an itemization of the amount financed sufficiently details this requirement, the creditor must establish compliance with § 1026.43(a)(3)(vii)(E) by some other written document and retain it in accordance with § 1026.25(a).

* * * * *

Paragraph 43(e)(3)(iii)

1. *Originated in good faith as a qualified mortgage.* i. The following

may be evidence that a creditor originated a loan in good faith as a qualified mortgage:

A. A creditor maintains and follows policies and procedures designed to ensure that points and fees are correctly calculated and do not exceed the applicable limit under § 1026.43(e)(3)(i); or

B. The pricing for the loan is consistent with pricing on qualified mortgages originated contemporaneously by the same creditor.

ii. In contrast, the following may be evidence that a loan was not originated in good faith as a qualified mortgage:

A. A creditor does not maintain, or the creditor has, but does not follow, policies and procedures designed to ensure that points and fees are correctly calculated and do not exceed the applicable limit under § 1026.43(e)(3)(i); or

B. The pricing for the loan is not consistent with pricing on qualified mortgages originated contemporaneously by the same creditor.

2. *Policies and procedures for post-consummation review and refunding.* A creditor or assignee satisfies § 1026.43(e)(3)(iii)(C) if it maintains and follows policies and procedures for post-consummation quality control loan review and for curing (by providing a refund) errors in points and fees calculations that occur at or before consummation.

* * * * *

Dated: April 30, 2014.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2014–10207 Filed 5–5–14; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0292; Directorate Identifier 2014–CE–011–AD]

RIN 2120–AA64

Airworthiness Directives; GROB-WERKE GMBH & CO KG and BURKHART GROB LUFT- UND RAUMFAHRT GmbH & CO KG Gliders

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for GROB-WERKE GMBH & CO KG Models G102 STANDARD ASTIR III, G102 CLUB ASTIR III, and G102 CLUB ASTIR IIIb gliders and BURKHART GROB LUFT- UND RAUMFAHRT GmbH & CO KG Models G103 TWIN II, G103A TWIN II ACRO, G103C TWIN III ACRO, and G 103 C Twin III SL gliders. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as plastic control cable pulleys developing cracks due to aging. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 20, 2014.

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

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

For service information identified in this proposed AD, contact Fiberglas-Technik Rudolf Lindner GmbH & Co. KG, Steige 3, D–88487 Walpertshofen, Germany; telephone: +49 (0) 7353/22 43; fax: +49 (0) 7353/30 96; email: *info@LTB-Lindner.com*; Web site: *http://www.ltb-lindner.com/home.104.html.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0292; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0292; Directorate Identifier 2014–CE–011–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2014–0067, dated March 18, 2014 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Control cable pulleys made from plastic (white or brown material) in the rudder control unit were reported to develop cracks due to aging. In one case, jamming of the rudder control unit was reported.
>
> This condition, if not detected and corrected, could cause cable pulleys to break, potentially jamming the rudder control unit and resulting in loss of control of the sailplane.
>
> To address this potential unsafe condition, Fiberglas-Technik issued Technische Mitteilung/Service Bulletin TM–G05/SB–G05 and Anweisung/Instructions A/I–G05 (one document) to provide instructions for the replacement of plastic cable pulleys with pulleys made from aluminium.
>
> For the reason described above, this AD requires identification and replacement of plastic cable pulleys in the rudder control unit.

Plastic cable pulleys may also be installed in the cable circuits of pedal adjustment and/or tow hook actuation, their replacement is not required by this AD.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0292.

Relevant Service Information

Fiberglas-Technik Rudolf Lindner GmbH & Co. KG has issued Service Bulletin SB–G05, dated January 17, 2014; and Instructions A/I–G05, dated January 17, 2014. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Costs of Compliance

We estimate that this proposed AD will affect 118 products of U.S. registry. We also estimate that it would take about .5 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $5,015, or $42.50 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $244, for a cost of $414 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

GROB-WERKE GMBH & CO KG and BURKHART GROB LUFT-UND RAUMFAHRT GmbH & CO KG: Docket No. FAA–2014–0292; Directorate Identifier 2014–CE–011–AD.

(a) Comments Due Date

We must receive comments by June 20, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GROB-WERKE GMBH & CO KG Models G102 STANDARD ASTIR III, G102 CLUB ASTIR III, and G102 CLUB ASTIR IIIb gliders and BURKHART GROB LUFT-UND RAUMFAHRT GmbH & CO KG Models G103 TWIN II, G103A TWIN II ACRO, G103C TWIN III ACRO and Model G 103 C Twin III SL gliders with the following serial numbers (S/N), certificated in any category.

(1) G102 STANDARD ASTIR III, S/N 5501 through 5652.

(2) G102 CLUB ASTIR III, S/N 5501 through 5652.

(3) G102 CLUB ASTIR IIIb, S/N 5501 through 5652.

(4) G103 TWIN II, S/N 3730 through 34078.

(5) G103A TWIN II ACRO, S/N 3730 through 34078.

(6) G103C TWIN III ACRO, S/N 34101 through 34203.

(7) G 103 C Twin III SL, S/N 35002 through 35051.

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as plastic control cable pulleys developing cracks due to aging. We are issuing this proposed AD to detect and correct plastic control cable pulleys in the rudder control unit, which could lead to breaking of the pulley and potentially jamming the rudder control unit, possibly resulting in loss of control of the glider.

(f) Actions and Compliance

Comply with this AD within the compliance times specified in paragraphs (f)(1) through (f)(3) of this AD, unless already done.

(1) *For all Models G103C TWIN III ACRO and G 103 C Twin III SL gliders:* Within 3 months after the effective date of this AD, inspect the rudder control unit for installation of plastic cable pulleys. If plastic cable pulleys are installed, before further flight, replace the plastic cable pulleys with aluminum cable pulleys following the actions and instructions of Fiberglas-Technik Rudolf Lindner GmbH & Co. KG Service Bulletin SB–G05 and Fiberglas-Technik Rudolf Lindner GmbH & Co. KG Instructions A/I–G05, both dated January 17, 2014.

(2) *For all Models G102 STANDARD ASTIR III, G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, G103 TWIN II, and G103A TWIN II ACRO gliders:* Within 1 month after the effective date of this AD, inspect the rudder control unit for installation of plastic cable pulleys. If plastic cable pulleys are installed, before further flight, replace the plastic cable pulleys with aluminum cable pulleys following the actions and instructions of

Fiberglas-Technik Rudolf Lindner GmbH & Co. KG Service Bulletin SB–G05 and Fiberglas-Technik Rudolf Lindner GmbH & Co. KG Instructions A/I–G05, both dated January 17, 2014.

(3) As of the effective date of this AD, do not install any plastic control cable pulley in the rudder control unit of any glider identified in paragraphs (c)(1) through (c)(7) of this AD.

(g) *Other FAA AD Provisions*

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to European Aviation Safety Agency (EASA) AD No.: 2014–0067, dated March 18, 2014, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0292. For service information related to this AD, contact Fiberglas-Technik Rudolf Lindner GmbH & Co. KG, Steige 3, D–88487 Walpertshofen, Germany; telephone: +49 (0) 7353/22 43; fax: +49 (0) 7353/30 96; email: *info@LTB-Lindner.com*; Web site: *http://www.ltb-lindner.com/home.104.html.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on April 30, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–10308 Filed 5–5–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No FAA–2014–0198 Airspace Docket No. 14–AGL–8]

Proposed Amendment of Class E Airspace; South Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 1,200 feet above the surface within the boundary of the state of South Dakota. With the increased use of GPS/GNSS navigation systems, pilots routinely file and fly flight plans using point-to-point routes instead of published airways. Often, these point-to-point routes take aircraft through uncontrolled airspace (Class G). With this proposal, Minneapolis Air Route Traffic Control Center (ARTCC) would provide more expeditious service and increased efficiency within the National Airspace System.

DATES: Comments must be received on or before June 20, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2014–0198/Airspace Docket No. 14–AGL–8, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Raul Garza, Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7654.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2014–0198/Airspace Docket No. 14–AGL–8.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 1,200 feet above the surface within the state of South Dakota. This action would enable Minneapolis ARTCC to have greater latitude to use radar vectors and/or altitude changes that would provide a more efficient use of airspace within the NAS.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9X, dated August 7, 2013 and

effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace within the state of South Dakota.

Environmental Review

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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air)

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013 and effective September 15, 2013, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 South Dakota, SD [New]

That airspace extending upward from 1,200 feet above the surface within the boundary of the state of South Dakota.

Issued in Fort Worth, TX, on April 25, 2014

Kent M. Wheeler,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2014–10335 Filed 5–5–14; 8:45 am]

BILLING CODE 4901–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0197; Airspace Docket No. 14–AGL–5]

Proposed Amendment of Class E5 Airspace; Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E5 airspace extending upward from 1,200 feet above the surface within the boundary of the state of Michigan. With the increased use of GPS/GNSS navigation systems, pilots routinely file and fly flight plans using point-to-point routes instead of published airways. Often, these point-to-point routes take aircraft through uncontrolled airspace (Class G). With this proposal, Minneapolis Air Route Traffic Control Center (ARTCC) would provide more expeditious service and increased efficiency within the National Airspace System (NAS).

DATES: Comments must be received on or before June 20, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2014–0197/Airspace Docket No. 14–AGL–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Raul Garza, Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7654.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2014–0197/Airspace Docket No. 14–AGL–5.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 1,200 feet above the surface within the state of Michigan. This action would enable Minneapolis ARTCC to have greater latitude to use radar vectors and/or altitude changes that would provide a more efficient use of airspace within the NAS.

Class E airspace designations areas are published in Paragraph 6005 of FAA Order 7400.9X, dated August 7, 2013 and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E5 airspace within the state of Michigan.

Environmental Review

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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013 and effective September 15, 2013, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Michigan, MI [New]

That airspace extending upward from 1,200 feet above the surface within the boundary of the State of Michigan.

Issued in Fort Worth, TX, on April 25, 2014.

Kent M. Wheeler,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2014–10336 Filed 5–5–14; 8:45 am]

BILLING CODE 4901–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0199; Airspace Docket No. 14–AGL–9]

Proposed Establishment of Class E Airspace; North Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 1,200 feet above the surface within the boundary of the state of North Dakota. With the increased use of GPS/GNSS navigation systems, pilots routinely file and fly flight plans using point-to-point routes instead of published airways. Often, these point-to-point routes take aircraft through uncontrolled airspace (Class G). With this proposal, Minneapolis Air Route Traffic Control Center (ARTCC) would provide a more expeditious service and increased efficiency within the National Airspace System (NAS).

DATES: Comments must be received on or before June 20, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2014–0199/Airspace Docket No. 14–AGL–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Raul Garza, Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Northwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7654.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2014–0199/Airspace Docket No. 14–AGL–9.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 1,200 feet above the surface within the state of North Dakota. This action would enable Minneapolis ARTCC to have greater latitude to use radar vectors and/or altitude changes that would provide a more efficient use of airspace within the NAS.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9X, dated August 7, 2013 and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would 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 rulemaking, when promulgated, will 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 U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish controlled airspace within the state of North Dakota.

Environmental Review

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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air)

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013 and effective September 15, 2013, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 North Dakota, ND [New]

That airspace extending upward from 1,200 feet above the surface within the boundary of the state of North Dakota.

Issued in Fort Worth, TX, on April 24, 2014.

Kent M. Wheeler,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2014–10391 Filed 5–5–14; 8:45 am]

BILLING CODE 4901–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2014–N–0504]

Administrative Destruction of Certain Drugs Refused Admission to the United States

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or Agency) is proposing a regulation to implement its authority to destroy a drug valued at $2,500 or less (or such higher amount as the Secretary of the Treasury may set by regulation) that has been refused admission into the United States under the Federal Food, Drug, and Cosmetic Act (FD&C Act), by providing to the owner or consignee notice and an opportunity to appear and introduce testimony to the Agency prior to the destruction. The proposed regulation is authorized by amendments made to the FD&C Act by the Food and Drug

Administration Safety and Innovation Act (FDASIA). Once finalized, this proposed regulation will allow FDA to better protect the public health by providing an administrative process for the destruction of certain refused drugs, thus increasing the integrity of the drug supply chain.

DATES: Submit either electronic or written comments on the proposed rule by July 7, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2014–N–0504, by any of the following methods.

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

• *Mail/Hand delivery/Courier (for paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2014–N–0504 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ann M. Metayer, Office of Regulatory Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4338, Silver Spring, MD 20993–0002, 301–796–3324, *FDASIAImplementationORA@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Proposed Rule

The proposed rule would provide the owner or consignee of a drug that has been refused admission into the United States, and that is valued at $2,500 or less (or such higher amount as the Secretary of the Treasury may set by regulation) with (1) written notice that FDA intends to destroy the drug and (2) an opportunity to present testimony to the Agency before the drug is destroyed. In 2012, Congress amended section 801(a) of the FD&C Act (21 U.S.C. 381(a)) to provide FDA with the authority to destroy these refused drugs without providing the owner or consignee with the opportunity to export the drug. Congress directed FDA to issue regulations that provide the drug's owner or consignee with notice and an opportunity to present testimony to the Agency prior to the drug's destruction. (Section 708 of FDASIA (Pub. L. 112–144).) This provision, as well as section 701 of the FD&C Act (21 U.S.C. 371), provide the legal authority for this proposed rule.

Summary of the Major Provisions of the Proposed Regulatory Action

This proposed rule would provide the owner or consignee of a drug that has been refused admission into the United States under section 801(a) of the FD&C Act, and that is valued at $2,500 or less (or such higher amount as the Secretary of the Treasury may set by regulation) with (1) written notice that FDA intends to destroy the drug and (2) notice and an opportunity to present testimony to the Agency before the drug is destroyed.

FDA proposes to amend part 1 (21 CFR part 1) by expanding the scope of § 1.94 (21 CFR 1.94). Currently this regulation provides the owner or consignee of an FDA-regulated product offered for import into the United States with notice and opportunity to present testimony to the Agency prior to refusal of admission of the product. The proposed rule would expand the scope of § 1.94 to provide an owner or consignee with notice and opportunity to present testimony to the Agency prior to the destruction of certain refused drugs.

Costs and Benefits

The primary public health benefit from adoption of the proposed rule would be the value of the illnesses and deaths avoided because FDA destroyed a drug valued at $2,500 or less (or such higher amount as the Secretary of the Treasury may set by regulation) that posed a public health risk. This benefit accrues whenever the Agency's other enforcement tools would not have prevented a drug that does not comply with the requirements of the FD&C Act (violative drug) from entering the U.S. market. The estimated primary costs of the proposed rule, if finalized, include the additional costs to destroy a violative drug. The Agency estimates the quantifiable net annual social benefit of the proposed rule to range between $228,000 and $618,000.

I. Background and Legal Authority

On July 9, 2012, President Obama signed FDASIA into law. Title VII of FDASIA provides FDA with important new authorities to help the Agency better protect the integrity of the drug supply chain. One of those new authorities is in section 708, which amends section 801(a) of the FD&C Act, to provide FDA with the authority to use an administrative procedure to destroy a drug valued at $2,500 or less (or such higher amount as the Secretary of the Treasury may set by regulation) that was not brought into compliance as described in section 801(b) of the FD&C Act and was refused admission into the United States. Section 708 of FDASIA authorizes FDA to use this new administrative procedure without offering the owner or consignee the opportunity to export the drug. Section 708 further provides that FDA will store and, as applicable, dispose of the drug that the Agency intends to destroy. The drug's owner or consignee is liable for FDA's storage and disposal costs pursuant to section 801(c) of the FD&C Act.

FDA is issuing this proposed rule to implement section 708 of FDASIA. That provision directs FDA to issue regulations that provide the owner or consignee of a drug valued at $2,500 or less (or such higher amount as the Secretary of the Treasury may set by regulation) that has been refused admission with notice and an opportunity to introduce testimony to the Agency prior to the destruction of the drug. The provision further states that this process may be combined with the notice and opportunity to appear before FDA and introduce testimony on the admissibility of the drug under section 801(a) of the FD&C Act, as long as appropriate notice is provided to the owner or consignee. FDA is also issuing this proposed rule under section 701(b) of the FD&C Act, which authorizes regulations for the efficient enforcement of section 801 of the FD&C Act.

A drug that is imported or offered for import is subject to refusal of admission under section 801(a) of the FD&C Act if, among other reasons, it is or appears to be adulterated, misbranded, or unapproved in violation of section 505 of the FD&C Act (21 U.S.C. 355). Under current regulation § 1.94, FDA issues a notice of the Agency's intention to refuse a drug to the owner or consignee, as defined in § 1.83, stating the reasons for the intended refusal. If the article is

sent by international mail, FDA generally considers the addressee of the parcel to be the owner or consignee. If this notice is to an individual who is importing a drug for personal use, it is issued consistent with the requirements of section 801(g) of the FD&C Act. The owner or consignee is given an opportunity to appear before the Agency and introduce testimony orally or in writing on why the drug should not be refused admission into the United States. The owner or consignee can also submit an application for authorization to recondition the drug to bring it into compliance with the FD&C Act or to render it other than a food, drug, device, or cosmetic. If, after providing the owner or consignee with notice and opportunity to present testimony, FDA determines that the drug should be refused admission, a notice of such refusal is issued to the owner or consignee.

The majority of refused drug products subject to FDA's new destruction authority come into the United States via an International Mail Facility (IMF) or an express courier hub. Parcels that come into the United States via an IMF are routed by the United States Postal Service (USPS) to Customs and Border Protection (CBP). CBP interdicts certain drug shipments and turns them over to FDA for examination and a determination of admission under the FD&C Act. Some of these parcels may include one or more drugs that are unapproved, adulterated and/or misbranded, including counterfeit drugs and drugs that purport to be dietary supplements. USPS estimated that the average daily number of parcels that came into the United States via international mail from November 1, 2011, to October 31, 2012, was nearly 1.2 million (Ref. 1). It is estimated that the number of such parcels which contain drugs that enter the United States each year through the IMFs is between 20 million and 100 million.

Operation Safeguard is a multiagency initiative to target illicit imports of prescription drugs. In total, from fiscal years 2010 through 2012, FDA examined nearly 45,000 shipments and CBP seized more than 14,000 illicit shipments of prescription drugs during Operation Safeguard, with international mail shipments constituting the majority of the shipments that were seized (Ref. 1). Despite these efforts, the high volume of inbound international mail shipments has strained limited Federal resources at the IMFs making it extremely difficult to interdict all incoming shipments of violative drugs.

Violative drugs pose a serious public health threat to consumers in the United States because they might not contain the active ingredient that patients need for the treatment of their disease; they might have too much or too little of an active ingredient; they might contain the wrong active ingredient; and/or they might contain toxic ingredients. For certain classes of drugs (e.g. antibiotics), these quality problems can also increase the likelihood of drug resistance (Ref. 2). By taking these drugs, consumers may be harmed directly by exposure to unsafe drugs or they may be harmed because they are prevented from getting the appropriate dose or strength of medications they need. Adverse events due to these violative drugs are underreported. Patients taking ineffective drugs may die or suffer the adverse effects of the underlying disease, making it difficult to detect or attribute these consequences to the violative drug (Ref. 3).

FDA has issued several warnings about counterfeit and unapproved drugs, including warnings issued in 2012 and 2013 about counterfeit versions of the cancer medicines AVASTIN and ALTUZAN (bevacizumab) approved for marketing outside of the United States, that were purchased by medical practices in the United States. Certain counterfeit versions of these drugs did not contain the active pharmaceutical ingredient, (bevacizumab), which may have resulted in patients not receiving needed therapy (Ref. 4). In July 2013, a British citizen was sentenced to 18 months in prison for distributing adulterated cancer drugs and selling a counterfeit version of ALTUZAN that was obtained from Turkey to physicians in the United States (Ref. 5). As of December 2013, FDA has issued over 1500 letters to medical practices in the United States to educate them about risky buying practices and to warn them about counterfeit and unapproved drugs in U.S. distribution. FDA publishes warnings about counterfeit medications on its Web site at *http://www.fda.gov/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/CounterfeitMedicine/default.htm*.

Many violative drugs are purchased by U.S. consumers over the Internet. In July 2013, the Government Accountability Office (GAO) issued a report on rogue Internet pharmacies. In its report, GAO defined a rogue Internet pharmacy as a fraudulent enterprise that operates in violation of Federal and/or State law, offers cheap drugs for sale without a prescription that meets Federal and State requirements, or operates without a pharmacy license in the United States. These rogue pharmacies may also operate in violation of laws relating to fraud, money laundering and/or intellectual property rights. Rogue Internet pharmacies operate Web sites that may look professional and legitimate, but in reality are often marketplaces for unapproved, adulterated and/or misbranded drugs (Ref. 6). According to the GAO report, LegitScript, an online pharmacy verification service that assesses the legitimacy of Internet pharmacies, determined that there were over 34,000 active rogue Internet pharmacies as of April 2013 (Ref. 7).

FDA has received a number of reports of adverse events resulting from the purchase of violative drugs over the internet. For example, FDA received reports from several consumers who ordered the FDA-approved drugs AMBIEN, XANAX, LEXAPRO, or ATIVAN over the Internet but instead received products containing haloperidol (the active pharmaceutical ingredient in the FDA-approved antipsychotic drug HALDOL). These consumers required emergency medical treatment for symptoms such as difficulty in breathing, muscle spasms, and muscle stiffness—all drug reactions associated with this powerful antipsychotic (Ref. 8). In May 2012, FDA warned consumers about a counterfeit version of ADDERALL (a drug used to treat attention deficit hyperactivity disorders and narcolepsy) containing the wrong active pharmaceutical ingredients, that was being purchased on the Internet (Ref. 9).

Some drugs that are represented and sold as dietary supplements can also present a significant public health risk. For example, some purported dietary supplements actually contain hidden or deceptively labeled active pharmaceutical ingredients, some at levels much higher than those found in drug products that are the subject of approved applications. Such products, especially when taken without physician supervision, can cause harm and have been associated with serious adverse events. Some purported dietary supplements, although they may not contain harmful ingredients, present a significant indirect public health risk because they are promoted to prevent or treat serious diseases but have not been proven safe and effective for that purpose. Instead of seeing a doctor for diagnosis and treatment, naïve consumers may rely on such unproven remedies and may even substitute them for doctor-prescribed medications that have been approved by FDA based on proof of safety and effectiveness.

Approximately 60 percent of the Class I drug recalls for fiscal years 2007 through 2013 involved drugs purported

to be dietary supplements. (Class I drug recalls involve public health threats for which there is a reasonable probability that the use of or exposure to a drug will cause serious adverse health consequences or death.) Many of the drugs being unlawfully marketed as dietary supplements are imported into the United States via IMFs and express courier hubs.

Currently, drugs that have been refused admission into the United States under section 801(a) of the FD&C Act are destroyed unless they are exported within 90 days. Certain illegal drugs may also be destroyed if they are seized and condemned under FDA's seizure authority, section 304 of the FD&C Act (21 U.S.C. 334), or if they are seized and forfeited under CBP's seizure and forfeiture authority, such as 19 U.S.C. 1595a(c). Drugs that are imported via an IMF which are refused are sent back to the USPS for export. There is currently little deterrence to prevent sellers from sending violative drugs or resending previously refused drugs into the United States via the IMFs. Drugs refused admission into the United States might be subsequently offered for re-importation by unscrupulous sellers who choose to circumvent the import regulatory systems. In fact, some of the parcels returned by USPS have been resubmitted for entry into the United States by the sender, with the sticker indicating prior refusal by FDA still attached and visible. Under this proposed rule, FDA will be better able to prevent such re-importation by having an administrative mechanism for destroying a drug valued at $2,500 or less (or such higher amount as the Secretary of the Treasury may set by regulation) that has been refused admission.

II. Proposed Changes to Current Regulations

A. Proposed Revisions to Part 1

FDA proposes to amend part 1 to create an implementing regulation for the administrative destruction of refused drugs. The proposed amendment to part 1 consists of amendments to § 1.94.

B. Principal Features of the Proposed Rule

Section 708 of FDASIA authorizes the Agency to destroy certain drugs that have already been refused admission under section 801(a) of the FD&C Act after the owner or consignee receives notice and an opportunity to present testimony before the Agency prior to destruction. The proposed rule allows FDA to provide two separate notices and hearings—one for refusal of admission and one for destruction of a refused drug product—or to combine both notices and hearings into one notice and proceeding. Whether the determinations occur separately or in one combined proceeding, the determination of refusal and the determination regarding destruction of a drug will be made separately by the Agency as the findings are separate and distinct. As with refusal of admission, FDA plans to specify operational details of its process for destruction by guidance, operating guidelines, or similar means. For example, the proposed rule says the notice will specify a time period for introducing testimony regarding destruction, which may be adjusted upon timely request giving reasonable grounds, and FDA could explain the time period it would typically provide. The operational details could also include the format of the notice and which FDA officials are authorized to make the decision as to whether to destroy a particular drug.

As noted, a drug is subject to refusal of admission if, among other reasons, it is or appears to be adulterated, misbranded, or unapproved in violation of section 505 of the FD&C Act. FDA intends to exercise its new authority under section 708 of FDASIA to take the further step of destroying a drug only in situations where, after providing the owner or consignee with the opportunity to introduce testimony, the Agency has made a determination that the drug is adulterated, misbranded, or unapproved in violation of section 505.

III. Effective Date

FDA intends that the effective date of the new requirements will be 30 days after publication of a final rule in the **Federal Register**. Section 708 of FDASIA states that FDA's new authority under section 801(a) of the FD&C Act shall not take effect until FDA issues a final regulation, and section 708 of FDASIA requires FDA to ''publish the final regulation not less than 30 days before the regulation's effective date.''

IV. Analysis of Impacts (Summary of the Initial Regulatory Impact Analysis)

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule, if finalized, would not be an economically significant regulatory action as defined by Executive Order 12866.

If a rule has a significant economic impact on a substantial number of small businesses, the Regulatory Flexibility Act requires Agencies to analyze regulatory alternatives that would minimize any significant impact of a rule on small entities. As further explained in this section, FDA has determined that this proposed rule, if finalized, would not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $141 million, using the most current (2012) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule, if finalized, to result in any 1-year expenditure that would meet or exceed this amount.

The primary public health benefit from adoption of the proposed rule would be the value of the illnesses or deaths avoided because the Agency destroyed a refused drug valued at $2,500 or less (or such higher amount as the Secretary of the Treasury may set by regulation) that posed a public health risk. Additionally, the proposed rule may benefit firms through increases in sales, brand value, and investment in research and development if the destroyed drug is a counterfeit or an otherwise falsified version of an approved drug. The threat of destruction may also have a deterrent effect resulting in a reduction in the amount of violative drugs shipped into the United States in the future. These benefits accrue whenever the Agency's other enforcement tools would not have prevented a violative drug from entering the U.S. market. The current procedure whereby a drug refused admission might be exported does not ensure that the drug would not be imported into the United States in the future.

The estimated primary costs to FDA include the additional costs associated with destroying a refused drug. Our

estimates of the primary costs assume that all refused drugs valued at $2,500 or less (or such higher amount as the Secretary of the Treasury may set by regulation) would be destroyed (estimated 12,100 destructions performed each year), that FDA would contract with another Government agency or private firm to destroy the drug, and the notice and hearing process for destruction would likely be combined with the notice and hearing process for refusals. Based on an assumed 12,100 administrative destructions performed each year, the Agency estimates the quantifiable net annual social benefit of the proposed rule, if finalized, to be between $228,000 and $618,000. The present discounted value of the quantifiable net social benefit over 20 years would be in the range of $3,386,000 to $9,169,000 at a 3 percent discount rate and in the range of $2,411,000 to $6,529,000 at a 7 percent discount rate.

FDA has examined the economic implications of the proposed rule as required by the Regulatory Flexibility Act. If a rule will have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. In the proposed rule, small entities will bear costs to the extent that they are responsible for the violative product. The number of expected destructions per year along with the very small value per event implies that this burden would not be significant, so we find that this proposed rule, if finalized, would not have a significant economic impact on a substantial number of small entities. This analysis, together with other relevant sections of this document, serves as the Initial Regulatory Flexibility Analysis, as required under the Regulatory Flexibility Act.

The full discussion of economic impacts is available in docket FDA–2014–N–0504 and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm#* (Ref. 10).

V. Paperwork Reduction Act of 1995

FDA concludes that the requirements contained in this proposed rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3518(c)(1)(B)(ii)).

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. 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*.

IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Government Accountability Office. ''Internet Pharmacies: Federal Agencies and States Face Challenges Combating Rogue Sites, Particularly Those Abroad,'' (GAO–13–560), p. 29, 2013. *http://www.gao.gov/products/GAO-13-560*.
2. U.S. Food and Drug Administration. ''Remarks as Delivered of Margaret A. Hamburg, M.D., Commissioner of Food and Drugs, Partnership for Safe Medicines Interchange,'' 2010. *http://www.fda.gov/downloads/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/CounterfeitMedicine/UCM235240.pdf*.
3. Institute of Medicine. ''Countering the Problem of Falsified and Substandard Drugs.'' Washington, DC: The National Academies Press, p. 57, 2013. *http://books.nap.edu/openbook.php?record_id=18272*.
4. U.S. Food and Drug Administration. ''Health Care Provider Alert: Another Counterfeit Cancer Medicine Found in the United States,'' 2013. *http://www.fda.gov/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/CounterfeitMedicine/ucm338283.htm*.
5. Department of Justice, United States Attorney's Office for the Eastern District of Missouri. ''English Citizen Sentenced for Distributing Adulterated and Counterfeit Cancer Drugs,'' 2013. *http://www.justice.gov/usao/moe/news/2013/july/taylor_richard.html*.
6. Government Accountability Office. ''Internet Pharmacies: Federal Agencies and States Face Challenges Combating Rogue Sites, Particularly Those Abroad,'' (GAO–13–560), What GAO Found, 2013. *http://www.gao.gov/products/GAO-13-560*.
7. Id., p. 14.
8. U.S. Food and Drug Administration. ''The Possible Dangers of Buying Drugs Over the Internet,'' 2011. *http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm048396.htm*.
9. U.S. Food and Drug Administration. ''FDA Warns Consumers about Counterfeit Version of Teva's Adderall,'' 2011. *http://www.fda.gov/newsevents/newsroom/pressannouncements/ucm305932.htm*.
10. U.S. Food and Drug Administration. ''Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis, and Unfunded Mandates Reform Act Analysis for Administrative Destruction of Certain Drugs Refused Admission to the United States,'' 2014. *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm#*.

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food Labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

■ 1. The authority citation for 21 CFR part 1 is revised to read as follows:

Authority: 15 U.S.C. 1333, 1453, 1454, 1455, 4402; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 343, 350c, 350d, 352, 355, 360b, 360ccc, 360ccc–1, 360ccc–2, 362, 371, 374, 381, 382, 387, 387a, 387c, 393; 42 U.S.C. 216, 241, 243, 262, 264.

■ 2. Revise § 1.94 to read as follows:

§ 1.94 Hearing on refusal of admission or destruction.

(a) If it appears that the article may be subject to refusal of admission, or that the article is a drug that may be subject to destruction under section 801(a) of the Federal Food, Drug, and Cosmetic Act, the district director shall give the owner or consignee a written notice to that effect, stating the reasons therefor. The notice shall specify a place and a period of time during which the owner or consignee shall have an opportunity to introduce testimony. Upon timely request giving reasonable grounds therefor, such time and place may be changed. Such testimony shall be confined to matters relevant to the admissibility or destruction of the article, and may be introduced orally or in writing.

(b) If such owner or consignee submits or indicates his or her intention to submit an application for authorization to relabel or perform other action to bring the article into compliance with the Federal Food, Drug, and Cosmetic Act or to render it other than a food, drug, device, or cosmetic, such testimony shall include evidence in support of such application. If such application is not submitted at or prior to the hearing on refusal of admission, the district director shall specify a time limit, reasonable in the light of the circumstances, for filing such application.

(c) If the article is a drug that may be subject to destruction under section 801(a) of the Federal Food, Drug, and Cosmetic Act, the district director may give the owner or consignee a single written notice that provides the notice on refusal of admission and the notice on destruction of an article described in paragraph (a) of this section. The district director may also combine the hearing on refusal of admission with the hearing on destruction of the article described in paragraph (a) of this section into a single proceeding.

Dated: April 30, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–10304 Filed 5–5–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0165]

RIN 1625–AA00

Safety Zones; July 4th Fireworks Displays Within the Captain of the Port Miami Zone; FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish three temporary safety zones during Fourth of July fireworks events on navigable waterways in the vicinity of Stuart, West Palm Beach, and Miami, Florida. These safety zones are necessary to protect the public from hazards associated with launching fireworks over the navigable waters of the United States. Non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port Miami or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before June 20, 2014.

Requests for public meetings must be received by the Coast Guard on or before June 5, 2014.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov*.

(2) Fax: 202–493–2251.

(3) Mail or Delivery: 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email If you have questions on this rule, call or email Petty Officer John K. Jennings, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–4317, email *John.K.Jennings@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, 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. 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, 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 *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–2014–0165 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''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–2014–0165) 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

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the 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

Previously, a rule regarding these maritime events was published in the Code of Federal Regulations at 33 CFR 165. No final rule has been published in regards to these events.

C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 33 CFR 1.05–1(g), and 160.5; Department of Homeland Security Delegation No. 0170.1. The purpose of the proposed rule is to provide for the safety of life on navigable waters of the United States.

D. Discussion of Proposed Rule

Multiple fireworks display events are planned for Fourth of July celebrations throughout the Captain of the Port Miami Zone. For some events, the fireworks will explode over navigable waters of the United States.

The Coast Guard is establishing three temporary safety zones for fireworks displays on July 4, 2014 on navigable waters of the United States within the Captain of the Port Miami Zone based on the location and/or size of the events. The safety zones are listed below.

The first safety zone is in Stuart, Florida. The safety zone encompasses all waters within a 400 yard radius around the barge from which the fireworks will be launched, located on the St. Lucie River north of City Hall. This safety zone will be enforced from 8:30 p.m. until 9:45 p.m.

The second safety zone is in West Palm Beach, Florida. The safety zone encompasses all waters within a 300 yard radius around the barge from which the fireworks will be launched, located on the Intracoastal Waterway north of the Royal Palm Bridge. This safety zone will be enforced from 9 p.m. until 10:15 p.m.

The third safety zone is located at Bayfront Park, Miami, Florida. The safety zone encompasses all waters within a 400 yard radius around the barge from which the fireworks will be launched, located on the waters of Biscayne Bay east of Bayfront Park. This safety zone will be enforced from 8:30 p.m. until 9:45 p.m.

Non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port Miami or a designated representative. Non-participant persons and vessels may request authorization to enter the safety zones by contacting the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the safety zones is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the safety zones by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

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 a number of 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, 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. The economic impact of this proposed rule is not significant for the following reasons: (1) Each safety zone will be enforced for less than two hours; (2) although non-participant persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zones without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement period; (3) non-participant persons and vessels may still enter, transit through, anchor in, or remain within the safety zones during the enforcement period if authorized by the Captain of the Port Miami or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zones to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. 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 may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within any of the safety zones described in this regulation during the respective enforcement period. For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed 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. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed 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 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

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

This proposed rule 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 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 is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing three temporary safety zones during Fourth of July fireworks events on navigable waterways in the vicinity of Stuart, West Palm Beach, and Miami, Florida. This proposed rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A prior environmental analysis checklist and a Categorical Exclusion Determination were completed for a regulation (USCG–2013–0429) issued for these same events in 2013. The previously completed environmental analysis checklist and Categorical Exclusion Determination can be found in the docket folder for USCG–2013–0429 at *www.regulations.gov*. Because this proposed rule is substantially unchanged from the regulation issued when the prior determination was made and there have been no new developments relevant to that determination, we have not completed a new environmental analysis checklist and Categorical Exclusion Determination for this proposed rule. We have made a preliminary determination this proposed rule will not have any of the following: Significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, state, or local laws or administrative determinations relating to the environment. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0165 to read as follows:

§ 165.T07–0165 Safety Zones; July 4th Fireworks Displays within the Captain of the Port Miami Zone, FL.

(a) *Regulated Areas.* The following regulated areas are safety zones. All coordinates are North American Datum 1983.

(1) *Stuart, FL.* All waters within a 400 yard radius around the barge from which the fireworks will be launched, located on the St. Lucie River north of City Hall at approximate position 27°12′09″ N, 80°14′20″ W.

(2) *West Palm Beach, FL.* All waters within a 300 yard radius around the barge from which the fireworks will be launched, located on the Intracoastal Waterway north of the Royal Palm Bridge at approximate position 26°42′36″ N, 80°02′45″ W.

(3) *Miami, FL.* All waters within a 400 yard radius around the barge from which the fireworks will be launched, located on the waters of Biscayne Bay east of Bayfront Park at approximate position 25°46′30″ N, 80°10′56″ W.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in or remaining within the safety zones unless authorized by the Captain of the Port Miami or a designated representative.

(2) Non-participant persons and vessels desiring to enter, transit through, anchor in, or remain within a regulated area may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within a regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the safety zones by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective on July 4, 2014. This rule will be enforced from 8:30 p.m. until 10:15 p.m. on July 4, 2014.

Dated: April 10, 2014.

A.J. Gould,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2014–10270 Filed 5–5–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 88

World Trade Center Health Program; Petition 004—Cardiovascular Disease; Finding of Insufficient Evidence

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Denial of petition for addition of a health condition.

SUMMARY: On March 7, 2014, the Administrator of the World Trade Center (WTC) Health Program received a petition (Petition 004) to add ''heart attack,'' which the Administrator has interpreted to mean ''cardiovascular disease,'' to the List of WTC-Related Health Conditions (List). Upon reviewing the scientific and medical literature, including information provided by the petitioner, the Administrator has determined that the available evidence does not have the potential to provide a basis for a decision on whether to add cardiovascular disease to the List. The Administrator finds that insufficient evidence exists to request a recommendation of the WTC Health Program Scientific/Technical Advisory Committee (STAC), to publish a proposed rule, or to publish a determination not to publish a proposed rule.

DATES: The Administrator of the WTC Health Program is denying this petition for the addition of a health condition as of May 6, 2014.

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Program Analyst, 4674 Columbia Parkway, MS: C–46, Cincinnati, OH 45226; telephone (855) 818–1629 (this is a toll-free number); email *NIOSHregs@cdc.gov.*

SUPPLEMENTARY INFORMATION:

A. WTC Health Program Statutory Authority

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347), amended the Public Health Service Act (PHS Act) to add Title XXXIII [1] establishing the WTC Health Program within the Department of Health and Human Services (HHS). The WTC Health Program provides medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers (responders) who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania, and to eligible persons (survivors) who were present in the dust or dust cloud on September 11, 2001 or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area.

All references to the Administrator of the WTC Health Program (Administrator) in this notice mean the Director of the National Institute for Occupational Safety and Health (NIOSH) or his or her designee.

Pursuant to section 3312(a)(6)(B) of the PHS Act, interested parties may petition the Administrator to add a health condition to the List in 42 CFR 88.1. Within 60 calendar days after receipt of a petition to add a condition to the List, the Administrator must take one of the following four actions described in section 3312(a)(6)(B) and 42 CFR 88.17: (i) Request a recommendation of the STAC; (ii) publish a proposed rule in the **Federal Register** to add such health condition; (iii) publish in the **Federal Register** the Administrator's determination not to publish such a proposed rule and the basis for such determination; or (iv) publish in the **Federal Register** a determination that insufficient evidence exists to take action under (i) through (iii) above.

B. Petition 004

On March 7, 2014, the Administrator received a petition to add ''heart attack'' to the List (Petition 004).[2] The petition was submitted by a WTC Health Program member who responded to the September 11, 2001 terrorist attacks in New York City. The petitioner indicated that he has been diagnosed with a number of WTC-related health conditions, and has suffered a heart attack. Also included in his petition was a press release published by the New York City Department of Health and Mental Hygiene describing a WTC Health Registry study authored by Hannah T. Jordan *et al.* and published

[1] Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm to 300mm-61. Those portions of the Zadroga Act found in Titles II and III of Public Law 111–347 do not pertain to the WTC Health Program and are codified elsewhere.

[2] See Petition 004. WTC Health Program: Petitions Received. *http://www.cdc.gov/wtc/received.html.*

in the *Journal of the American Heart Association* on October 24, 2013.[3]

C. Administrator's Determination on Petition 004

The Administrator has established a methodology for evaluating whether to add non-cancer health conditions to the List of WTC-Related Health Conditions.[4] A health condition may be added to the List if published, peer-reviewed epidemiologic evidence provides substantial support for a causal relationship between 9/11 exposures and the health condition in 9/11-exposed populations.[5] If the epidemiologic evidence provides modest support for a causal relationship between 9/11 exposures and the health condition, the Administrator may then evaluate studies of associations between the health condition and 9/11 agents in similarly-exposed populations.[6] If that additional assessment establishes substantial support for a causal relationship between a 9/11 agent or agents and the health condition, the health condition may be added to the List.

In accordance with section 3312(a)(6)(B) of the PHS Act, 42 CFR 88.17, and the methodology for the addition of non-cancer health conditions, the Administrator reviewed the evidence presented in Petition 004. Although the petitioner requested the addition of ''heart attack,'' the Administrator determined that the more appropriate health condition is ''cardiovascular disease,'' which includes heart attack, acute or chronic coronary artery disease, cardiac arrhythmia, angina, and any other heart condition. The Administrator then selected a team under the direction of the WTC Health Program Associate Director for Science (ADS) to perform a systematic literature search and provide input on whether the available scientific and medical information has the potential to provide a basis for a decision on whether to add the health condition to the List. The ADS conducted a search of the existing scientific/medical literature for epidemiologic evidence of a causal relationship between 9/11 exposures and cardiovascular disease. Among the studies identified by the literature search, four were found to be published, peer-reviewed epidemiologic studies of 9/11-exposed populations.[7] However, when reviewed by the ADS for relevance, quantity, and quality, each of the four published, peer-reviewed epidemiologic studies of 9/11-exposed populations were found to have significant limitations, both individually and in combination. Limitations of the four studies included selection, recall, and confounding bias [8]; poor generalizability among all exposed groups; and lack of consistency among the associations reported between 9/11 exposures and cardiovascular disease between studies. Thus, the ADS concluded that the available information did not have the potential to form the basis for a decision on whether to propose adding cardiovascular disease to the List.

The findings described above led the Administrator to determine that insufficient evidence exists to take further action, including either proposing the addition of cardiovascular disease to the List (pursuant to PHS Act, section 3312(a)(6)(B)(ii) and 42 CFR 88.17(a)(2)(ii)) or publishing a determination not to publish a proposed rule in the **Federal Register** (pursuant to PHS Act, section 3312(a)(6)(B)(iii) and 42 CFR 88.17(a)(2)(iii)). The Administrator has also determined that requesting a recommendation from the STAC (pursuant to PHS Act, section 3312(a)(6)(B)(i) and 42 CFR 88.17(a)(2)(i)) is unwarranted.

For the reasons discussed above, the request made in Petition 004 to add cardiovascular disease to the List of WTC-Related Health Conditions is denied.

Dated: May 1, 2014.

John Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2014–10434 Filed 5–5–14; 8:45 am]

BILLING CODE 4163–18–P

[3] Jordan HT, Stellman SD, Morabia A, Miller-Archie SA, Alper H, Laskaris Z, Brackbill RM, and Cone JE [2013] Cardiovascular disease hospitalizations in relation to exposure to the September 11, 2001 World Trade Center disaster and posttraumatic stress disorder. Journal of the American Heart Association 2(5).

[4] This methodology, ''Policy and Procedures for Adding Non-Cancer Conditions to the List of WTC-Related Health Conditions,'' is available on the WTC Health Program Web site, at *http://www.cdc.gov/wtc/policies.html*.

[5] The substantial evidence standard is met when the Program assesses all of the available, relevant information and determines with high confidence that the evidence supports its findings regarding a causal association between the 9/11 exposure(s) and the health condition.

[6] The modest evidence standard is met when the Program assesses all of the available, relevant information and determines with moderate confidence that the evidence supports its findings regarding a causal association between the 9/11 exposure(s) and the health condition.

[7] Jordan HT, Brackbill RM, Cone JE, Debchoudhury I, Farfel MR, Greene CM, Hadler JL, Kennedy J, Li J, Liff J, Stayner L, Stellman SD [2011]. Mortality among survivors of the Sept 11, 2001, World Trade Center disaster: results from the World Trade Center Health Registry cohort. The Lancet 378: 879–87; Jordan HT, Miller-Archie SA, Cone JE, Morabia A, Stellman SD [2011]. Heart disease among adults exposed to the September 11, 2001 World Trade Center disaster: Results from the World Trade Center Health Registry. Preventive Medicine 53:370–376; Jordan HT, Stellman SD, Morabia A, Miller-Archie SA, Alper H, Laskaris Z, Brackbill RM, Cone JE [2013]. Cardiovascular Disease Hospitalizations in Relation to Exposure to the September 11, 2001 World Trade Center Disaster and Posttraumatic Stress Disorder. J Am Heart Assoc; Brackbill RM, Cone JE, Farfel MR, Stellman SD [2014]. Chronic Physical Health Consequences of Being Injured During the Terrorist Attacks on World Trade Center on September 11, 2001. American Journal of Epidemiology. Advance Access published February 20, 2014.

[8] In this case, ''selection bias'' refers to study populations that include individuals who were self-identified as heart patients but whose reported illness was not independently verified; ''recall bias'' refers to the inaccuracies or incompleteness inherent in the self-reporting of 9/11-related health conditions years after the event; and ''confounding bias'' refers to the existence of risk factors for cardiovascular disease that have not been accounted for by study authors.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 488

[CMS–1605–P]

RIN 0938–AS07

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2015

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2015. In addition, it includes a proposal to adopt the most recent Office of Management and Budget (OMB) statistical area delineations to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to the facility and to determine the SNF PPS wage index including a proposed one-year transition with a blended wage index for all providers for FY 2015. It also includes a discussion of the SNF therapy payment research currently underway within CMS. This proposed rule also proposes a revision to policies related to the Change of Therapy (COT) Other Medicare Required Assessment (OMRA). This proposed rule includes a discussion of a provision related to the

Affordable Care Act involving Civil Money Penalties. Finally, this proposed rule includes a discussion of observed trends related to therapy utilization among SNF providers and a discussion of accelerating health information exchange in SNFs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 30, 2014.

ADDRESSES: In commenting, please refer to file code CMS–1605–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Within the search bar, enter the Regulation Identifier Number associated with this regulation, 0938–AS07, and then click on the ''Comment Now'' box.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1605–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1605–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Penny Gershman, (410) 786–6643, for information related to clinical issues.

John Kane, (410) 786–0557, for information related to the development of the payment rates and case-mix indexes.

Kia Sidbury, (410) 786–7816, for information related to the wage index.

Karen Tritz, (410) 786–8021, for information related to Civil Money Penalties.

Bill Ullman, (410) 786–5667, for information related to level of care determinations, consolidated billing, and general information.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Availability of Certain Tables Exclusively Through the Internet on the CMS Web Site

In the past, tables setting forth the Wage Index for Urban Areas Based on CBSA Labor Market Areas and the Wage Index Based on CBSA Labor Market Areas for Rural Areas were published in the **Federal Register** as an Addendum to the annual SNF PPS rulemaking (that is, the SNF PPS proposed and final rules or, when applicable, the current update notice). However, as finalized in the FY 2014 SNF PPS final rule (78 FR 47936, 47964), beginning in FY 2015, these wage index tables are no longer published in the **Federal Register**. Instead, these tables will be available exclusively through the Internet. The wage index tables for this proposed rule are available exclusively through the Internet on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Wage Index.html.*

Readers who experience any problems accessing any of the tables that are posted on the CMS Web sites identified above should contact Kia Sidbury at (410) 786–7816.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

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Acronyms

In addition, because of the many terms to which we refer by acronym in this proposed rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

AIDS Acquired Immune Deficiency Syndrome
ARD Assessment reference date
BBA Balanced Budget Act of 1997, Pub. L. 105–33
BBRA Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Pub. L. 106–113
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub. L. 106–554
CAH Critical access hospital
CBSA Core-based statistical area
CFR Code of Federal Regulations
CMI Case-mix index
CMP Civil money penalties
CMS Centers for Medicare & Medicaid Services
COT Change of therapy
ECI Employment Cost Index
eCQM Electronically specified clinical quality measures
EHR Electronic health record
EOT End of therapy
EOT–R End of therapy—resumption
FQHC Federally qualified health center
FR Federal Register
FY Fiscal year
GAO Government Accountability Office
HCPCS Healthcare Common Procedure Coding System
HIE Health information exchange
HIT Health information technology
HOMER Home office Medicare records
ICR Information Collection Requirements
IGI IHS (Information Handling Services) Global Insight, Inc.
IPPS Inpatient Prospective Payment System
MDS Minimum data set
MFP Multifactor productivity
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173
MSA Metropolitan statistical area
NAICS North American Industrial Classification System
NF Nursing facility
OMB Office of Management and Budget
OMRA Other Medicare Required Assessment
PAMA Protecting Access to Medicare Act of 2014, Pub. L 113–93
PPS Prospective Payment System
RAI Resident assessment instrument
RAVEN Resident assessment validation entry
RFA Regulatory Flexibility Act, Pub. L. 96–354
RHC Rural health clinic
RIA Regulatory impact analysis
RUG–III Resource Utilization Groups, Version 3
RUG–IV Resource Utilization Groups, Version 4
RUG–53 Refined 53-Group RUG–III Case-Mix Classification System
SCHIP State Children's Health Insurance Program
SNF Skilled nursing facility
STM Staff time measurement
STRIVE Staff time and resource intensity verification
UMRA Unfunded Mandates Reform Act, Pub. L. 104–4

I. Executive Summary

A. Purpose

This proposed rule would update the SNF prospective payment rates for FY 2015 as required under section 1888(e)(4)(E) of the Act. It would also respond to section 1888(e)(4)(H) of the Act, which requires the Secretary to ''provide for publication in the **Federal Register**'' before the August 1 that precedes the start of each fiscal year, certain specified information relating to the payment update (see section II.C.).

B. Summary of Major Provisions

In accordance with sections 1888(e)(4)(E)(ii)(IV) and 1888(e)(5) of the Act, the federal rates in this proposed rule would reflect an update to the rates that we published in the SNF PPS final rule for FY 2014 (78 FR 47936) which reflects the SNF market basket index, adjusted by the forecast error correction, if applicable, and the multifactor productivity adjustment for FY 2015.

C. Summary of Cost and Benefits

Provision description	Total transfers
Proposed FY 2015 SNF PPS payment rate update.	The overall economic impact of this proposed rule would be an estimated increase of $750 million in aggregate payments to SNFs during FY 2015.

II. Background

A. Statutory Basis and Scope

As amended by section 4432 of the Balanced Budget Act of 1997 (BBA, Pub. L. 105–33, enacted on August 5, 1997), section 1888(e) of the Act provides for the implementation of a PPS for SNFs. This methodology uses prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services defined in section 1888(e)(2)(A) of the Act. The SNF PPS is effective for cost reporting periods beginning on or after July 1, 1998, and covers all costs of furnishing covered SNF services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities and bad debts. Under section 1888(e)(2)(A)(i) of the Act, covered SNF services include post-hospital extended care services for which benefits are provided under Part A, as well as those items and services (other than a small number of excluded services, such as physician services) for which payment may otherwise be made under Part B and which are furnished to Medicare beneficiaries who are residents in a SNF during a covered Part A stay. A comprehensive discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252). In addition, a detailed discussion of the legislative history of the SNF PPS is available online at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Legislative_History_07302013.pdf.*

As noted in section I.F. of that legislative history, on March 23, 2010, the Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted. Then, the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010) amended certain provisions of Pub. L. 111–148 and certain sections of the Social Security Act and, in certain instances, included ''freestanding'' provisions. In this proposed rule, Public Law 111–148 and Public Law 111–152 are collectively referred to as the ''Affordable Care Act.'' In section V. of this proposed rule, we include discussions of one specific provision related to the Affordable Care Act involving Civil Money Penalties (as discussed in section V.D.).

B. Initial Transition

Under sections 1888(e)(1)(A) and 1888(e)(11) of the Act, the SNF PPS included an initial, three-phase transition that blended a facility-specific rate (reflecting the individual facility's historical cost experience) with the federal case-mix adjusted rate. The transition extended through the

facility's first three cost reporting periods under the PPS, up to and including the one that began in FY 2001. Thus, the SNF PPS is no longer operating under the transition, as all facilities have been paid at the full federal rate effective with cost reporting periods beginning in FY 2002. As we now base payments for SNFs entirely on the adjusted federal per diem rates, we no longer include adjustment factors under the transition related to facility-specific rates for the upcoming FY.

C. Required Annual Rate Updates

Section 1888(e)(4)(E) of the Act requires the SNF PPS payment rates to be updated annually. The most recent annual update occurred in a final rule that set forth updates to the SNF PPS payment rates for FY 2014 (78 FR 47936, August 6, 2013). We subsequently published two correction notices (78 FR 61202, October 3, 2013, and 79 FR 63, January 2, 2014) with respect to that final rule, as well as a notice that made corrections to the January 2, 2014 correction notice (79 FR 1742, January 10, 2014).

Section 1888(e)(4)(H) of the Act specifies that we provide for publication annually in the **Federal Register** of the following:

- The unadjusted federal per diem rates to be applied to days of covered SNF services furnished during the upcoming FY.
- The case-mix classification system to be applied for these services during the upcoming FY.
- The factors to be applied in making the area wage adjustment for these services.

Along with other revisions discussed later in this preamble, this proposed rule would provide the required annual updates to the per diem payment rates for SNFs for FY 2015.

III. SNF PPS Rate Setting Methodology and FY 2015 Update

A. Federal Base Rates

Under section 1888(e)(4) of the Act, the SNF PPS uses per diem federal payment rates based on mean SNF costs in a base year (FY 1995) updated for inflation to the first effective period of the PPS. We developed the federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the federal rates also incorporated a ''Part B add-on,'' which is an estimate of the amounts that, prior to the SNF PPS, would have been payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for geographic variations in wages and for the costs of facility differences in case mix. In compiling the database used to compute the federal payment rates, we excluded those providers that received new provider exemptions from the routine cost limits, as well as costs related to payments for exceptions to the routine cost limits. Using the formula that the BBA prescribed, we set the federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas, and adjusted the portion of the federal rate attributable to wage-related costs by a wage index to reflect geographic variations in wages.

B. SNF Market Basket Update

1. SNF Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. We use the SNF market basket index, adjusted in the manner described below, to update the federal rates on an annual basis. In the SNF PPS final rule for FY 2014 (78 FR 47939 through 47946), we revised and rebased the market basket, which included updating the base year from FY 2004 to FY 2010.

For the FY 2015 proposed rule, the FY 2010-based SNF market basket growth rate is estimated to be 2.4 percent, which is based on the IHS Global Insight, Inc. (IGI) first quarter 2014 forecast with historical data through fourth quarter 2013. In section III.B.5. of this proposed rule, we discuss the specific application of this adjustment to the forthcoming annual update of the SNF PPS payment rates.

2. Use of the SNF Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index from the midpoint of the previous FY to the midpoint of the current FY. For the federal rates set forth in this proposed rule, we use the percentage change in the SNF market basket index to compute the update factor for FY 2015. This is based on the IGI first quarter 2014 forecast (with historical data through the fourth quarter 2013) of the FY 2015 percentage increase in the FY 2010-based SNF market basket index for routine, ancillary, and capital-related expenses, which is used to compute the update factor in this proposed rule. As discussed in sections III.B.3. and III.B.4. of this proposed rule, this market basket percentage change would be reduced by the forecast error correction (as described in § 413.337(d)(2)) if applicable, and by the multifactor productivity adjustment as required by section 1888(e)(5)(B)(ii) of the Act. Finally, as discussed in section II.B. of this proposed rule, we no longer compute update factors to adjust a facility-specific portion of the SNF PPS rates, because the initial three-phase transition period from facility-specific to full federal rates that started with cost reporting periods beginning in July 1998 has expired.

3. Forecast Error Adjustment

As discussed in the June 10, 2003 supplemental proposed rule (68 FR 34768) and finalized in the August 4, 2003, final rule (68 FR 46057 through 46059), the regulations at § 413.337(d)(2) provide for an adjustment to account for market basket forecast error. The initial adjustment for market basket forecast error applied to the update of the FY 2003 rate for FY 2004, and took into account the cumulative forecast error for the period from FY 2000 through FY 2002, resulting in an increase of 3.26 percent to the FY 2004 update. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently available FY for which there is final data, and apply the difference between the forecasted and actual change in the market basket when the difference exceeds a specified threshold. We originally used a 0.25 percentage point threshold for this purpose; however, for the reasons specified in the FY 2008 SNF PPS final rule (72 FR 43425, August 3, 2007), we adopted a 0.5 percentage point threshold effective for FY 2008 and subsequent fiscal years. As we stated in the final rule for FY 2004 that first issued the market basket forecast error adjustment (68 FR 46058, August 4, 2003), the adjustment will ''. . . reflect both upward and

downward adjustments, as appropriate.''

For FY 2013 (the most recently available FY for which there is final data), the estimated increase in the market basket index was 2.5 percentage points, while the actual increase for FY 2013 was 2.2 percentage points, resulting in the actual increase being 0.3 percentage point lower than the estimated increase. Accordingly, as the difference between the estimated and actual amount of change in the market basket index does not exceed the 0.5 percentage point threshold, the payment rates for FY 2015 do not include a forecast error adjustment. Table 1 shows the forecasted and actual market basket amounts for FY 2013.

TABLE 1—DIFFERENCE BETWEEN THE FORECASTED AND ACTUAL MARKET BASKET INCREASES FOR FY 2013

Index	Forecasted FY 2013 increase *	Actual FY 2013 increase **	FY 2013 difference
SNF	2.5	2.2	−0.3

* Published in **Federal Register**; based on second quarter 2012 IGI forecast (2004-based index).
** Based on the first quarter 2014 IHS Global Insight forecast, with historical data through the fourth quarter 2013 (2004-based index).

4. Multifactor Productivity Adjustment

Section 3401(b) of the Affordable Care Act requires that, in FY 2012 (and in subsequent FYs), the market basket percentage under the SNF payment system as described in section 1888(e)(5)(B)(i) of the Act is to be reduced annually by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1886(b)(3)(B)(xi)(II) of the Act, added by section 3401(a) of the Affordable Care Act, sets forth the definition of this productivity adjustment. The statute defines the productivity adjustment to be equal to ''the 10-year moving average of changes in annual economy-wide private nonfarm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, year, cost-reporting period, or other annual period)'' (the MFP adjustment). The Bureau of Labor Statistics (BLS) is the agency that publishes the official measure of private nonfarm business multifactor productivity (MFP). Please see *http://www.bls.gov/mfp* to obtain the BLS historical published MFP data.

The projection of MFP is currently produced by IGI, an economic forecasting firm. To generate a forecast of MFP, IGI replicated the MFP measure calculated by the BLS, using a series of proxy variables derived from IGI's U.S. macroeconomic models. This process is described in greater detail in section III.F.3. of the FY 2012 SNF PPS final rule (76 FR 48527 through 48529).

a. Incorporating the Multifactor Productivity Adjustment Into the Market Basket Update

According to section 1888(e)(5)(A) of the Act, the Secretary ''shall establish a skilled nursing facility market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered skilled nursing facility services.'' Section 1888(e)(5)(B)(ii) of the Act, added by section 3401(b) of the Affordable Care Act, requires that for FY 2012 and each subsequent FY, after determining the market basket percentage described in section 1888(e)(5)(B)(i) of the Act, ''the Secretary shall reduce such percentage by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II)'' (which we refer to as the MFP adjustment). Section 1888(e)(5)(B)(ii) of the Act further states that the reduction of the market basket percentage by the MFP adjustment may result in the market basket percentage being less than zero for a FY, and may result in payment rates under section 1888(e) of the Act for a FY being less than such payment rates for the preceding FY. Thus, if the application of the MFP adjustment to the market basket percentage calculated under section 1888(e)(5)(B)(i) of the Act results in an MFP-adjusted market basket percentage that is less than zero, then the annual update to the unadjusted federal per diem rates under section 1888(e)(4)(E)(ii) of the Act would be negative, and such rates would decrease relative to the prior FY.

For the FY 2015 update, the MFP adjustment is calculated as the 10-year moving average of changes in MFP for the period ending September 30, 2015, which is 0.4 percent. Consistent with section 1888(e)(5)(B)(i) of the Act and § 413.337(d)(2) of the regulations, the market basket percentage for FY 2015 for the SNF PPS is based on IGI's first quarter 2014 forecast of the SNF market basket update, and is estimated to be 2.4 percent. In accordance with section 1888(e)(5)(B)(ii) of the Act (as added by section 3401(b) of the Affordable Care Act) and § 413.337(d)(3), this market basket percentage is then reduced by the MFP adjustment (the 10-year moving average of changes in MFP for the period ending September 30, 2015) of 0.4 percent, which is calculated as described above and based on IGI's first quarter 2014 forecast. The resulting MFP-adjusted SNF market basket update is equal to 2.0 percent, or 2.4 percent less 0.4 percentage point.

5. Market Basket Update Factor for FY 2015

Sections 1888(e)(4)(E)(ii)(IV) and 1888(e)(5)(i) of the Act require that the update factor used to establish the FY 2015 unadjusted federal rates be at a level equal to the market basket index percentage change. Accordingly, we determined the total growth from the average market basket level for the period of October 1, 2013 through September 30, 2014 to the average market basket level for the period of October 1, 2014 through September 30, 2015. This process yields an update factor of 2.4 percent. As further explained in section III.B.3. of this proposed rule, as applicable, we adjust the market basket update factor by the forecast error from the most recently available FY for which there is final data and apply this adjustment whenever the difference between the forecasted and actual percentage change in the market basket exceeds a 0.5 percentage point threshold. Since the difference between the forecasted FY 2013 SNF market basket percentage change and the actual FY 2013 SNF market basket percentage change (FY 2013 is the most recently available FY for which there is final data) does not exceed 0.5 percentage point, the FY 2015 market basket of 2.4 percent would not be adjusted by the applicable difference. In addition, for FY 2015, section 1888(e)(5)(B)(ii) of the Act requires us to reduce the market basket percentage by the MFP adjustment (the 10-year moving average of changes in MFP for the period ending September 30, 2015) of 0.4 percent, as described in section III.B.4. of this proposed rule.

The resulting MFP-adjusted SNF market basket update would be equal to 2.0 percent, or 2.4 percent less 0.4 percentage point. We note that if more recent data become available (for example, a more recent estimate of the SNF market basket, MFP adjustment, and/or FY 2004-based SNF market basket used for the forecast error calculation), we would use such data, if appropriate, to determine the FY 2015 SNF market basket update, FY 2015 labor-related share relative importance, and MFP adjustment in the FY 2015 SNF PPS final rule. We used the SNF market basket, adjusted as described above, to adjust each per diem component of the federal rates forward to reflect the change in the average prices for FY 2015 from average prices for FY 2014. We would further adjust the rates by a wage index budget neutrality factor, described later in this section. Tables 2 and 3 reflect the updated components of the unadjusted federal rates for FY 2015, prior to adjustment for case-mix.

While we would continue to compute and apply separate federal per diem rates for SNFs located in urban and rural areas as we have in the past, we propose to use the revised OMB statistical area delineations discussed in Section V.A below to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to a facility beginning on October 1, 2014. We believe that the most current OMB delineations more accurately reflect the contemporary urban and rural nature of areas across the country, and that use of such delineations would allow us to more accurately determine the appropriate rate tables to apply under the SNF PPS. Thus, we believe it is appropriate to use the most current OMB delineations for this purpose, in order to enhance the accuracy of payments under the SNF PPS. We invite comments on this proposal.

TABLE 2—FY 2015 UNADJUSTED FEDERAL RATE PER DIEM URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$169.14	$127.41	$16.78	$86.32

TABLE 3—FY 2015 UNADJUSTED FEDERAL RATE PER DIEM RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$161.59	$146.90	$17.92	$87.92

C. Case-Mix Adjustment

Under section 1888(e)(4)(G)(i) of the Act, the federal rate also incorporates an adjustment to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. The statute specifies that the adjustment is to reflect both a resident classification system that the Secretary establishes to account for the relative resource use of different patient types, as well as resident assessment data and other data that the Secretary considers appropriate. In the interim final rule with comment period that initially implemented the SNF PPS (63 FR 26252, May 12, 1998), we developed the RUG–III case-mix classification system, which tied the amount of payment to resident resource use in combination with resident characteristic information. Staff time measurement (STM) studies conducted in 1990, 1995, and 1997 provided information on resource use (time spent by staff members on residents) and resident characteristics that enabled us not only to establish RUG–III, but also to create case-mix indexes (CMIs). The original RUG–III grouper logic was based on clinical data collected in 1990, 1995, and 1997. As discussed in the SNF PPS proposed rule for FY 2010 (74 FR 22208), we subsequently conducted a multi-year data collection and analysis under the Staff Time and Resource Intensity Verification (STRIVE) project to update the case-mix classification system for FY 2011. The resulting Resource Utilization Groups, Version 4 (RUG–IV) case-mix classification system reflected the data collected in 2006–2007 during the STRIVE project, and was finalized in the FY 2010 SNF PPS final rule (74 FR 40288) to take effect in FY 2011 concurrently with an updated new resident assessment instrument, version 3.0 of the Minimum Data Set (MDS 3.0), which collects the clinical data used for case-mix classification under RUG–IV.

We note that case-mix classification is based, in part, on the beneficiary's need for skilled nursing care and therapy services. The case-mix classification system uses clinical data from the MDS to assign a case-mix group to each patient that is then used to calculate a per diem payment under the SNF PPS. As discussed in section IV.A. of this proposed rule, the clinical orientation of the case-mix classification system supports the SNF PPS's use of an administrative presumption that considers a beneficiary's initial case-mix classification to assist in making certain SNF level of care determinations. Further, because the MDS is used as a basis for payment, as well as a clinical assessment, we have provided extensive training on proper coding and the time frames for MDS completion in our Resident Assessment Instrument (RAI) Manual. For an MDS to be considered valid for use in determining payment, the MDS assessment must be completed in compliance with the instructions in the RAI Manual in effect at the time the assessment is completed. For payment and quality monitoring purposes, the RAI Manual consists of both the Manual instructions and the interpretive guidance and policy clarifications posted on the appropriate MDS Web site at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/MDS30RAIManual.html*.

In addition, we note that section 511 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA, Pub. L. 108–173) amended section 1888(e)(12) of the Act to provide for a temporary increase of 128 percent in the PPS per diem payment for any SNF residents with Acquired Immune Deficiency Syndrome (AIDS), effective with services furnished on or after October 1, 2004. This special add-on for SNF residents with AIDS was to remain in effect until ". . . the Secretary certifies that there is an appropriate adjustment in the case mix . . . to compensate for the increased costs associated with [such] residents . . . ." The add-on for SNF residents with AIDS is also discussed in Program Transmittal

#160 (Change Request #3291), issued on April 30, 2004, which is available online at *www.cms.gov/transmittals/downloads/r160cp.pdf.* In the SNF PPS final rule for FY 2010 (74 FR 40288), we did not address the certification of the add-on for SNF residents with AIDS in that final rule's implementation of the case-mix refinements for RUG–IV, thus allowing the add-on payment required by section 511 of the MMA to remain in effect. For the limited number of SNF residents that qualify for this add-on, there is a significant increase in payments. For example, using FY 2012 data, we identified fewer than 4,355 SNF residents with a diagnosis code of 042 (Human Immunodeficiency Virus (HIV) Infection). For FY 2015, an urban facility with a resident with AIDS in RUG–IV group ''HC2'' would have a case-mix adjusted per diem payment of $422.77 (see Table 4) before the application of the MMA adjustment. After an increase of 128 percent, this urban facility would receive a case-mix adjusted per diem payment of approximately $963.92.

Currently, we use the International Classification of Diseases, 9th revision, Clinical Modification (ICD–9–CM) code 042 to identify those residents for whom it is appropriate to apply the AIDS add-on established by section 511 of the MMA. In this context, we note that the Department published a final rule in the September 5, 2012 **Federal Register** (77 FR 54664) which requires us to stop using ICD–9–CM on September 30, 2014, and begin using the International Classification of Diseases, 10th revision, Clinical Modification (ICD–10–CM), on October 1, 2014. Regarding the above-referenced ICD–9–CM diagnosis code of 042, in the FY 2014 SNF PPS proposed rule (78 FR 26444, May 6, 2013), we proposed to transition to the equivalent ICD–10–CM diagnosis code of B20 upon the overall conversion to ICD–10–CM on October 1, 2014, and we subsequently finalized that proposal in the FY 2014 SNF PPS final rule (78 FR 47951 through 47952).

However, on April 1, 2014, the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. No. 113–93) was enacted. Section 212 of PAMA, titled ''Delay in Transition from ICD–9 to ICD–10 Code Sets,'' provides that ''[t]he Secretary of Health and Human Services may not, prior to October 1, 2015, adopt ICD–10 code sets as the standard for code sets under section 1173(c) of the Social Security Act (42 U.S.C. 1320d–2(c)) and section 162.1002 of title 45, Code of Federal Regulations.'' As of now, the Secretary has not implemented this provision under HIPAA. In light of PAMA, the effective date of the change from ICD–9–CM code 042 to ICD–10–CM code B20 for purposes of applying the AIDS add-on would be the date when ICD–10 becomes the required medical data code set for use on Medicare SNF claims. Until that time, we would continue to use ICD–9–CM code 042 for this purpose.

Under section 1888(e)(4)(H), each update of the payment rates must include the case-mix classification methodology applicable for the upcoming FY. The payment rates set forth in this proposed rule reflect the use of the RUG–IV case-mix classification system from October 1, 2014, through September 30, 2015. We list the proposed case-mix adjusted RUG–IV payment rates, provided separately for urban and rural SNFs, in Tables 4 and 5 with corresponding case-mix values. As discussed above, facilities would use the proposed revised OMB delineations in order to identify their urban or rural status for the purpose of determining which set of rate tables would apply to them beginning on October 1, 2014. These tables do not reflect the add-on for SNF residents with AIDS enacted by section 511 of the MMA, which we apply only after making all other adjustments (such as wage index and case-mix).

TABLE 4— RUG–IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES URBAN

RUG–IV Category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
RUX	2.67	1.87	$451.60	$238.26		$86.32	$776.18
RUL	2.57	1.87	434.69	238.26		86.32	759.27
RVX	2.61	1.28	441.46	163.08		86.32	690.86
RVL	2.19	1.28	370.42	163.08		86.32	619.82
RHX	2.55	0.85	431.31	108.30		86.32	625.93
RHL	2.15	0.85	363.65	108.30		86.32	558.27
RMX	2.47	0.55	417.78	70.08		86.32	574.18
RML	2.19	0.55	370.42	70.08		86.32	526.82
RLX	2.26	0.28	382.26	35.67		86.32	504.25
RUC	1.56	1.87	263.86	238.26		86.32	588.44
RUB	1.56	1.87	263.86	238.26		86.32	588.44
RUA	0.99	1.87	167.45	238.26		86.32	492.03
RVC	1.51	1.28	255.40	163.08		86.32	504.80
RVB	1.11	1.28	187.75	163.08		86.32	437.15
RVA	1.10	1.28	186.05	163.08		86.32	435.45
RHC	1.45	0.85	245.25	108.30		86.32	439.87
RHB	1.19	0.85	201.28	108.30		86.32	395.90
RHA	0.91	0.85	153.92	108.30		86.32	348.54
RMC	1.36	0.55	230.03	70.08		86.32	386.43
RMB	1.22	0.55	206.35	70.08		86.32	362.75
RMA	0.84	0.55	142.08	70.08		86.32	298.48
RLB	1.50	0.28	253.71	35.67		86.32	375.70
RLA	0.71	0.28	120.09	35.67		86.32	242.08
ES3	3.58		605.52		16.78	86.32	708.62
ES2	2.67		451.60		16.78	86.32	554.70
ES1	2.32		392.40		16.78	86.32	495.50
HE2	2.22		375.49		16.78	86.32	478.59
HE1	1.74		294.30		16.78	86.32	397.40
HD2	2.04		345.05		16.78	86.32	448.15
HD1	1.60		270.62		16.78	86.32	373.72
HC2	1.89		319.67		16.78	86.32	422.77
HC1	1.48		250.33		16.78	86.32	353.43

TABLE 4— RUG–IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES URBAN—Continued

RUG–IV Category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
HB2	1.86		314.60		16.78	86.32	417.70
HB1	1.46		246.94		16.78	86.32	350.04
LE2	1.96		331.51		16.78	86.32	434.61
LE1	1.54		260.48		16.78	86.32	363.58
LD2	1.86		314.60		16.78	86.32	417.70
LD1	1.46		246.94		16.78	86.32	350.04
LC2	1.56		263.86		16.78	86.32	366.96
LC1	1.22		206.35		16.78	86.32	309.45
LB2	1.45		245.25		16.78	86.32	348.35
LB1	1.14		192.82		16.78	86.32	295.92
CE2	1.68		284.16		16.78	86.32	387.26
CE1	1.50		253.71		16.78	86.32	356.81
CD2	1.56		263.86		16.78	86.32	366.96
CD1	1.38		233.41		16.78	86.32	336.51
CC2	1.29		218.19		16.78	86.32	321.29
CC1	1.15		194.51		16.78	86.32	297.61
CB2	1.15		194.51		16.78	86.32	297.61
CB1	1.02		172.52		16.78	86.32	275.62
CA2	0.88		148.84		16.78	86.32	251.94
CA1	0.78		131.93		16.78	86.32	235.03
BB2	0.97		164.07		16.78	86.32	267.17
BB1	0.90		152.23		16.78	86.32	255.33
BA2	0.70		118.40		16.78	86.32	221.50
BA1	0.64		108.25		16.78	86.32	211.35
PE2	1.50		253.71		16.78	86.32	356.81
PE1	1.40		236.80		16.78	86.32	339.90
PD2	1.38		233.41		16.78	86.32	336.51
PD1	1.28		216.50		16.78	86.32	319.60
PC2	1.10		186.05		16.78	86.32	289.15
PC1	1.02		172.52		16.78	86.32	275.62
PB2	0.84		142.08		16.78	86.32	245.18
PB1	0.78		131.93		16.78	86.32	235.03
PA2	0.59		99.79		16.78	86.32	202.89
PA1	0.54		91.34		16.78	86.32	194.44

TABLE 5—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES RURAL

RUG–IV Category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
RUX	2.67	1.87	$431.45	$274.70		$87.92	$794.07
RUL	2.57	1.87	415.29	274.70		87.92	777.91
RVX	2.61	1.28	421.75	188.03		87.92	697.70
RVL	2.19	1.28	353.88	188.03		87.92	629.83
RHX	2.55	0.85	412.05	124.87		87.92	624.84
RHL	2.15	0.85	347.42	124.87		87.92	560.21
RMX	2.47	0.55	399.13	80.80		87.92	567.85
RML	2.19	0.55	353.88	80.80		87.92	522.60
RLX	2.26	0.28	365.19	41.13		87.92	494.24
RUC	1.56	1.87	252.08	274.70		87.92	614.70
RUB	1.56	1.87	252.08	274.70		87.92	614.70
RUA	0.99	1.87	159.97	274.70		87.92	522.59
RVC	1.51	1.28	244.00	188.03		87.92	519.95
RVB	1.11	1.28	179.36	188.03		87.92	455.31
RVA	1.10	1.28	177.75	188.03		87.92	453.70
RHC	1.45	0.85	234.31	124.87		87.92	447.10
RHB	1.19	0.85	192.29	124.87		87.92	405.08
RHA	0.91	0.85	147.05	124.87		87.92	359.84
RMC	1.36	0.55	219.76	80.80		87.92	388.48
RMB	1.22	0.55	197.14	80.80		87.92	365.86
RMA	0.84	0.55	135.74	80.80		87.92	304.46
RLB	1.50	0.28	242.39	41.13		87.92	371.44
RLA	0.71	0.28	114.73	41.13		87.92	243.78
ES3	3.58		578.49		17.92	87.92	684.33
ES2	2.67		431.45		17.92	87.92	537.29
ES1	2.32		374.89		17.92	87.92	480.73
HE2	2.22		358.73		17.92	87.92	464.57
HE1	1.74		281.17		17.92	87.92	387.01
HD2	2.04		329.64		17.92	87.92	435.48
HD1	1.60		258.54		17.92	87.92	364.38

TABLE 5—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES RURAL—Continued

RUG–IV Category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
HC2	1.89		305.41		17.92	87.92	411.25
HC1	1.48		239.15		17.92	87.92	344.99
HB2	1.86		300.56		17.92	87.92	406.40
HB1	1.46		235.92		17.92	87.92	341.76
LE2	1.96		316.72		17.92	87.92	422.56
LE1	1.54		248.85		17.92	87.92	354.69
LD2	1.86		300.56		17.92	87.92	406.40
LD1	1.46		235.92		17.92	87.92	341.76
LC2	1.56		252.08		17.92	87.92	357.92
LC1	1.22		197.14		17.92	87.92	302.98
LB2	1.45		234.31		17.92	87.92	340.15
LB1	1.14		184.21		17.92	87.92	290.05
CE2	1.68		271.47		17.92	87.92	377.31
CE1	1.50		242.39		17.92	87.92	348.23
CD2	1.56		252.08		17.92	87.92	357.92
CD1	1.38		222.99		17.92	87.92	328.83
CC2	1.29		208.45		17.92	87.92	314.29
CC1	1.15		185.83		17.92	87.92	291.67
CB2	1.15		185.83		17.92	87.92	291.67
CB1	1.02		164.82		17.92	87.92	270.66
CA2	0.88		142.20		17.92	87.92	248.04
CA1	0.78		126.04		17.92	87.92	231.88
BB2	0.97		156.74		17.92	87.92	262.58
BB1	0.90		145.43		17.92	87.92	251.27
BA2	0.70		113.11		17.92	87.92	218.95
BA1	0.64		103.42		17.92	87.92	209.26
PE2	1.50		242.39		17.92	87.92	348.23
PE1	1.40		226.23		17.92	87.92	332.07
PD2	1.38		222.99		17.92	87.92	328.83
PD1	1.28		206.84		17.92	87.92	312.68
PC2	1.10		177.75		17.92	87.92	283.59
PC1	1.02		164.82		17.92	87.92	270.66
PB2	0.84		135.74		17.92	87.92	241.58
PB1	0.78		126.04		17.92	87.92	231.88
PA2	0.59		95.34		17.92	87.92	201.18
PA1	0.54		87.26		17.92	87.92	193.10

D. Wage Index Adjustment

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the federal rates to account for differences in area wage levels, using a wage index that the Secretary determines appropriate. Since the inception of the SNF PPS, we have used hospital inpatient wage data in developing a wage index to be applied to SNFs. We propose to continue this practice for FY 2015, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage index data is appropriate and reasonable for the SNF PPS. As explained in the update notice for FY 2005 (69 FR 45786), the SNF PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data also excludes any wage data related to SNFs. Therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments. For FY 2015, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2010 and before October 1, 2011 (FY 2011 cost report data).

We note that section 315 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554, enacted on December 21, 2000) authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes. However, to date, this has proven to be unfeasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of that data.

In addition, we propose to continue to use the same methodology discussed in the SNF PPS final rule for FY 2008 (72 FR 43423) to address those geographic areas in which there are no hospitals, and thus, no hospital wage index data on which to base the calculation of the FY 2015 SNF PPS wage index. For rural geographic areas that do not have hospitals, and therefore, lack hospital wage data on which to base an area wage adjustment, we would use the average wage index from all contiguous Core-Based Statistical Areas (CBSAs) as a reasonable proxy. For FY 2015, there are no rural geographic areas that do not have hospitals, and thus, this methodology would not be applied. For rural Puerto Rico, we would not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity to one another of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas); instead, we would continue to use the most recent wage index previously available for that area. For urban areas without specific hospital wage index data, we would use the average wage indexes of all of the urban areas within the state to serve as a reasonable proxy for the wage index of that urban CBSA. For FY 2015, the only urban area without wage index data

available is CBSA 25980, Hinesville-Fort Stewart, GA.

Once calculated, we would apply the wage index adjustment to the labor-related portion of the federal rate. Each year, we calculate a revised labor-related share, based on the relative importance of labor-related cost categories (that is, those cost categories that are sensitive to local area wage costs) in the input price index. In the SNF PPS final rule for FY 2014 (78 FR 47944 through 47946), we finalized a proposal to revise the labor-related share to reflect the relative importance of the revised FY 2010-based SNF market basket cost weights for the following cost categories: wages and salaries; employee benefits; the labor-related portion of nonmedical professional fees; administrative and facilities support services; all other—labor-related services; and a proportion of capital-related expenses.

We calculate the labor-related relative importance from the SNF market basket, and it approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2015. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2015 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2015 in four steps. First, we compute the FY 2015 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2015 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2015 relative importance for each cost category by multiplying this ratio by the base year (FY 2010) weight. Finally, we add the FY 2015 relative importance for each of the labor-related cost categories (wages and salaries, employee benefits, the labor-related portion of non-medical professional fees, administrative and facilities support services, all other: labor-related services, and a portion of capital-related expenses) to produce the FY 2015 labor-related relative importance. Tables 6 and 7 show the RUG–IV case-mix adjusted federal rates by labor-related and non-labor-related components. As discussed above, the proposed new OMB delineations would be used to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to them beginning on October 1, 2014. Table 12 in section V.A.3. provides the FY 2015 labor-related share components based on the SNF market basket.

TABLE 6—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

RUG–IV Category	Total rate	Labor portion	Non-labor portion
RUX	776.18	$539.55	$236.63
RUL	759.27	527.79	231.48
RVX	690.86	480.24	210.62
RVL	619.82	430.86	188.96
RHX	625.93	435.10	190.83
RHL	558.27	388.07	170.20
RMX	574.18	399.13	175.05
RML	526.82	366.21	160.61
RLX	504.25	350.52	153.73
RUC	588.44	409.04	179.40
RUB	588.44	409.04	179.40
RUA	492.03	342.02	150.01
RVC	504.80	350.90	153.90
RVB	437.15	303.88	133.27
RVA	435.45	302.69	132.76
RHC	439.87	305.77	134.10
RHB	395.90	275.20	120.70
RHA	348.54	242.28	106.26
RMC	386.43	268.62	117.81
RMB	362.75	252.16	110.59
RMA	298.48	207.48	91.00
RLB	375.70	261.16	114.54
RLA	242.08	168.28	73.80
ES3	708.62	492.58	216.04
ES2	554.70	385.59	169.11
ES1	495.50	344.44	151.06
HE2	478.59	332.68	145.91
HE1	397.40	276.24	121.16
HD2	448.15	311.52	136.63
HD1	373.72	259.78	113.94
HC2	422.77	293.88	128.89
HC1	353.43	245.68	107.75
HB2	417.70	290.36	127.34
HB1	350.04	243.32	106.72
LE2	434.61	302.11	132.50
LE1	363.58	252.74	110.84
LD2	417.70	290.36	127.34
LD1	350.04	243.32	106.72
LC2	366.96	255.08	111.88
LC1	309.45	215.11	94.34
LB2	348.35	242.15	106.20
LB1	295.92	205.70	90.22
CE2	387.26	269.20	118.06
CE1	356.81	248.03	108.78
CD2	366.96	255.08	111.88
CD1	336.51	233.92	102.59
CC2	321.29	223.34	97.95
CC1	297.61	206.88	90.73
CB2	297.61	206.88	90.73
CB1	275.62	191.59	84.03
CA2	251.94	175.13	76.81
CA1	235.03	163.38	71.65
BB2	267.17	185.72	81.45
BB1	255.33	177.49	77.84
BA2	221.50	153.97	67.53
BA1	211.35	146.92	64.43
PE2	356.81	248.03	108.78
PE1	339.90	236.27	103.63
PD2	336.51	233.92	102.59
PD1	319.60	222.16	97.44

TABLE 6—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG–IV Category	Total rate	Labor portion	Non-labor portion
PC2	289.15	201.00	88.15
PC1	275.62	191.59	84.03
PB2	245.18	170.43	74.75
PB1	235.03	163.38	71.65
PA2	202.89	141.03	61.86
PA1	194.44	135.16	59.28

TABLE 7—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

RUG–IV Category	Total rate	Labor portion	Non-labor portion
RUX	794.07	$551.98	$242.09
RUL	777.91	540.75	237.16
RVX	697.70	484.99	212.71
RVL	629.83	437.81	192.02
RHX	624.84	434.35	190.49
RHL	560.21	389.42	170.79
RMX	567.85	394.73	173.12
RML	522.60	363.27	159.33
RLX	494.24	343.56	150.68
RUC	614.70	427.30	187.40
RUB	614.70	427.30	187.40
RUA	522.59	363.27	159.32
RVC	519.95	361.43	158.52
RVB	455.31	316.50	138.81
RVA	453.70	315.38	138.32
RHC	447.10	310.79	136.31
RHB	405.08	281.58	123.50
RHA	359.84	250.14	109.70
RMC	388.48	270.04	118.44
RMB	365.86	254.32	111.54
RMA	304.46	211.64	92.82
RLB	371.44	258.20	113.24
RLA	243.78	169.46	74.32
ES3	684.33	475.70	208.63
ES2	537.29	373.49	163.80
ES1	480.73	334.17	146.56
HE2	464.57	322.94	141.63
HE1	387.01	269.02	117.99
HD2	435.48	302.72	132.76
HD1	364.38	253.29	111.09
HC2	411.25	285.87	125.38
HC1	344.99	239.81	105.18
HB2	406.40	282.50	123.90
HB1	341.76	237.57	104.19
LE2	422.56	293.73	128.83
LE1	354.69	246.56	108.13
LD2	406.40	282.50	123.90
LD1	341.76	237.57	104.19
LC2	357.92	248.80	109.12
LC1	302.98	210.61	92.37
LB2	340.15	236.45	103.70
LB1	290.05	201.62	88.43
CE2	377.31	262.28	115.03
CE1	348.23	242.07	106.16
CD2	357.92	248.80	109.12
CD1	328.83	228.58	100.25
CC2	314.29	218.47	95.82
CC1	291.67	202.75	88.92
CB2	291.67	202.75	88.92
CB1	270.66	188.14	82.52
CA2	248.04	172.42	75.62

TABLE 7—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG–IV Category	Total rate	Labor portion	Non-labor portion
CA1	231.88	161.19	70.69
BB2	262.58	182.53	80.05
BB1	251.27	174.67	76.60
BA2	218.95	152.20	66.75
BA1	209.26	145.46	63.80
PE2	348.23	242.07	106.16
PE1	332.07	230.83	101.24
PD2	328.83	228.58	100.25
PD1	312.68	217.35	95.33
PC2	283.59	197.13	86.46
PC1	270.66	188.14	82.52
PB2	241.58	167.93	73.65
PB1	231.88	161.19	70.69
PA2	201.18	139.85	61.33
PA1	193.10	134.23	58.87

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments under the SNF PPS that are greater or less than would otherwise be made if the wage adjustment had not been made. For FY 2015 (federal rates effective October 1, 2014), we would apply an adjustment to fulfill the budget neutrality requirement. We would meet this requirement by multiplying each of the components of the unadjusted federal rates by a budget neutrality factor equal to the ratio of the weighted average wage adjustment factor for FY 2014 to the weighted average wage adjustment factor for FY 2015, based on the blended wage index for FY 2015 as proposed later in this proposed rule. For this calculation, we use the same FY 2013 claims utilization data for both the numerator and denominator of this ratio. We define the wage adjustment factor used in this calculation as the labor share of the rate component multiplied by the wage index plus the non-labor share of the rate component. The budget neutrality factor for FY 2015 would be 1.0001.

In the SNF PPS final rule for FY 2006 (70 FR 45026, August 4, 2005), we adopted the changes discussed in the OMB Bulletin No. 03–04 (June 6, 2003), available online at *www.whitehouse.gov/omb/bulletins/b03-04.html*, which announced revised definitions for MSAs, and the creation of micropolitan statistical areas and combined statistical areas.

In adopting the CBSA geographic designations, we provided for a one-year transition in FY 2006 with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), since the expiration of this one-year transition on September 30, 2006, we have used the full CBSA-based wage index values.

On February 28, 2013, OMB issued OMB Bulletin No. 13–01, announcing revisions to the delineation of MSAs, Micropolitan Statistical Areas, and Combined Statistical Areas, and guidance on uses of the delineation of these areas. A copy of this bulletin is available online at *http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b-13-01.pdf.* This bulletin states that it ''provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** (75 FR 37246–37252) and Census Bureau data.''

While the revisions OMB published on February 28, 2013 are not as sweeping as the changes made when we adopted the CBSA geographic designations for FY 2006, the February 28, 2013 bulletin does contain a number of significant changes. For example, there are new CBSAs, urban counties that become rural, rural counties that become urban, and existing CBSAs that are being split apart.

As discussed in the SNF PPS proposed rule for FY 2014 (78 FR 26448), the changes made by the bulletin and their ramifications required extensive review by CMS before using them for the SNF PPS wage index. Having completed our assessment, we are proposing changes to the SNF PPS wage index based on the newest OMB delineations, as described in OMB Bulletin No. 13–01, beginning in FY 2015, including a proposed one-year transition with a blended wage index for FY 2015. These proposed changes are discussed further in section V.A. of this proposed rule. The proposed wage index applicable to FY 2015 is set forth in Table A available on the CMS Web site at *http://cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.* Table A provides a crosswalk between the FY 2015 wage index for a provider using the current OMB delineations in effect in FY 2014 and the FY 2015 wage index using the proposed revised OMB delineations, as well as the proposed transition wage index values that would be in effect in FY 2015 if these proposed changes are finalized.

E. Adjusted Rate Computation Example

Using the hypothetical SNF XYZ described below, Table 8 shows the adjustments made to the federal per diem rates to compute the provider's actual per diem PPS payment. We derive the Labor and Non-labor columns from Table 6. The wage index used in this example is based on the proposed transition wage index, which may be found in Table A as referenced above. As illustrated in Table 8, SNF XYZ's total PPS payment would equal $42,299.26.

TABLE 8—ADJUSTED RATE COMPUTATION EXAMPLE

SNF XYZ: LOCATED IN CEDAR RAPIDS, IA (URBAN CBSA 16300) WAGE INDEX: 0.8883

[See Proposed Transition Wage Index in Table A] [1]

RUG–IV Group	Labor	Wage index	Adjusted labor	Non-labor	Adjusted rate	Percent adjustment	Medicare days	Payment
RVX	$480.24	0.8883	$426.60	$210.62	$637.22	$637.22	14	$8,921.08
ES2	385.59	0.8883	342.52	169.11	511.63	511.63	30	15,348.90
RHA	242.28	0.8883	215.22	106.26	321.48	321.48	16	5,143.68
CC2 *	223.34	0.8883	198.39	97.95	296.34	675.66	10	6,756.60
BA2	153.97	0.8883	136.77	67.53	204.30	204.30	30	6,129.00
							100	42,299.26

* Reflects a 128 percent adjustment from section 511 of the MMA.

[1] Available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.*

IV. Additional Aspects of the SNF PPS

A. SNF Level of Care—Administrative Presumption

The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because the case-mix classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the existing resident assessment process and case-mix classification system discussed in section III.C. of this proposed rule. This approach includes an administrative presumption that utilizes a beneficiary's initial classification in one of the upper 52 RUGs of the 66-group RUG-IV case-mix classification system to assist in making certain SNF level of care determinations.

In accordance with section 1888(e)(4)(H)(ii) of the Act and the regulations at § 413.345, we include in each update of the federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. As set forth in the FY 2011 SNF PPS update notice (75 FR 42910), this designation reflects an administrative presumption under the 66-group RUG–IV system that beneficiaries who are correctly assigned to one of the upper 52 RUG–IV groups on the initial five-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to and including the assessment reference date on the five-day Medicare-required assessment.

A beneficiary assigned to any of the lower 14 RUG-IV groups is not automatically classified as either meeting or not meeting the definition, but instead receives an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 52 RUG-IV groups during the immediate post-hospital period require a covered level of care, which would be less likely for those beneficiaries assigned to one of the lower 14 RUG-IV groups.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the case-mix classification structure. In this proposed rule, we would continue to designate the upper 52 RUG-IV groups for purposes of this administrative presumption, consisting of all groups encompassed by the following RUG-IV categories:

- Rehabilitation plus Extensive Services;
- Ultra High Rehabilitation;
- Very High Rehabilitation;
- High Rehabilitation;
- Medium Rehabilitation;
- Low Rehabilitation;
- Extensive Services;
- Special Care High;
- Special Care Low; and,
- Clinically Complex.

However, we note that this administrative presumption policy does not supersede the SNF's responsibility to ensure that its decisions relating to level of care are appropriate and timely, including a review to confirm that the services prompting the beneficiary's assignment to one of the upper 52 RUG–IV groups (which, in turn, serves to trigger the administrative presumption) are themselves medically necessary. As we explained in the FY 2000 SNF PPS final rule (64 FR 41667), the administrative presumption:

> ''. . . is itself rebuttable in those individual cases in which the services actually received by the resident do not meet the basic statutory criterion of being reasonable and necessary to diagnose or treat a beneficiary's condition (according to section 1862(a)(1) of the Act). Accordingly, the presumption would not apply, for example, in those situations in which a resident's assignment to one of the upper . . . groups is itself based on the receipt of services that are subsequently determined to be not reasonable and necessary.''

Moreover, we want to stress the importance of careful monitoring for changes in each patient's condition to determine the continuing need for Part A SNF benefits after the assessment reference date of the 5-day assessment.

B. Consolidated Billing

Sections 1842(b)(6)(E) and 1862(a)(18) of the Act (as added by section 4432(b) of the BBA) require a SNF to submit consolidated Medicare bills to its Medicare Administrative Contractor for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, section 1862(a)(18) places the responsibility with the SNF for billing Medicare for physical therapy, occupational therapy, and speech-language pathology services that the resident receives during a noncovered stay. Section 1888(e)(2)(A) of the Act excludes a small list of services from the consolidated billing provision (primarily those services furnished by physicians and certain other types of practitioners), which remain separately billable under Part B when furnished to a SNF's Part A resident. These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295 through 26297).

A detailed discussion of the legislative history of the consolidated billing provision is available on the SNF PPS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Legislative_History_07302013.pdf.* In particular, section 103 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113, enacted on November 29, 1999) amended section 1888(e)(2)(A) of the Act by further excluding a number of individual ''high-cost, low probability'' services, identified by Healthcare Common Procedure Coding System (HCPCS) codes, within several broader categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) that otherwise remained subject to the provision. We discuss this BBRA amendment in greater detail in the SNF PPS proposed and final rules for FY 2001 (65 FR 19231 through 19232, April 10, 2000, and 65 FR 46790 through 46795, July 31, 2000), as well as in Program Memorandum AB–00–18 (Change Request #1070), issued March 2000, which is available online at *www.cms.gov/transmittals/downloads/ab001860.pdf.*

As explained in the FY 2001 proposed rule (65 FR 19232), the amendments enacted in section 103 of the BBRA not only identified for exclusion from this provision a number of particular service codes within four specified categories (that is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices), but also gave the Secretary ''. . . the authority to designate additional, individual services for exclusion within each of the specified service categories.'' In the proposed rule for FY 2001, we also noted that the BBRA Conference report (H.R. Rep. No. 106–479 at 854 (1999) (Conf. Rep.)) characterizes the individual services that this legislation targets for exclusion as ''. . . high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment [SNFs] receive under the prospective payment system. . . .'' According to the conferees, section 103(a) of the BBRA ''is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs . . .'' By contrast, we noted that the Congress declined to designate for exclusion any of the remaining services within those

four categories (thus, leaving all of those services subject to SNF consolidated billing), because they are relatively inexpensive and are furnished routinely in SNFs.

As we further explained in the final rule for FY 2001 (65 FR 46790), and as our longstanding policy, any additional service codes that we might designate for exclusion under our discretionary authority must meet the same statutory criteria used in identifying the original codes excluded from consolidated billing under section 103(a) of the BBRA: they must fall within one of the four service categories specified in the BBRA; and they also must meet the same standards of high cost and low probability in the SNF setting, as discussed in the BBRA Conference report. Accordingly, we characterized this statutory authority to identify additional service codes for exclusion ''. . . as essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice)'' (65 FR 46791). In this proposed rule, we specifically invite public comments identifying HCPCS codes in any of these four service categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) representing recent medical advances that might meet our criteria for exclusion from SNF consolidated billing. We may consider excluding a particular service if it meets our criteria for exclusion as specified above. Commenters should identify in their comments the specific HCPCS code that is associated with the service in question, as well as their rationale for requesting that the identified HCPCS code(s) be excluded.

We note that the original BBRA amendment (as well as the implementing regulations) identified a set of excluded services by means of specifying HCPCS codes that were in effect as of a particular date (in that case, as of July 1, 1999). Identifying the excluded services in this manner made it possible for us to utilize program issuances as the vehicle for accomplishing routine updates of the excluded codes, to reflect any minor revisions that might subsequently occur in the coding system itself (for example, the assignment of a different code number to the same service). Accordingly, in the event that we identify through the current rulemaking cycle any new services that would actually represent a substantive change in the scope of the exclusions from SNF consolidated billing, we would identify these additional excluded services by means of the HCPCS codes that are in effect as of a specific date (in this case, as of October 1, 2014). By making any new exclusions in this manner, we could similarly accomplish routine future updates of these additional codes through the issuance of program instructions.

C. Payment for SNF-Level Swing-Bed Services

Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute- or SNF-level care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF-level services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, these services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. As explained in the FY 2002 final rule (66 FR 39562), this effective date is consistent with the statutory provision to integrate swing-bed rural hospitals into the SNF PPS by the end of the transition period, June 30, 2002.

Accordingly, all non-CAH swing-bed rural hospitals have now come under the SNF PPS. Therefore, all rates and wage indexes outlined in earlier sections of this proposed rule for the SNF PPS also apply to all non-CAH swing-bed rural hospitals. A complete discussion of assessment schedules, the MDS, and the transmission software (RAVEN–SB for Swing Beds) appears in the FY 2002 final rule (66 FR 39562) and in the FY 2010 final rule (74 FR 40288). As finalized in the FY 2010 SNF PPS final rule (74 FR 40356–57), effective October 1, 2010, non-CAH swing-bed rural hospitals are required to complete an MDS 3.0 swing-bed assessment which is limited to the required demographic, payment, and quality items. The latest changes in the MDS for swing-bed rural hospitals appear on the SNF PPS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html.*

V. Other Issues

A. Proposed Changes to SNF PPS Wage Index

1. Background

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the federal rates to account for differences in area wage levels, using a wage index that the Secretary determines appropriate. Since the inception of the SNF PPS, we have used hospital inpatient wage data, exclusive of the occupational mix adjustment, in developing a wage index to be applied to SNFs. As noted previously in section III.D of this proposed rule, we are proposing to continue that practice for FY 2015. The wage index used for the SNF PPS is calculated using the Inpatient Prospective Payment System (IPPS) wage index data on the basis of the labor market area in which the acute care hospital is located, but without taking into account geographic reclassifications under section 1886(d)(8) and (d)(10) of the Act, and without applying the IPPS rural floor under section 4410 of the BBA, the IPPS imputed rural floor under 42 CFR 412.64(h), and the outmigration adjustment under section 1886(d)(13) (see the FY 2006 SNF PPS proposed rule (70 FR 29090 through 29092)). The applicable SNF wage index value is assigned to a SNF on the basis of the labor market area in which the SNF is geographically located. Under section 1888(e)(4)(G)(ii) of the Act, beginning with FY 2006, we delineate labor market areas based on the Core-Based Statistical Areas (CBSAs) established by the Office of Management and Budget (OMB). The current statistical areas used in FY 2014 are based on OMB standards published on December 27, 2000 (65 FR 82228) and Census 2000 data and Census Bureau population estimates for 2007 and 2008 (OMB Bulletin No. 10–02). For a discussion of OMB's delineations of CBSAs and our implementation of the CBSA definitions, we refer readers to the preamble of the FY 2006 SNF PPS proposed rule (70 FR 29090 through 29096) and final rule (70 FR 45040 through 45041). As stated in the FY 2014 SNF PPS proposed rule (78 FR 26448) and final rule (78 FR 47952), on February 28, 2013, OMB issued OMB Bulletin No. 13–01, which established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of this bulletin may be obtained at *http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b-13-01.pdf.* According to OMB, ''[t]his bulletin provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published

on June 28, 2010, in the **Federal Register** (75 FR 37246–37252) and Census Bureau data.''

While the revisions OMB published on February 28, 2013 are not as sweeping as the changes made when we adopted the CBSA geographic designations for FY 2006, the February 28, 2013 OMB bulletin does contain a number of significant changes. For example, there are new CBSAs, urban counties that have become rural, rural counties that have become urban, and existing CBSAs that have been split apart. However, because the bulletin was not issued until February 28, 2013, with supporting data not available until later, and because the changes made by the bulletin and their ramifications needed to be extensively reviewed and verified, we were unable to undertake such a lengthy process before publication of the FY 2014 SNF PPS proposed rule and, thus, did not implement changes to the wage index for FY 2014 based on these new OMB delineations. In the FY 2014 SNF PPS final rule (78 FR 47952), we stated that we intended to propose changes to the wage index based on the most current OMB delineations in this FY 2015 SNF PPS proposed rule. As discussed below, in this proposed rule, we are proposing to implement the new OMB delineations as described in the February 28, 2013 OMB Bulletin No. 13–01, for SNF PPS wage index beginning in FY 2015.

2. Proposed Implementation of New Labor Market Delineations

As discussed in the FY 2014 SNF PPS proposed rule (78 FR 26448) and final rule (78 FR 47952), CMS delayed implementing the new OMB statistical area delineations to allow for sufficient time to assess the new changes. We believe it is important for the SNF PPS to use the latest OMB delineations available in order to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. While CMS and other stakeholders have explored potential alternatives to the current CBSA-based labor market system (we refer readers to the CMS Web site at *www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Wage-Index-Reform.html*), no consensus has been achieved regarding how best to implement a replacement system. As discussed in the FY 2005 IPPS final rule (69 FR 49027), ''While we recognize that MSAs are not designed specifically to define labor market areas, we believe they do represent a useful proxy for this purpose.'' We further believe that using the most current OMB delineations would increase the integrity of the SNF PPS wage index by creating a more accurate representation of geographic variation in wage levels. We have reviewed our findings and impacts relating to the new OMB delineations, and have concluded that there is no compelling reason to further delay implementation. Because we believe that we have broad authority under section 1888(e)(4)(G)(ii) to determine the labor market areas used for the SNF PPS wage index, and because we also believe that the most current OMB delineations accurately reflect the local economies and wage levels of the areas in which hospitals are currently located, we are proposing to implement the new OMB delineations as described in the February 28, 2013 OMB Bulletin No. 13–01, for the SNF PPS wage index effective beginning in FY 2015. As discussed further below, we are proposing to implement a one-year transition with a blended wage index for all providers in FY 2015 to assist providers in adapting to the new OMB delineations (if we finalize implementation of such delineations for the SNF PPS wage index beginning in FY 2015). We invite comments on this proposal. This proposed transition is discussed in more detail below.

a. Micropolitan Statistical Areas

As discussed in the FY 2006 SNF PPS proposed rule (70 FR 29093 through 29094) and final rule (70 FR 45041), CMS considered how to use the Micropolitan Statistical Area definitions in the calculation of the wage index. OMB defines a ''Micropolitan Statistical Area'' as a CBSA ''associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000'' (75 FR 37252). We refer to these as Micropolitan Areas. After extensive impact analysis, consistent with the treatment of these areas under the IPPS as discussed in the FY 2005 IPPS final rule (69 FR 49029 through 49032), CMS determined the best course of action would be to treat Micropolitan Areas as ''rural'' and include them in the calculation of each state's SNF PPS rural wage index (see 70 FR 29094 and 70 FR 45040 through 45041)). Thus, the SNF PPS statewide rural wage index is determined using IPPS hospital data from hospitals located in non-MSA areas, and the statewide rural wage index is assigned to SNFs located in those areas. Because Micropolitan Areas tend to encompass smaller population centers and contain fewer hospitals than MSAs, we determined that if Micropolitan Areas were to be treated as separate labor market areas, the SNF PPS wage index would have included significantly more single-provider labor market areas. As we explained in the FY 2006 SNF PPS proposed rule (70 FR 29094), recognizing Micropolitan Areas as independent labor markets would generally increase the potential for dramatic shifts in year-to-year wage index values because a single hospital (or group of hospitals) could have a disproportionate effect on the wage index of an area. Dramatic shifts in an area's wage index from year to year are problematic and create instability in the payment levels from year to year, which could make fiscal planning for SNFs difficult if we adopted this approach. For these reasons, we adopted a policy to include Micropolitan Areas in the state's rural wage area for purposes of the SNF PPS wage index, and have continued this policy through the present.

Based upon the new 2010 Decennial Census data, a number of urban counties have switched status and have joined or became Micropolitan Areas, and some counties that once were part of a Micropolitan Area, have become urban. Overall, there are fewer Micropolitan Areas (541) under the new OMB delineations based on the 2010 Census than existed under the latest data from the 2000 Census (581). We believe that the best course of action would be to continue the policy established in the FY 2006 SNF PPS final rule and include Micropolitan Areas in each state's rural wage index. These areas continue to be defined as having relatively small urban cores (populations of 10,000 to 49,999). We do not believe it would be appropriate to calculate a separate wage index for areas that typically may include only a few hospitals for the reasons discussed in the FY 2006 SNF PPS proposed rule, and as discussed above. Therefore, in conjunction with our proposal to implement the new OMB labor market delineations beginning in FY 2015 and consistent with the treatment of Micropolitan Areas under the IPPS, we are proposing to continue to treat Micropolitan Areas as ''rural'' and to include Micropolitan Areas in the calculation of the state's rural wage index.

b. Urban Counties Becoming Rural

As previously discussed, we are proposing to implement the new OMB statistical area delineations (based upon the 2010 decennial Census data) beginning in FY 2015 for the SNF PPS wage index. Our analysis shows that a total of 37 counties (and county equivalents) that are currently considered part of an urban CBSA would be considered located in a rural

area, beginning in FY 2015, if we adopt the new OMB delineations. Table 9 below lists the 37 urban counties that would be rural if we finalize our proposal to implement the new OMB delineations.

TABLE 9—COUNTIES THAT WOULD LOSE URBAN STATUS

County	State	Previous CBSA	Previous urban area (constituent counties)
Greene County	IN	14020	Bloomington, IN.
Anson County	NC	16740	Charlotte-Gastonia-Rock Hill, NC-SC.
Franklin County	IN	17140	Cincinnati-Middletown, OH-KY-IN.
Stewart County	TN	17300	Clarksville, TN-KY.
Howard County	MO	17860	Columbia, MO.
Delta County	TX	19124	Dallas-Fort Worth-Arlington, TX.
Pittsylvania County	VA	19260	Danville, VA.
Danville City	VA	19260	Danville, VA.
Preble County	OH	19380	Dayton, OH.
Gibson County	IN	21780	Evansville, IN-KY.
Webster County	KY	21780	Evansville, IN-KY.
Franklin County	AR	22900	Fort Smith, AR-OK.
Ionia County	MI	24340	Grand Rapids-Wyoming, MI.
Newaygo County	MI	24340	Grand Rapids-Wyoming, MI.
Greene County	NC	24780	Greenville, NC.
Stone County	MS	25060	Gulfport-Biloxi, MS.
Morgan County	WV	25180	Hagerstown-Martinsburg, MD-WV.
San Jacinto County	TX	26420	Houston-Sugar Land-Baytown, TX.
Franklin County	KS	28140	Kansas City, MO-KS.
Tipton County	IN	29020	Kokomo, IN.
Nelson County	KY	31140	Louisville/Jefferson County, KY-IN.
Geary County	KS	31740	Manhattan, KS.
Washington County	OH	37620	Parkersburg-Marietta-Vienna, WV-OH.
Pleasants County	WV	37620	Parkersburg-Marietta-Vienna, WV-OH.
George County	MS	37700	Pascagoula, MS.
Power County	ID	38540	Pocatello, ID.
Cumberland County	VA	40060	Richmond, VA.
King and Queen County	VA	40060	Richmond, VA.
Louisa County	VA	40060	Richmond, VA.
Washington County	MO	41180	St. Louis, MO-IL.
Summit County	UT	41620	Salt Lake City, UT.
Erie County	OH	41780	Sandusky, OH.
Franklin County	MA	44140	Springfield, MA.
Ottawa County	OH	45780	Toledo, OH.
Greene County	AL	46220	Tuscaloosa, AL.
Calhoun County	TX	47020	Victoria, TX.
Surry County	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC.

We are proposing that the wage data for all hospitals located in the counties listed above would now be considered rural when calculating their respective state's rural wage index value, which rural wage index value would be used under the SNF PPS. Furthermore, for SNF providers currently located in an urban county that would be considered rural, should this proposal be finalized, CMS would utilize the rural unadjusted per-diem rates, found in Table 3 above, as the basis for determining this facility's payment rates beginning on October 1, 2014.

c. Rural Counties Becoming Urban

Analysis of the new OMB delineations (based upon the 2010 decennial Census data) shows that a total of 105 counties (and county equivalents) that are currently located in rural areas would be located in urban areas, if we finalize our proposal to implement the new OMB delineations. Table 10 below lists the 105 rural counties that would be urban if we finalize this proposal.

TABLE 10—COUNTIES THAT WOULD GAIN URBAN STATUS

County	State	New CBSA	Urban area (constituent counties)
Utuado Municipio	PR	10380	Aguadilla-Isabela, PR.
Linn County	OR	10540	Albany, OR.
Oldham County	TX	11100	Amarillo, TX.
Morgan County	GA	12060	Atlanta-Sandy Springs-Roswell, GA.
Lincoln County	GA	12260	Augusta-Richmond County, GA-SC.
Newton County	TX	13140	Beaumont-Port Arthur, TX.
Fayette County	WV	13220	Beckley, WV.
Raleigh County	WV	13220	Beckley, WV.
Golden Valley County	MT	13740	Billings, MT.
Oliver County	ND	13900	Bismarck, ND.

TABLE 10—COUNTIES THAT WOULD GAIN URBAN STATUS—Continued

County	State	New CBSA	Urban area (constituent counties)
Sioux County	ND	13900	Bismarck, ND.
Floyd County	VI	13980	Blacksburg-Christiansburg-Radford, VA.
De Witt County	IL	14010	Bloomington, IL.
Columbia County	PA	14100	Bloomsburg-Berwick, PA.
Montour County	PA	14100	Bloomsburg-Berwick, PA.
Allen County	KY	14540	Bowling Green, KY.
Butler County	KY	14540	Bowling Green, KY.
St. Mary's County	MD	15680	California-Lexington Park, MD.
Jackson County	IL	16060	Carbondale-Marion, IL.
Williamson County	IL	16060	Carbondale-Marion, IL.
Franklin County	PA	16540	Chambersburg-Waynesboro, PA.
Iredell County	NC	16740	Charlotte-Concord-Gastonia, NC-SC.
Lincoln County	NC	16740	Charlotte-Concord-Gastonia, NC-SC.
Rowan County	NC	16740	Charlotte-Concord-Gastonia, NC-SC.
Chester County	SC	16740	Charlotte-Concord-Gastonia, NC-SC.
Lancaster County	SC	16740	Charlotte-Concord-Gastonia, NC-SC.
Buckingham County	VA	16820	Charlottesville, VA.
Union County	IN	17140	Cincinnati, OH-KY-IN.
Hocking County	OH	18140	Columbus, OH.
Perry County	OH	18140	Columbus, OH.
Walton County	FL	18880	Crestview-Fort Walton Beach-Destin, FL.
Hood County	TX	23104	Dallas-Fort Worth-Arlington, TX.
Somervell County	TX	23104	Dallas-Fort Worth-Arlington, TX.
Baldwin County	AL	19300	Daphne-Fairhope-Foley, AL.
Monroe County	PA	20700	East Stroudsburg, PA.
Hudspeth County	TX	21340	El Paso, TX.
Adams County	PA	23900	Gettysburg, PA.
Hall County	NE	24260	Grand Island, NE.
Hamilton County	NE	24260	Grand Island, NE.
Howard County	NE	24260	Grand Island, NE.
Merrick County	NE	24260	Grand Island, NE.
Montcalm County	MI	24340	Grand Rapids-Wyoming, MI.
Josephine County	OR	24420	Grants Pass, OR.
Tangipahoa Parish	LA	25220	Hammond, LA.
Beaufort County	SC	25940	Hilton Head Island-Bluffton-Beaufort, SC.
Jasper County	SC	25940	Hilton Head Island-Bluffton-Beaufort, SC.
Citrus County	FL	26140	Homosassa Springs, FL.
Butte County	ID	26820	Idaho Falls, ID.
Yazoo County	MS	27140	Jackson, MS.
Crockett County	TN	27180	Jackson, TN.
Kalawao County	HI	27980	Kahului-Wailuku-Lahaina, HI.
Maui County	HI	27980	Kahului-Wailuku-Lahaina, HI.
Campbell County	TN	28940	Knoxville, TN.
Morgan County	TN	28940	Knoxville, TN.
Roane County	TN	28940	Knoxville, TN.
Acadia Parish	LA	29180	Lafayette, LA.
Iberia Parish	LA	29180	Lafayette, LA.
Vermilion Parish	LA	29180	Lafayette, LA.
Cotton County	OK	30020	Lawton, OK.
Scott County	IN	31140	Louisville/Jefferson County, KY-IN.
Lynn County	TX	31180	Lubbock, TX.
Green County	WI	31540	Madison, WI.
Benton County	MS	32820	Memphis, TN-MS-AR.
Midland County	MI	33220	Midland, MI.
Martin County	TX	33260	Midland, TX.
Le Sueur County	MN	33460	Minneapolis-St. Paul-Bloomington, MN-WI.
Mille Lacs County	MN	33460	Minneapolis-St. Paul-Bloomington, MN-WI.
Sibley County	MN	33460	Minneapolis-St. Paul-Bloomington, MN-WI.
Maury County	TN	34980	Nashville-Davidson-Murfreesboro-Franklin, TN.
Craven County	NC	35100	New Bern, NC.
Jones County	NC	35100	New Bern, NC.
Pamlico County	NC	35100	New Bern, NC.
St. James Parish	LA	35380	New Orleans-Metairie, LA.
Box Elder County	UT	36260	Ogden-Clearfield, UT.
Gulf County	FL	37460	Panama City, FL.
Custer County	SD	39660	Rapid City, SD.
Fillmore County	MN	40340	Rochester, MN.

TABLE 10—COUNTIES THAT WOULD GAIN URBAN STATUS—Continued

County	State	New CBSA	Urban area (constituent counties)
Yates County	NY	40380	Rochester, NY.
Sussex County	DE	41540	Salisbury, MD-DE.
Worcester County	MA	41540	Salisbury, MD-DE.
Highlands County	FL	42700	Sebring, FL.
Webster Parish	LA	43340	Shreveport-Bossier City, LA.
Cochise County	AZ	43420	Sierra Vista-Douglas, AZ.
Plymouth County	IA	43580	Sioux City, IA-NE-SD.
Union County	SC	43900	Spartanburg, SC.
Pend Oreille County	WA	44060	Spokane-Spokane Valley, WA.
Stevens County	WA	44060	Spokane-Spokane Valley, WA.
Augusta County	VA	44420	Staunton-Waynesboro, VA.
Staunton City	VA	44420	Staunton-Waynesboro, VA.
Waynesboro City	VA	44420	Staunton-Waynesboro, VA.
Little River County	AR	45500	Texarkana, TX-AR.
Sumter County	FL	45540	The Villages, FL.
Pickens County	AL	46220	Tuscaloosa, AL.
Gates County	NC	47260	Virginia Beach-Norfolk-Newport News, VA-NC.
Falls County	TX	47380	Waco, TX.
Columbia County	WA	47460	Walla Walla, WA.
Walla Walla County	WA	47460	Walla Walla, WA.
Peach County	GA	47580	Warner Robins, GA.
Pulaski County	GA	47580	Warner Robins, GA.
Culpeper County	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV.
Rappahannock County	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV.
Jefferson County	NY	48060	Watertown-Fort Drum, NY.
Kingman County	KS	48620	Wichita, KS.
Davidson County	NC	49180	Winston-Salem, NC.
Windham County	CT	49340	Worcester, MA-CT.

We are proposing that when calculating the area wage index, the wage data for hospitals located in these counties would be included in their new respective urban CBSAs. Furthermore, for SNF providers currently located in a rural county that would be considered urban, should this proposal be finalized, CMS would utilize the urban unadjusted per-diem rates, found in Table 2 above, as the basis for determining this facility's payment rates beginning on October 1, 2014

d. Urban Counties Moving to a Different Urban CBSA

In addition to rural counties becoming urban and urban counties becoming rural, several urban counties would shift from one urban CBSA to another urban CBSA under our proposal to adopt the new OMB delineations. In other cases, applying the new OMB delineations would involve a change only in CBSA name or number, while the CBSA continues to encompass the same constituent counties. For example, CBSA 29140 (Lafayette, IN), would experience both a change to its number and its name, and would become CBSA 29200 (Lafayette-West Lafayette, IN), while all of its three constituent counties would remain the same. We are not discussing these proposed changes in this section because they are inconsequential changes with respect to the SNF PPS wage index. However, in other cases, if we adopt the new OMB delineations, counties would shift between existing and new CBSAs, changing the constituent makeup of the CBSAs.

In one type of change, an entire CBSA would be subsumed by another CBSA. For example, CBSA 37380 (Palm Coast, FL) currently is a single county (Flagler, FL) CBSA. Flagler County would be a part of CBSA 19660 (Deltona-Daytona Beach-Ormond Beach, FL) under the new OMB delineations.

In another type of change, some CBSAs have counties that would split off to become part of or to form entirely new labor market areas. For example, CBSA 37964 (Philadelphia Metropolitan Division of MSA 37980) currently is comprised of five Pennsylvania counties (Bucks, Chester, Delaware, Montgomery, and Philadelphia). If we adopt the new OMB delineations, Montgomery, Bucks, and Chester counties would split off and form the new CBSA 33874 (Montgomery County-Bucks County-Chester County, PA Metropolitan Division of MSA 37980), while Delaware and Philadelphia counties would remain in CBSA 37964.

Finally, in some cases, a CBSA would lose counties to another existing CBSA if we adopt the new OMB delineations. For example, Lincoln County and Putnam County, WV would move from CBSA 16620 (Charleston, WV) to CBSA 26580 (Huntington-Ashland, WV–KY–OH). CBSA 16620 would still exist in the new labor market delineations with fewer constituent counties. Table 11 lists the urban counties that would move from one urban CBSA to another urban CBSA if we adopt the new OMB delineations.

TABLE 11—COUNTIES THAT WOULD CHANGE TO A DIFFERENT CBSA

Prior CBSA	New CBSA	County	State
11300	26900	Madison County	IN.

TABLE 11—COUNTIES THAT WOULD CHANGE TO A DIFFERENT CBSA—Continued

Prior CBSA	New CBSA	County	State
11340	24860	Anderson County	SC.
14060	14010	McLean County	IL.
37764	15764	Essex County	MA.
16620	26580	Lincoln County	WV.
16620	26580	Putnam County	WV.
16974	20994	DeKalb County	IL.
16974	20994	Kane County	IL.
21940	41980	Ceiba Municipio	PR.
21940	41980	Fajardo Municipio	PR.
21940	41980	Luquillo Municipio	PR.
26100	24340	Ottawa County	MI.
31140	21060	Meade County	KY.
34100	28940	Grainger County	TN.
35644	35614	Bergen County	NJ.
35644	35614	Hudson County	NJ.
20764	35614	Middlesex County	NJ.
20764	35614	Monmouth County	NJ.
20764	35614	Ocean County	NJ.
35644	35614	Passaic County	NJ.
20764	35084	Somerset County	NJ.
35644	35614	Bronx County	NY.
35644	35614	Kings County	NY.
35644	35614	New York County	NY.
35644	20524	Putnam County	NY.
35644	35614	Queens County	NY.
35644	35614	Richmond County	NY.
35644	35614	Rockland County	NY.
35644	35614	Westchester County	NY.
37380	19660	Flagler County	FL.
37700	25060	Jackson County	MS.
37964	33874	Bucks County	PA.
37964	33874	Chester County	PA.
37964	33874	Montgomery County	PA.
39100	20524	Dutchess County	NY.
39100	35614	Orange County	NY.
41884	42034	Marin County	CA.
41980	11640	Arecibo Municipio	PR.
41980	11640	Camuy Municipio	PR.
41980	11640	Hatillo Municipio	PR.
41980	11640	Quebradillas Municipio	PR.
48900	34820	Brunswick County	NC.
49500	38660	Guánica Municipio	PR.
49500	38660	Guayanilla Municipio	PR.
49500	38660	Peñuelas Municipio	PR.
49500	38660	Yauco Municipio	PR.

If providers located in these counties move from one CBSA to another under the new OMB delineations, there may be impacts, both negative and positive, upon their specific wage index values. As discussed below, we propose to implement a transition wage index to adjust for these possible impacts.

e. Transition Period

Overall, we believe implementing the new OMB delineations would result in wage index values being more representative of the actual costs of labor in a given area. Further, we recognize that some providers (15 percent) would have a higher wage index due to our proposed implementation of the new labor market area delineations. However, we also recognize that more providers (22 percent) would experience decreases in wage index values as a result of our proposed implementation of the new labor market area delineations. Therefore, we believe it would be appropriate to consider, as we did in FY 2006, whether or not a transition period should be used in order to implement these proposed changes to the wage index.

We considered having no transition period and fully implementing the proposed new OMB delineations beginning in FY 2015. This would mean that we would adopt the revised OMB delineations for all providers on October 1, 2014. However, this would not provide any time for providers to adapt to the new OMB delineations. As discussed above, more providers would experience a decrease in wage index due to implementation of the proposed new OMB delineations than would experience an increase. Thus, we believe that it would be appropriate to provide for a transition period to mitigate the resulting short-term instability and negative impacts on these providers, and to provide time for providers to adjust to their new labor market area delineations. Furthermore, in light of the comments received during the FY 2006 rulemaking cycle on our proposal in the FY 2006 SNF PPS proposed rule (70 FR 29094–29095) to adopt the new CBSA definitions without a transition period, we anticipate that providers would have similar concerns with not having a transition period for the proposed new OMB delineations. Therefore, as further discussed below, similar to the policy

adopted in the FY 2006 SNF PPS final rule (70 FR 45041) when we first adopted OMB's CBSA definitions for purposes of the SNF PPS wage index, we are proposing a one-year transition blended wage index for all SNFs to assist providers in adapting to the new OMB delineations (should we finalize implementation of such delineations for the SNF PPS wage index beginning in FY 2015). In determining an appropriate transition methodology, consistent with the objectives set forth in the FY 2006 SNF PPS final rule (70 FR 45041), we looked for approaches that would provide relief to the largest percentage of adversely-affected SNFs with the least impact to the rest of the facilities.

First, we considered transitioning the wage index to the revised OMB delineations over a number of years in order minimize the impact of the proposed wage index changes in a given year. However, we also believe this must be balanced against the need to ensure the most accurate payments possible, which argues for a faster transition to the revised OMB delineations. As discussed above in section V.A.2 of this proposed rule, we believe that using the most current OMB delineations would increase the integrity of the SNF PPS wage index by creating a more accurate representation of geographic variation in wage levels. As such, we believe that utilizing a one-year (rather than a multiple year) transition with a blended wage index in FY 2015 would strike the best balance.

Second, we considered what type of blend would be appropriate for purposes of the transition wage index. We are proposing that providers would receive a one-year blended wage index using 50 percent of their FY 2015 wage index based on the proposed new OMB delineations and 50 percent of their FY 2015 wage index based on the OMB delineations used in FY 2014. We believe that a 50/50 blend would best mitigate the negative payment impacts associated with the implementation of the proposed new OMB delineations. While we considered alternatives to the 50/50 blend, we believe this type of split balances the increases and decreases in wage index values associated with this proposal, as well as provides a readily understandable calculation for providers.

Next, we considered whether or not the blended wage index should be used for all providers or for only a subset of providers, such as those providers that would experience a decrease in their respective wage index values due to implementation of the revised OMB delineations. If we were to apply the transition policy only to those providers that would experience a decrease in their respective wage index values due to the implementation of the revised OMB delineations, then providers that would experience either no change in wage index or an increase in wage index due to the revised OMB delineations would be immediately transitioned to the FY 2015 wage index under the revised OMB delineations. As required in Section 1888(e)(4)(G)(ii) of the Act, the wage index adjustment must be implemented in a budget-neutral manner. As such, if we were to apply the transition policy only to those providers that would experience a decrease in their respective wage index values due to implementation of the revised OMB delineations, the budget neutrality factor, discussed in section III.D, calculated based on this this approach would be 0.9986, which would result in reduced base rates for all providers as compared to the budget neutrality factor of 1.0001 which would result from applying the blended wage index to all providers. Furthermore, based on our analysis of the wage index changes associated with fully implementing the revised OMB delineations, we determined that the new OMB delineations would only affect the wage index values of approximately 37 percent of facilities. Given that our goal is to provide relief to the largest percentage of adversely-affected SNFs with the least impact to the rest of the facilities (whose wage index values either would remain the same or would increase), we believe that using a blended wage index for all providers would be the best option. This option would assist the 22 percent of providers that would be adversely affected by the proposed implementation of the new OMB delineations without reducing the base rates for all providers, 63 percent of which would otherwise be unaffected by the proposed implementation of the new OMB delineations. In other words, this option is based on a balance between the interests of all SNF providers, including the 15 percent of providers that would experience an increase in their wage index value due to the proposed implementation of the new OMB delineations, the 22 percent of providers that would experience a decrease in their wage index value due to the proposed implementation of the new OMB delineations, and the 63 percent of providers that would be unaffected by the proposed implementation of the new OMB delineations. As discussed above, if we were to apply the blended wage index only to the 22 percent of providers that would experience a decrease in their respective wage index values due to the proposed implementation of the new OMB delineations in an effort to preserve the full increase in wage index value for the 15 percent of providers that would experience such an increase due to the proposed implementation of the new OMB delineations, the budget neutrality factor of 1.0001 referenced in section III.D, which is based on applying the blended wage index to all providers, would be revised to 0.9986. As such, this would mean a reduction in the base rate for all providers, most notably the 63 percent of providers that would be unaffected by the proposed implementation of the new OMB delineations, but also for that 15 percent of providers that would experience an increase in their wage index value.

Moreover, while providers experience wage index changes from year to year based on updating the wage data, full implementation of the proposed new OMB delineations would dramatically increase the magnitude of those changes for some providers. Year-to-year wage index changes usually vary from decreases as high as 10 percent to increases as high as 10 percent. Using FY 2011 wage data (the data used for the FY 2015 wage index), the range of changes in the wage index values due solely to full implementation of the proposed OMB delineations would span from decreases of over 20 percent to increases of over 30 percent. Therefore, in addition to mitigating the impact of the proposed OMB delineations on the facilities that are adversely affected by them and providing a period to adjust, we believe a transition wage index could also mitigate the volatility of the SNF PPS wage index caused by these proposed changes.

Therefore, for the reasons discussed above, if we finalize implementation of the new OMB delineations, we are proposing to apply a one-year transition with a 50/50 blended wage index for all providers in FY 2015. We propose to calculate the FY 2015 wage indexes using both the current FY 2014 and proposed new labor market delineations. Specifically, providers would receive 50 percent of their FY 2015 wage index based on the new OMB delineations, and 50 percent of their FY 2015 wage index based on the labor market area delineations for FY 2014 (both using FY 2011 hospital wage data). This ultimately results in an average of the two values. As we stated in the FY 2006 SNF PPS final rule (70 FR 45041), we believe that our proposed transition approach would best achieve our objective of providing relief to the largest percentage of adversely-affected

SNFs with the least impact to the rest of the facilities, because it reduces the impact of the transition on the base rates for all providers. For the reasons discussed above, and based on provider reaction during the FY 2006 rulemaking cycle to the proposed adoption of the new CBSA definitions, we are proposing to provide a one-year blended wage index for all SNFs to assist providers in adapting to these proposed changes. We refer to this blended wage index as the FY 2015 SNF PPS transition wage index. This transition policy would be for a one-year period, going into effect October 1, 2014, and continuing through September 30, 2015. Thus, beginning October 1, 2015, the wage index for all SNFs would be fully based on the new OMB delineations. We invite comments on our proposed transition methodology, as well as on the other transition options discussed above.

The proposed wage index applicable to FY 2015 is set forth in Table A available on the CMS Web site at *http://cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html*. Table A provides a crosswalk between the FY 2015 wage index for a provider using the current OMB delineations in effect in FY 2014 and the FY 2015 wage index using the proposed revised OMB delineations, as well as the proposed transition wage index values that would be in effect in FY 2015 if these proposed changes are finalized.

3. Labor-Related Share

Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the SNF market basket as discussed in Section III.D of this proposed rule. Table 12 summarizes the proposed updated labor-related share for FY 2015, compared to the labor-related share that was used for the FY 2014 SNF PPS final rule.

TABLE 12—LABOR-RELATED RELATIVE IMPORTANCE, FY 2014 AND FY 2015

	Relative importance, labor-related, FY 2014 13:2 forecast [1]	Relative importance, labor-related, FY 2015 14:1 forecast [2]
Wages and salaries	49.118	49.116
Employee benefits	11.423	11.373
Nonmedical Professional fees: labor-related	3.446	3.460
Administrative and facilities support services	0.499	0.503
All Other: Labor-related services	2.287	2.285
Capital-related (.391)	2.772	2.776
Total	69.545	69.513

[1] Published in the **Federal Register**; based on second quarter 2013 IGI forecast.
[2] Based on first quarter 2014 IGI forecast, with historical data through fourth quarter 2013.

B. SNF Therapy Research Project

As discussed in the FY 2014 SNF PPS proposed rule (78 FR 26466, May 6, 2013), CMS contracted with Acumen, LLC and the Brookings Institution to identify potential alternatives to the existing methodology used to pay for therapy services received under the SNF PPS. Under the current payment model, the therapy payment rate component of the SNF PPS is based solely on the amount of therapy provided to a patient during the 7-day look-back period, regardless of the specific patient characteristics. The amount of therapy a patient receives is used to classify the resident into a RUG category, which then determines the per diem payment for that resident. In the FY 2014 SNF PPS proposed rule (78 FR 26466, May 6, 2013), we invited public comment on this project. In the FY 2014 SNF PPS final rule (78 FR 47963, August 6, 2013), we discussed the comments we received on this project, all of which supported the overall goals and objective of the project, and a few highlighted the importance of maintaining contact with the stakeholder community.

In this proposed rule, we are taking the opportunity to update the public on the current state of this project. In September 2013, we completed the first phase of the research project, which included a literature review, stakeholder outreach, supplementary analyses, and a comprehensive review of options for a viable alternative to the current therapy payment model. CMS produced a report outlining the most promising and viable options that we plan to pursue in the second phase of the project. The report is available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html*.

During the second phase of the project, which began in September 2013, our team will further develop the options outlined in the aforementioned report and perform more comprehensive data analysis to determine which of these options would work best as a potential replacement for the existing therapy payment model. In keeping with the public comments we received on this project previously, we also plan to engage the stakeholder community by convening a Technical Expert Panel during this second phase of the project to discuss the available alternatives, as well as present some of the initial data analysis that is currently being conducted. We hope that by convening this Technical Expert Panel, we can best ensure that we utilize the expertise of the stakeholder community in identifying the most viable alternative to the current therapy payment model.

As before, comments may be included as part of comments on this proposed rule. We are also soliciting comments outside the rulemaking process and these comments should be sent via email to *SNFTherapyPayments@cms.hhs.gov*. Information regarding this project can be found on the project Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html*.

C. Proposed Revisions to Policies Related to the Change of Therapy (COT) Other Medicare Required Assessment (OMRA)

On October 1, 2011, CMS introduced the Change of Therapy (COT) Other Medicare Required Assessment (OMRA), which is an assessment designed to capture changes in the therapy services provided to a given SNF resident during the past 7 days. As discussed in the FY 2012 SNF PPS final rule, this assessment was implemented because we had found that in certain cases, ''the therapy recorded on a given PPS assessment did not provide an accurate account of the therapy provided to a given resident outside the observation window used for the most recent assessment'' (76 FR 48518).

To address this situation, effective for services provided on or after October 1, 2011, we required facilities to complete a COT OMRA for patients classified into a RUG–IV therapy category, whenever the intensity of therapy (that is, the total reimbursable therapy minutes delivered or other therapy category qualifiers, such as the number of days the patient received therapy during the week or the number of therapy disciplines) changes to such a degree that it would no longer reflect the RUG–IV classification and payment assigned for a given SNF resident based on the most recent assessment used for Medicare payment (see 76 FR 48525). In addition, as discussed in the FY 2012 SNF PPS final rule (76 FR 48523 through 48524, 48526), the COT OMRA policy also applies to patients who are receiving a level of therapy sufficient for classification into a therapy RUG, but are classified into a nursing RUG because of index maximization. An evaluation of the necessity for a COT OMRA must be completed every 7 calendar days starting from the day following the Assessment Reference Date (ARD) set for the most recent scheduled or unscheduled PPS assessment (or in the case of an End of Therapy–Resumption-OMRA, starting the day that therapy resumes). This rolling 7-day window is called the COT observation period. As discussed in the FY 2012 SNF PPS final rule (76 FR 48523), the purpose of the COT OMRA is to track changes in a patient's condition and in the provision of therapy services more accurately to ensure that the patient is placed in the appropriate RUG category, thereby improving the accuracy of reimbursement.

As discussed above, the resident must be classified into a RUG–IV therapy category or into a nursing RUG because of index maximization (while receiving a level of therapy sufficient for classification into a RUG–IV therapy category) in order for the COT OMRA requirements to apply. However, since implementation of this assessment, we have learned that, in rare cases where a resident has been classified into a RUG–IV therapy category, therapy services provided to the resident during a COT observation period may not be sufficient to continue to qualify the resident for any therapy RUG, resulting in classification of the resident into a non-therapy RUG. During a subsequent week when the therapy services are sufficient to again qualify the resident for a therapy RUG, providers have indicated that they cannot complete a subsequent COT OMRA to reclassify the resident into a therapy RUG because the resident is no longer in a therapy RUG or in a nursing RUG because of index maximization as discussed above (pursuant to the conditions set forth in the FY 2012 SNF PPS final rule and in Section 2.9 of the MDS 3.0 RAI manual). As a result, providers are unable to use the COT OMRA to capture the increased therapy services provided to the resident to ensure accurate payment for the services provided, which is the express purpose of the COT OMRA.

Accordingly, we propose to revise the existing COT OMRA policy to permit providers to complete a COT OMRA for a resident who is not currently classified into a RUG–IV therapy group, or receiving a level of therapy sufficient for classification into a RUG–IV therapy group as discussed above, but only in those rare cases where the resident had qualified for a RUG–IV therapy group on a prior assessment during the resident's current Medicare Part A stay and had no discontinuation of therapy services between Day 1 of the COT observation period for the COT OMRA that classified the resident into his/her current non-therapy RUG–IV group and the ARD of the COT OMRA that reclassified the patient into a RUG–IV therapy group. Under the proposed policy, while a COT OMRA may be used to *reclassify* a resident into a therapy RUG in the circumstances described above, it may not be used to *initially* classify a resident into a therapy RUG. We believe it is appropriate to revise the COT OMRA policy in this manner to provide for more accurate payment for services provided to those residents who have qualified for a RUG–IV therapy group during their Medicare Part A stay and continue to receive skilled therapy services during their Medicare Part A stay (even though they may have been classified into a non-therapy RUG as discussed above).

Consider, for example, if Mr. A. was classified into the RUG group RUA on his 30-day assessment with an ARD set for Day 30 of his stay. On Day 37, the facility checks how much therapy was provided to Mr. A. and finds that while Mr. A. did receive the requisite number of therapy minutes to qualify for this RUG category, he only received therapy on 4 distinct calendar days, which would make it impossible for him to qualify for an Ultra-High Rehabilitation RUG group. Moreover, due to the lack of 5 distinct calendar days of therapy and the lack of any restorative nursing services, Mr. A. does not qualify for any therapy RUG group. As a result, the facility must complete a COT OMRA for Mr. A., on which he may only classify to a non-therapy RUG group. Let us further assume that the facility continues to provide Mr. A. with skilled therapy and that, when looking back on Mr. A.'s services from Day 44 (7 days after the ARD of the COT OMRA), Mr. A. again qualifies for classification in the RUG group RUA.

Under the existing COT OMRA policy, it would not be possible for this provider to reclassify Mr. A. back into RUA from the non-therapy group by using a COT OMRA. Instead, Mr. A. could only be classified into a therapy RUG either by discontinuing his therapy using an End of Therapy (EOT) OMRA and beginning a new therapy program and completing a Start of Therapy (SOT) OMRA, or by waiting until the next scheduled assessment. Under our proposed revised policy, this provider would be permitted to complete a COT OMRA with an ARD of Day 44 in order to reclassify Mr. A. back into the RUA group. The facility would then continue to review the therapy services provided to Mr. A. in order to ensure that these services continue to reflect Mr. A.'s current RUG–IV therapy classification.

To further clarify the scope of this proposal, consider a slightly different example in which Mr. A. is classified into the RUG group RUA on his 30-day assessment with an ARD set for Day 30 of his stay. On Day 37, the facility checks the amount of therapy that was provided to Mr. A. and finds that while Mr. A. did receive the requisite number of therapy minutes to qualify for this RUG category, he only received therapy on 4 distinct calendar days, which would make it impossible for him to qualify for an Ultra-High Rehabilitation RUG group. Moreover, due to the lack of 5 distinct calendar days of therapy and the lack of any restorative nursing services, Mr. A. does not qualify for any therapy RUG group. As a result, the facility must complete a COT OMRA for Mr. A., on which he may only classify for a non-therapy RUG group. However, as opposed to the previous situation where the resident's therapy continued during the week following the COT OMRA, let us assume that the facility decides to discontinue his therapy services by completing an End of Therapy OMRA with an ARD set for Day 39, resulting in a non-therapy RUG classification for Mr. A. The facility subsequently decides to restart Mr. A.'s therapy services, beginning on Day 41 of his stay. The facility looks back from Day 47 (7 days following the day therapy began on Day 41, including Day 41) to review the therapy services provided to Mr. A. during the prior week and finds that Mr. A. would qualify for the RUG group RVA.

As in the prior example, under the existing COT OMRA policy, it would not be possible for this provider to classify Mr. A. into RVA from the non-therapy group by using a COT OMRA. However, as opposed to the prior example, under the revised COT OMRA policy proposed in this proposed rule, the facility would still not be permitted to complete the COT OMRA in this instance, as a discontinuation of therapy services had occurred between Day 1 of the COT observation period for the COT OMRA that classified the resident into his/her current non-therapy RUG–IV group and the ARD of the COT OMRA that would have been used to reclassify the patient into a RUG–IV therapy group if it had been permitted. Based on this example, in order to reclassify the resident into a RUG–IV therapy group, the provider would need to either complete a Start of Therapy OMRA or wait until the next regularly scheduled assessment.

We believe this proposal would address the concern of those providers who have experienced the rare occurrence of a COT OMRA classifying a resident into a non-therapy RUG group from a therapy RUG group, where the patient continues to receive therapy and later qualifies again for a therapy RUG. We believe this proposed revision to the COT OMRA policy would ensure the most accurate payment for therapy services furnished to such residents by allowing providers to capture variations in therapy services on a weekly basis. As with other similar policy changes, if this revision is finalized, then we intend to monitor the impact of this revision to ensure that is has the intended effect. We invite comments on this proposed change to the existing COT OMRA policy.

D. Civil Money Penalties (Section 6111 of the Affordable Care Act)

Sections 6111 of the Patient Protection and Affordable Care Act (Affordable Care Act), amended sections 1819(h) and 1919(h) of the Act to incorporate specific provisions pertaining to the imposition and collection of civil money penalties (CMPs). Sections 1819(h)(2)(B)(ii)(IV)(ff) and 1919(h)(3)(C)(ii)(IV)(ff) of the Act specifies that some portion of such amounts collected may be used to support activities that benefit residents, including assistance to support and protect residents of a facility that closes (voluntarily or involuntarily) or is decertified (including offsetting costs of relocating residents to home and community-based settings or another facility), projects that support resident and family councils and other consumer involvement in assuring quality care in facilities, and facility improvement initiatives approved by the Secretary (including joint training of facility staff and surveyors, technical assistance for facilities implementing quality assurance programs, the appointment of temporary management firms, and other activities approved by the Secretary). These changes were implemented in a final rule published on March 18, 2011 entitled ''Medicare and Medicaid Programs; Civil Money Penalties for Nursing Homes.'' At § 488.433, we specify that these funds may not be used for survey and certification operations but must be used entirely for activities that protect or improve the quality of care for residents and that these activities must be approved by CMS.

This proposed rule would clarify statutory requirements as specified in section 6111 of the Affordable Care Act regarding the approval and use of CMPs imposed by CMS. It is important to note that these clarifications not only apply to the Federal share of collected CMP funds granted for approved projects that benefit residents under § 488.433, but they also apply to the portion of the CMPs collected by CMS that is disbursed to the states based on the proportion of Medicaid eligible nursing home residents under § 488.442(e)(2) and (f). The amendments made by section 6111 of the Affordable Care Act makes it clear that the specified use of CMP funds collected from SNFs, SNF/NFs, and NF-only facilities as a result of CMPs imposed by CMS, must be approved by CMS by specifying that the activities that CMP funds are used for must be approved by the Secretary. Sections 1819(h)(2)(B)(ii)(IV)(ff) and 1919(h)(3)(C)(ii)(IV)(ff) of the Act also provide for flexibility on how CMP funds imposed by CMS may be used within the bounds established by law. The regulations at § 488.433 specify that collected CMP funds must be used entirely for activities that protect or improve the quality of care for residents, and may not be used for survey and certification operations. However, we are aware of instances in which states have used federal CMP funds without obtaining prior approval from CMS, have used these funds even though CMS had disapproved their intended use, have not used these funds at all, or have used these funds for purposes other than to support activities that benefit residents as specified in statute and regulation. For example, information reported by the CMS Regional Offices for CY 2012 indicates that 24 states had not approved any projects using CMP funds. While some states have only small amounts of CMP funds available and seek to maintain a core reserve in the event of emergencies or involuntary termination that necessitates timely relocation for resident safety and well-being, other states maintain significant amounts of funds. One state, for example, maintained more than $15 million in FY 2012. While it is very prudent to maintain a reserve fund for emergencies, we believe that maintenance of large amounts of unused CMP funds is not desirable or consistent with ensuring that collected CMP funds be used to benefit nursing home residents. In addition, large amounts of unused CMP funds may create the appearance that CMPs are being levied for purposes other than to benefit nursing home residents.

A key function of the CMP remedy is to prompt quick compliance with the federal health and safety requirements. These monies must be used to support projects or activities that will benefit nursing home residents. Entities applying for approval of projects utilizing CMP funds must demonstrate that the planned use will benefit nursing home residents and promote compliance with the regulations.

We propose changes to the CMS enforcement regulations at § 488.433 to clarify and strengthen these provisions to provide more specific instructions to states regarding the use of CMPs and the approval process, and to permit an opportunity for greater transparency and accountability of CMP monies utilized by States.

We invite public comment on our proposed changes. This proposed rule would explicitly clarify the intended use and statutory requirements of collected CMP funds. Specifically, we propose to: (1) Specify that CMP funds may not be used for state management operations except for the reasonable costs that are consistent with managing projects utilizing CMP funds; (the rationale for this clarification is explained further in section VI.); (2) clarify CMS's expectations that States must obtain prior approval for use of these CMP funds; (3) outline specific requirements that must be included in proposals submitted for CMS approval; (4) specify that CMPs funds may not be used for projects that have been disapproved by CMS; (5) specify that states are responsible for having an acceptable plan to solicit, accept, monitor and track projects utilizing CMP funds and make the results of all approved projects publicly available on at least an annual basis; (6) specify that state plans must ensure that a core amount of civil money penalty funds will be held in reserve for emergencies,

such as relocation of residents in the event of involuntary termination from Medicare and Medicaid, and (7) specify that if a state is not spending collected CMPs in accordance with the law or not at all, that CMS has authority to take appropriate steps to ensure that these funds are used for their intended purpose, such as withholding future disbursements of CMP amounts. We do not believe this has significant cost implications and it will benefit nursing home residents to ensure that CMP funds will be used for their intended purpose. We further invite public comment on CMS's proposed methods to ensure compliance with these requirements.

E. Observations on Therapy Utilization Trends

In the FY 2014 SNF PPS final rule (78 FR 47959 through 47960), we discussed our monitoring efforts associated with the impact of certain policy changes finalized in the FY 2012 SNF PPS final rule (76 FR 48486). We noted that we would continue these monitoring efforts and report any new information as appropriate. We are not proposing new Medicare policy in this discussion of observed trends but merely highlighting that we will continue to monitor these observed trends which may serve as the basis for future policy development.

In the FY 2014 SNF PPS proposed rule (78 FR 26464), we presented data which compared various utilization metrics including, in particular, the case-mix distribution for the RUG–IV therapy categories (Ultra-High Rehabilitation or RU, Very-High Rehabilitation or RV, High Rehabilitation or RH, Medium Rehabilitation or RM, and Low Rehabilitation or RL), for FY 2011 and FY 2012. It was observed based on those data that the percentage of billed days of service being classified into the RU RUG groups had increased from 44.8 percent in FY 2011 to 48.6 percent in FY 2012, while utilization in all other therapy RUG categories either remained stable or declined. We have since updated this data set using data from FY 2013 and have posted a memo to the SNF PPS Web site (available at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Spotlight.html*) which demonstrates that the percentage of billed service days in the RU RUG groups has increased to over 50 percent. These revised data in the aforementioned memo are presented in a slightly different format than they have been presented in the past, which is to show how, over the course of the past 3 years since October of 2010, the percentage of residents classified into one of these Ultra-High Rehabilitation groups has not only increased, but done so rather steadily.

The second identified trend that we would highlight here and is discussed in the memo referenced above is that, most notably in the cases of RU and RV RUG groups, the amount of therapy reported on the MDS is just enough to surpass the relevant therapy minute threshold for a given therapy RUG category. For example, as demonstrated in Figure 2 in the aforementioned memo, the percentage of claims-matched MDS assessments in the range of 720 minutes to 739 minutes, which is just enough to surpass the therapy minute threshold for RU RUG groups of 720 minutes, has increased from 21 percent in FY 2011 to 33 percent in FY 2013. As stated above, this trend also holds for residents classified into a RV RUG group, where the largest percentage of service days were provided in the 500 to 520 minutes range, which just surpasses the therapy minute threshold for the RV RUG groups of 500 minutes.

We invite comment on the data presented here and the discussion of observed trends.

F. Accelerating Health Information Exchange in SNFs

As we have stated in the past, we believe all patients, and others involved in the patient's care, and their healthcare providers should have consistent and timely access to their health information in a standardized format that can be securely exchanged between the patient, providers, and others involved in the patient's care. (HHS August 2013 Statement, ''Principles and Strategies for Accelerating Health Information Exchange.'') The Department is committed to accelerating health information exchange (HIE) through the use of electronic health records (EHRs) and other types of health information technology (HIT) across the broader care continuum through a number of initiatives including: (1) Alignment of incentives and payment adjustments to encourage provider adoption and optimization of HIT and HIE services through Medicare and Medicaid payment policies; (2) adoption of common standards and certification requirements for interoperable HIT; (3) support for privacy and security of patient information across all HIE-focused initiatives; and (4) governance of health information networks. These initiatives are designed to improve care delivery and coordination across the entire care continuum and encourage HIE among all health care providers, including professionals and hospitals eligible for the Medicare and Medicaid EHR Incentive Programs and those who are not eligible for the EHR Incentive Programs. To increase flexibility in ONC's HIT Certification Program and expand HIT certification, ONC has issued a proposed rule concerning a voluntary 2015 Edition of EHR certification criteria which would more easily accommodate certification of HIT used in other types of health care settings where individual or institutional health care providers are not typically eligible for incentive payments under the Medicare and Medicaid EHR Incentive Programs, such as long-term and post-acute care and behavioral health settings.

We believe that HIE and the use of certified EHRs by SNFs and other types of providers that are ineligible for the Medicare and Medicaid EHR Incentive Programs can effectively and efficiently help providers improve internal care delivery practices, support management of patient care across the continuum, and enable the reporting of electronically specified clinical quality measures (eCQMs). More information on the identification of EHR certification criteria and development of standards applicable to SNFs can be found at:

- *http://healthit.gov/policy-researchers-implementers/standards-and-certification-regulations.*
- *http://www.healthit.gov/facas/FACAS/health-it-policy-committee/hitpc-workgroups/certificationadoption.*
- *http://wiki.siframework.org/LCC+LTPAC+Care+Transition+SWG.*
- *http://wiki.siframework.org/Longitudinal+Coordination+of+Care.*

VI. Provisions of the Proposed Rule

As discussed in section III. of this proposed rule, this proposed rule would update the payment rates under the SNF PPS for FY 2015 as required by section 1888(e)(4)(E)(ii) of the Act. In addition, we propose to use the most current OMB delineations (discussed in section V.A) to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to the facility (section III.B.). Furthermore, as discussed in section V. of this proposed rule, we propose changes to the wage index based on the most current OMB delineations, including a one-year transition with a blended wage index for FY 2015 (section V.A.); propose to revise the policy governing use of the COT OMRA (section V.C.); and finally, propose changes to the enforcement regulations related to civil money penalties utilized by states (section V.D.).

With reference to the civil money penalty provisions discussed in section V.D. of this proposed rule, we propose to modify current CMS regulations to provide further clarification to states and the public regarding prior approval and appropriate use of these federal-imposed civil money penalty funds.

At § 488.433, civil money penalties: Uses and approval of civil money penalties imposed by CMS, we propose to amend this regulation to specify that civil money penalties may not be used for state management operations except for the costs that are consistent with managing the civil money penalty funds, specify that all activities utilizing civil money penalty funds must be approved in advance by CMS, outline specific requirements that must be included in proposals submitted for CMS approval, specify that states are responsible for monitoring and tracking the results of all approved activities utilizing civil money penalties and making this information publicly available, specify that state plans must ensure that a core amount of civil money penalty funds will be held in reserve for emergencies, such as relocation of residents in the event of involuntary termination from Medicare and Medicaid, and specify steps CMS will take if civil money penalty funds are being used for disapproved purposes or not being used at all.

The proposed CMS regulation would explicitly clarify the intended use of these civil money penalty funds including the processes for prior approval of all activities using civil money penalty funds by CMS and how CMS will address a state's use of civil money penalty funds for activities that have been disapproved by CMS or used by states for activities other than those explicitly specified in statute or regulations.

At proposed § 488.433(a), we would clarify that approved projects may work to improve residents' quality of life and not just quality of care. We would also clarify that states while states may not use funds for survey and certification operations or state expenses, they may use a reasonable amount of civil money penalty funds for the actual administration of grant awards, including the tracking, monitoring, and evaluating of approved projects. Some states have maintained that effective use and management of the civil money penalty funds requires more state oversight and planning than they are able to provide currently, and that an allowance for such management would remove a barrier to the effective use of these funds. We have not proposed a monetary or numeric limit on what might be considered reasonable, although one to 3 percent of available funds might be considered reasonable for an established fund. We invite comment on the question of appropriate limits.

At proposed § 488.433(b)(5), we would clarify in a new paragraph that in extraordinary situations involving closure of a facility, civil monetary penalty funds may be used to pay the salary of a temporary manager when CMS concludes that it is infeasible to ensure timely payment for such a manager by the facility. We have encountered situations, for example, in which a facility is in bankruptcy and the court has frozen all funds at the very time that residents are being relocated and closure is proceeding. In another situation involving involuntary termination from Medicare and impending closure of the facility, the facility was not making payments for staff or for its utilities, and residents were at risk due to the imminent departure of staff and the absence of a manager. While § 489.55 permits Medicare and Medicaid payments to a facility to continue for up to 30 days after the effective date of a facility's termination or possibly longer (or shorter) if a facility has submitted a notification of closure under § 483.75(r) in order to promote the orderly and safe relocation of residents, if the continued Medicare and Medicaid payments are being used to pay for facility operations during the relocation period but are being diverted elsewhere by the facility, then residents may be placed at increased risk. The proposed change at § 488.433(b)(5) would clarify not only that CMS places a priority on resident protection and protection of the Trust Fund and allows such emergency use of civil money funds, but that CMS also intends to stop or suspend the payments to the facility under § 489.55 when such a situation occurs.

At new § 488.433(c), we specify the requirements for all CMP fund proposals being submitted to CMS for approval.

At new § 488.433 (d), we state that CMP funds may not be used for activities that have been disapproved by CMS.

At new § 488.433(e), we propose that states must maintain an acceptable plan for the effective use of civil monetary penalty funds, including a description of methods by which the state will solicit, accept, monitor, and track approved projects funded by CMP amounts and make key information publicly available. Examples of information that must be publically available would include information on the projects that have been approved by CMS, the grantee and project recipients, the dollar amounts of projects approved, and the results of the projects. We also propose that these plans provide for a minimum amount of funds that will generally be held in reserve for emergencies, unless the state's plan demonstrates the availability of other funds to cover emergency situations, and a reasonable aggregate amount of civil money penalty funds, beyond the emergency reserve amount, that the state expects to disburse each year for grants or contracts of projects that benefit residents and are consistent with the statute and CMS regulations. We appreciate that states may wish to develop a multi-year plan and provide an approximate range of total amount that the state plans to disburse. The intent is to ensure there is an acceptable plan, and that a state is prepared to respond to emergencies while at the same time is not maintaining a large unused amount of civil monetary penalty funds.

In § 488.433(f), we propose that CMS may withhold future disbursement of collected civil money penalty funds to a state if CMS finds that the state has not spent such funds in accordance with the statute and regulations, fails to make use of funds to benefit the quality of care or life of residents, or fails to maintain an acceptable plan approved by CMS.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to publish a 60-day notice in the **Federal Register** and solicit public comments before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to evaluate fairly whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments 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.

A. Information Collection Requirements (ICRs)

While this proposed rule does not have any PRA implications, we are soliciting comment on the following:

1. ICRs Regarding the SNF PPS Rate Setting Methodology (preamble sections III and V)

While sections III and V propose to revise certain policies related to the current rate setting methodology (such as the use of updated OMB delineations to assign a facility the urban or rural per diem rate and to calculate wage index adjustments), the provisions would not impose any new or revised reporting, recordkeeping, or third-party disclosure requirements. Nor would they require the development, acquisition, installation, and utilization of any new or revised technology or information systems. Consequently, they do not require review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The information collection requirements discussed in section III.C. concerning the resident assessment instrument (MDS 3.0) are currently approved by OMB under OCN 0938–1140 (CMS–10387).

2. ICRs Regarding the COT OMRA (Preamble Section V.C.)

While section V.C. proposes to revise current COT OMRA policy by permitting providers to complete a COT OMRA for a resident who is not currently classified into a RUG–IV therapy group in certain circumstances, this provision does not impose any new or revised reporting, recordkeeping, or third-party disclosure requirements. Consequently, it does not require review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

3. ICRs Regarding the Use of Civil Money Penalties (§ 488.433(c))

In § 488.433(c), states proposing to use civil money penalties for certain activities are required to submit descriptions of the intended outcomes, deliverables, sustainability, and methods by which the results will be assessed, including specific measures. Prior to using these funds, the activities must be approved by CMS under existing regulations. The proposed language in this rule provides methods to ensure that these requirements are followed and to promote additional transparency.

The provision does not require additional OMB review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). In addition, as stated in the Civil Money Penalties for Nursing Homes final rule published on March 18, 2011 (76 FR 15125), sections 4204(b) and 4214(d) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, enacted on December 21, 1987, provide waivers of Office of Management and Budget review of information collection requirements for the purpose of implementing the nursing home reform amendments. The provisions of OBRA '87 that exempt agency actions to collect information from states or facilities relevant to survey and enforcement activities from the Paperwork Reduction Act are not time-limited.

4. ICRs Regarding Civil Money Penalty Plans (§ 488.433(e))

In § 488.433(e), states would be required to maintain an acceptable plan (approved by CMS) for the effective use of civil money funds. The plan must include a description of methods by which the state will: (1) Solicit, accept, monitor, and track projects utilizing civil money penalty funds; (2) make information about the use of civil money penalty funds publicly available, including key information about approved projects, the grantee or contract recipients, and the results of projects; (3) ensure that a core amount of civil money penalty funds will be held in reserve for emergencies, such as unplanned relocation of residents pursuant to an involuntary termination from Medicare and Medicaid; and (4) ensure that a reasonable amount of funds, beyond those held in reserve, will be awarded or contracted each year.

Since current statute, regulations and/or CMS policy guidance released to the states already specifies that all proposed activities using civil money penalty funds must be submitted to CMS for approval and must contain information on the expected final outcomes of the activity and how the results of the activity will be assessed, states must already have plans in place to monitor and track the outcomes of all approved activities using these funds. Consequently, the proposed provision would not require any substantive revision to any state plans and would not impose any additional burden to states.

Since the provisions in § 488.433(e) would not impose any new or revised reporting, recordkeeping, or third-party disclosure requirements, they do not require additional OMB review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). In addition, as stated in the Civil Money Penalties for Nursing Homes final rule published on March 18, 2011 (76 FR 15125), sections 4204(b) and 4214(d) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, enacted on December 21, 1987, provides waivers of OMB review of information collection requirements for the purpose of implementing the nursing home reform amendments. The provisions of OBRA '87 that exempt agency actions to collect information from states or facilities relevant to survey and enforcement activities from the Paperwork Reduction Act are not time-limited.

B. Submission of PRA-Related Comments

If you comment on any of these information collection requirements, please submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule.

Comments must be received on/by June 30, 2014.

VIII. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IX. Economic Analyses

A. Regulatory Impact Analysis

1. Introduction

We have examined the impacts of this proposed 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), Executive Order 13132 on Federalism (August 4, 1999), 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. This rule has been designated an economically significant rule, under section 3(f)(1) of

Executive Order 12866. Accordingly, we have prepared a regulatory impact analysis (RIA) as further discussed below. Also, the rule has been reviewed by OMB.

2. Statement of Need

This proposed rule would update the SNF prospective payment rates for FY 2015 as required under section 1888(e)(4)(E) of the Act. It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to ''provide for publication in the **Federal Register**'' before the August 1 that precedes the start of each fiscal year, the unadjusted federal per diem rates, the case-mix classification system, and the factors to be applied in making the area wage adjustment. As these statutory provisions prescribe a detailed methodology for calculating and disseminating payment rates under the SNF PPS, we do not have the discretion to adopt an alternative approach. In addition, this proposed rule would clarify statutory requirements and intent as specified in section 6111 of the Affordable Care Act regarding the approval and use of civil money penalties imposed by CMS.

3. Overall Impacts

This proposed rule sets forth proposed updates of the SNF PPS rates contained in the SNF PPS final rule for FY 2014 (78 FR 47936). Based on the above, we estimate that the aggregate impact would be an increase of $750 million in payments to SNFs, resulting from the SNF market basket update to the payment rates, as adjusted by the MFP adjustment. The impact analysis of this proposed rule represents the projected effects of the changes in the SNF PPS from FY 2014 to FY 2015. Although the best data available are utilized, there is no attempt to predict behavioral responses to these changes, or to make adjustments for future changes in such variables as days or case-mix.

Certain events may occur to limit the scope or accuracy of our impact analysis, as this analysis is future-oriented and, thus, very susceptible to forecasting errors due to certain events that may occur within the assessed impact time period. Some examples of possible events may include newly-legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of previously-enacted legislation, or new statutory provisions. Although these changes may not be specific to the SNF PPS, the nature of the Medicare program is such that the changes may interact and, thus, the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

In accordance with sections 1888(e)(4)(E) and 1888(e)(5) of the Act, we update the FY 2014 payment rates by a factor equal to the market basket index percentage change adjusted by the FY 2013 forecast error adjustment (if applicable) and the MFP adjustment to determine the payment rates for FY 2015. As discussed previously, for FY 2012 and each subsequent FY, as required by section 1888(e)(5)(B) of the Act as amended by section 3401(b) of the Affordable Care Act, the market basket percentage is reduced by the MFP adjustment. The special AIDS add-on established by section 511 of the MMA remains in effect until ''. . . such date as the Secretary certifies that there is an appropriate adjustment in the case mix . . . .'' We have not provided a separate impact analysis for the MMA provision. Our latest estimates indicate that there are fewer than 4,355 beneficiaries who qualify for the add-on payment for residents with AIDS. The impact to Medicare is included in the ''total'' column of Table 13. In updating the SNF PPS rates for FY 2015, we made a number of standard annual revisions and clarifications mentioned elsewhere in this proposed rule (for example, the update to the wage and market basket indexes used for adjusting the federal rates).

The annual update set forth in this proposed rule applies to SNF PPS payments in FY 2015. Accordingly, the analysis that follows only describes the impact of this single year. In accordance with the requirements of the Act, we will publish a notice or rule for each subsequent FY that will provide for an update to the SNF PPS payment rates and include an associated impact analysis.

As discussed in Section V.D. of this proposed rule, we would also clarify statutory requirements and intent as specified in section 6111 of the Affordable Care Act regarding the approval and use of civil money penalties imposed by CMS. There would be no impact to States unless they failed to follow the new regulations regarding the approval and use of civil money penalty funds. In FY 2011, the approximate total amount of civil money penalties returned to the states was $28 million. In FY 2012, the approximate total amount of civil money penalties returned to the states was $32 million. In FY 2013, the approximate total amount of civil money penalties returned to the states was $35 million. The estimated amount that we expect to be returned to the states in FY2015, based on data from previous years, is approximately $33 million. These payments to the states would only be withheld in the event that states did not spend civil money penalty funds in accordance with the statute and this regulation, or failed to make use of funds to benefit the quality of care or life of residents, or failed to maintain an acceptable plan for the use of these funds. Even if CMP funds are withheld from a state, we expect that the state would eventually come into compliance and that the state would later gain access to the withheld funds.

4. Detailed Economic Analysis

The FY 2015 impacts appear in Table 13. Using the most recently available data, in this case FY 2013, we apply the current FY 2014 wage index and labor-related share value to the number of payment days to simulate FY 2014 payments. Then, using the same FY 2013 data, we apply the FY 2015 wage index, as proposed in Section V.A above, and labor-related share value to simulate FY 2015 payments. We tabulate the resulting payments according to the classifications in Table 13 (for example, facility type, geographic region, facility ownership), and compare the difference between current and proposed payments to determine the overall impact. The breakdown of the various categories of data in the table follows.

The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, census region, and ownership.

The first row of figures describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The urban and rural designations are based on the location of the facility under the new OMB delineations that we are proposing to implement beginning in FY 2015. Facilities should use these proposed OMB delineations to identify their urban or rural status for purposes of identifying what areas of the impact table would apply to them beginning on October 1, 2014. The next nineteen rows show the effects on facilities by urban versus rural status by census region. The last three rows show the effects on facilities by ownership (that is, government, profit, and non-profit status).

The second column shows the number of facilities in the impact database.

The third column shows the effect of the annual update to the wage index. This represents the effect of using the most recent wage data available, without taking into account the proposed revised OMB delineations. That is, the impact represented in this column is solely that of updating from the FY 2014 wage index to the FY 2015 wage index without any changes to the OMB delineations. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fourth column shows the effect of adopting the updated OMB delineations (as set forth in OMB Bulletin No. 13–01) for wage index purposes for FY 2015, independent of the effect of using the most recent wage data available, captured in Column 3. That is, the impact represented in this column is that of the proposed use of the revised OMB delineations, utilizing the proposed blended wage index. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fifth column shows the effect of all of the changes on the FY 2015 payments. The update of 2.0 percent (consisting of the market basket increase of 2.4 percentage points, reduced by the 0.4 percentage point MFP adjustment) is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will increase by 2.0 percent, assuming facilities do not change their care delivery and billing practices in response.

As illustrated in Table 13, the combined effects of all of the changes vary by specific types of providers and by location. For example, due to changes proposed in this rule, providers in the rural Pacific region would experience a 4.5 percent increase in FY 2015 total payments.

TABLE 13—RUG–IV PROJECTED IMPACT TO THE SNF PPS FOR FY 2015

	Number of facilities FY 2015	Update wage data (%)	Update OMB delineations (%)	Total change (%)
Group:				
Total	15,397	0.0	0.0	2.0
Urban	10,860	0.0	0.0	2.0
Rural	4,537	0.1	−0.2	1.9
Hospital based urban	572	0.1	0.0	2.0
Freestanding urban	10,288	0.0	0.0	2.0
Hospital based rural	640	0.1	−0.3	1.7
Freestanding rural	3,897	0.1	−0.2	1.9
Urban by region:				
New England	803	0.9	0.0	2.9
Middle Atlantic	1,490	0.3	0.1	2.5
South Atlantic	1,853	−0.3	0.0	1.7
East North Central	2,054	−0.3	0.0	1.6
East South Central	544	−1.0	0.0	1.0
West North Central	889	0.0	0.0	2.0
West South Central	1,293	−0.4	0.0	1.6
Mountain	501	0.1	−0.1	2.0
Pacific	1,427	0.3	0.0	2.3
Outlying	6	0.6	−0.2	2.4
Rural by region:				
New England	144	0.7	0.1	2.8
Middle Atlantic	228	1.5	−1.6	1.8
South Atlantic	504	−0.4	−0.2	1.4
East North Central	925	−0.1	0.0	1.9
East South Central	533	−0.3	−0.2	1.4
West North Central	1,093	0.3	−0.2	2.2
West South Central	770	0.3	−0.4	1.9
Mountain	235	−0.7	0.0	1.3
Pacific	105	2.6	−0.1	4.5
Outlying	0	0.0	0.0	2.0
Ownership:				
Government	852	0.1	0.1	2.2
Profit	10,783	0.0	0.0	2.0
Non-profit	3,762	0.1	0.0	2.0

Note: The Total column includes the 2.4 percent market basket increase, reduced by the 0.4 percentage point MFP adjustment. Additionally, we found no SNFs in rural outlying areas.

5. Alternatives Considered

As described above, we estimate that the aggregate impact for FY 2015 would be an increase of $750 million in payments to SNFs, resulting from the SNF market basket update to the payment rates, as adjusted by the MFP adjustment.

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the SNF PPS payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995). In accordance with the statute, we also incorporated a number of elements into the SNF PPS (for example, case-mix classification methodology, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the federal rates). Further, section 1888(e)(4)(H) of the Act specifically

requires us to disseminate the payment rates for each new FY through the **Federal Register**, and to do so before the August 1 that precedes the start of the new FY. Accordingly, we are not pursuing alternatives with respect to the payment methodology as discussed above.

With regard to the proposal discussed in section V.A of this rule related to our proposed adoption of the revised OMB delineations for purposes of calculating the wage index, we believe implementing the new OMB delineations would result in wage index values being more representative of the actual costs of labor in a given area. Further, we recognize that some providers (15 percent) would have a higher wage index due to our proposed implementation of the new labor market delineations. However, we also recognize that more providers (22 percent) would experience decreases in wage index values as a result of our proposed implementation of the new labor market area delineations. Therefore, we believe it would be appropriate to consider, as we did in FY 2006, whether or not a transition period should be used in order to implement these proposed changes to the wage index.

We considered having no transition period and fully implementing the proposed new OMB delineations beginning in FY 2015. This would mean that we would adopt the revised OMB delineations for all providers on October 1, 2014. However, this would not provide any time for providers to adapt to the new OMB delineations. As discussed above, more providers would experience a decrease in wage index due to implementation of the proposed new OMB delineations than would experience an increase. Thus, we believe that it would be appropriate to provide for a transition period to mitigate the resulting short-term instability and negative impact on these providers, and to provide time for providers to adjust to their new labor market area delineations. Furthermore, in light of the comments received during the FY 2006 rulemaking cycle on our proposal in the FY 2006 SNF PPS proposed rule (70 FR 29094–29095) to adopt the new CBSA definitions without a transition period, we anticipate that providers would have similar concerns with not having a transition period for the proposed new OMB delineations. Therefore, as further discussed below, similar to the policy adopted in the FY 2006 SNF PPS final rule (70 FR 45041) when we first adopted OMB's CBSA definitions for purposes of the SNF PPS wage index, we are proposing a one-year transition blended wage index for all SNFs to assist providers in adapting to the new OMB delineations (should we finalize implementation of such delineations for the SNF PPS wage index beginning in FY 2015). In determining an appropriate transition methodology, consistent with the objectives set forth in the FY 2006 SNF PPS final rule (70 FR 45041), we looked for approaches that would provide relief to the largest percentage of adversely-affected SNFs with the least impact to the rest of the facilities

First, we considered transitioning the wage index to the revised OMB delineations over a number of years in order minimize the impact of the proposed wage index changes in a given year. However, we also believe this must be balanced against the need to ensure the most accurate payments possible, which argues for a faster transition to the revised OMB delineations. As discussed above in section V.A.2 of this proposed rule, we believe that using the most current OMB delineations would increase the integrity of the SNF PPS wage index by creating a more accurate representation of geographic variation in wage levels. As such, we believe that utilizing a one-year (rather than a multiple year) transition with a blended wage index in FY 2015 would strike the best balance.

Second, we considered what type of blend would be appropriate for purposes of the transition wage index. We are proposing that providers would receive a one-year blended wage index using 50 percent of their FY 2015 wage index based on the proposed new OMB delineations and 50 percent of their FY 2015 wage index based on the FY 2014 OMB delineations. We believe that a 50/50 blend would best mitigate the negative payment impacts associated with the implementation of the proposed new OMB delineations. While we considered alternatives to the 50/50 blend, we believe this type of split balances the increases and decreases in wage index values associated with this proposal, as well as provides a readily understandable calculation for providers.

Next, we considered whether or not the blended wage index should be used for all providers or for only a subset of providers, such as those providers that would experience a decrease in their respective wage index values due to implementation of the revised OMB delineations. If we were to apply the transition policy only to those providers that would experience a decrease in their respective wage index values due to the implementation of the revised OMB delineations, then providers that would experience either no change in wage index or an increase in wage due to the revised OMB delineations would be immediately transitioned to the FY 2015 wage index under the revised OMB delineations. As required in section 1888(e)(4)(G)(ii) of the Act, the wage index adjustment must be implemented in a budget-neutral manner. As such, if we were to apply the transition policy only to those providers that would experience a decrease in their respective wage index values due to implementation of the revised OMB delineations, the budget neutrality factor, discussed in section III.D, calculated based on this this approach would be 0.9986, which would result in reduced base rates for all providers as compared to the budget neutrality factor of 1.0001 which would result from applying the blended wage index to all providers. Furthermore, based on our analysis of the wage index changes associated with fully implementing the revised OMB delineations, we determined that the new OMB delineations would only affect the wage index values of approximately 37 percent of facilities. Given that our goal is to provide relief to the largest percentage of adversely-affected SNFs with the least impact to the rest of the facilities (whose wage index values either would remain the same or increase), we believe that using a blended wage index for all providers would be the best option. This option would assist the 22 percent of providers that would be adversely affected by the proposed implementation of the new OMB delineations without reducing the base rates for all providers, 63 percent of which would otherwise be unaffected by the proposed implementation of the new OMB delineations. In other words, this option is based on a balance between the interests of all SNF providers, including the 15 percent of providers that would experience an increase in their wage index value due to the proposed implementation of the new OMB delineations, the 22 percent of providers that would experience a decrease in their wage index value due to the proposed implementation of the new OMB delineations, and the 63 percent of providers that would be unaffected by the proposed implementation of the new OMB delineations. As discussed above, if we were to apply the blended wage index only to the 22 percent of providers that would experience a decrease in their respective wage index values due to the proposed implementation of the new OMB delineations in an effort to preserve the full increase in wage index

value for the 15 percent of providers that would experience such an increase due to the proposed implementation of the new OMB delineations, the budget neutrality factor of 1.0001 referenced in section III.D, which is based on applying the blended wage index to all providers, would be revised to 0.9986. As such, this would mean a reduction in the base rate for all providers, most notably the 63 percent of providers that would be unaffected by the proposed implementation of the new OMB delineations, but also for that 15 percent of providers that would experience an increase in their wage index value.

Moreover, while providers experience wage index changes from year to year based on updating the wage data, full implementation of the proposed new OMB delineations would dramatically increase the magnitude of those changes for some providers. Year-to-year wage index changes usually vary from decreases as high as 10 percent to increases as high as 10 percent. Using FY 2011 wage data (the data used for the FY 2015 wage index), the range of changes in the wage index values due solely to full implementation of the proposed OMB delineations would span from decreases of over 20 percent to increases of over 30 percent. Therefore, in addition to mitigating the impact of the proposed OMB delineations on the facilities that are adversely affected by them and providing a period to adjust, we believe a transition wage index could also mitigate the volatility of the SNF PPS wage index for certain providers caused by these proposed changes.

Therefore, if we finalize implementation of the new OMB delineations for the SNF PPS wage index, we are proposing to use a one-year transition with a blended wage index for all providers in FY 2015, as outlined in Section V.A.2.e. For the reasons discussed above, we believe that this proposed transition approach appropriately balances the interests of all SNFs, and would best achieve our objective of providing relief to the largest percentage of adversely affected SNFs with the least impact to the rest of the facilities. We believe this approach would mitigate negative impacts on providers as well as the volatility of the SNF PPS wage index for certain providers resulting from implementation of the proposed new OMB delineations. We invite comments on the alternatives discussed in this analysis.

6. Accounting Statement

As required by OMB Circular A–4 (available online at *www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf*), in Table 14, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. Table 14 provides our best estimate of the possible changes in Medicare payments under the SNF PPS as a result of the policies in this proposed rule, based on the data for 15,397 SNFs in our database. All expenditures are classified as transfers to Medicare providers (that is, SNFs).

TABLE 14—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2014 SNF PPS FISCAL YEAR TO THE 2015 SNF PPS FISCAL YEAR

Category	Transfers
Annualized Monetized Transfers.	$750 million*.
From Whom To Whom?.	Federal Government to SNF Medicare Providers.

*The net increase of $750 million in transfer payments is a result of the MFP-adjusted market basket increase of $750 million.

7. Conclusion

This proposed rule sets forth updates of the SNF PPS rates contained in the SNF PPS final rule for FY 2014 (78 FR 47936). Based on the above, we estimate the overall estimated payments for SNFs in FY 2015 are projected to increase by $750 million, or 2.0 percent, compared with those in FY 2014. We estimate that in FY 2015 under RUG–IV, SNFs in urban and rural areas would experience, on average, a 2.0 and 1.9 percent increase, respectively, in estimated payments compared with FY 2014. Providers in the rural Pacific region would experience the largest estimated increase in payments of approximately 4.5 percent. Providers in the urban East South Central region would experience the smallest increase in payments of 1.0 percent.

B. Regulatory Flexibility Act Analysis

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, non profit organizations, and small governmental jurisdictions. Most SNFs and most other providers and suppliers are small entities, either by their non-profit status or by having revenues of $25.5 million or less in any 1 year. We utilized the revenues of individual SNF providers (from recent Medicare Cost Reports) to classify a small business, and not the revenue of a larger firm they may be affiliated with. As a result, we estimate approximately 91 percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards (NAICS 623110), with total revenues of $25.5 million or less in any 1 year. (For details, see the Small Business Administration's Web site at *http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/eligibility-size-standards*). In addition, approximately 25 percent of SNFs classified as small entities are non-profit organizations. Finally, individuals and states are not included in the definition of a small entity.

This proposed rule sets forth updates of the SNF PPS rates contained in the SNF PPS final rule for FY 2014 (78 FR 47936). Based on the above, we estimate that the aggregate impact would be an increase of $750 million in payments to SNFs, resulting from the SNF market basket update to the payment rates, as adjusted by the MFP adjustment. While it is projected in Table 13 that all providers would experience a net increase in payments, we note that some individual providers within the same region or group may experience different impacts on payments than others due to the distributional impact of the FY 2015 wage indexes and the degree of Medicare utilization.

Guidance issued by the Department of Health and Human Services on the proper assessment of the impact on small entities in rulemakings, utilizes a cost or revenue impact of 3 to 5 percent as a significance threshold under the RFA. According to MedPAC, Medicare covers approximately 11 percent of total patient days in freestanding facilities and 22 percent of facility revenue (Report to the Congress: Medicare Payment Policy, March 2014, available at *http://www.medpac.gov/documents/Mar14_EntireReport.pdf*). However, it is worth noting that the distribution of days and payments is highly variable. That is, the majority of SNFs have significantly lower Medicare utilization (Report to the Congress: Medicare Payment Policy, March 2014, available at *http://www.medpac.gov/documents/Mar14_EntireReport.pdf*). As a result, for most facilities, when all payers are included in the revenue stream, the overall impact on total revenues should be substantially less than those impacts presented in Table 13. As indicated in Table 13, the effect on facilities is projected to be an aggregate positive impact of 2.0 percent. As the overall impact on the industry as a whole, and thus on small entities specifically, is

less than the 3 to 5 percent threshold discussed above, the Secretary has determined that this proposed rule would not have a significant 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 603 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 proposed rule would affect small rural hospitals that (1) furnish SNF services under a swing-bed agreement or (2) have a hospital-based SNF. We anticipate that the impact on small rural hospitals would be similar to the impact on SNF providers overall. Moreover, as noted in previous SNF PPS final rules (most recently the one for FY 2014 (78 FR 47968)), the category of small rural hospitals would be included within the analysis of the impact of this proposed rule on small entities in general. As indicated in Table 13, the effect on facilities is projected to be an aggregate positive impact of 2.0 percent. As the overall impact on the industry as a whole is less than the 3 to 5 percent threshold discussed above, the Secretary has determined that this proposed rule would not have a significant impact on a substantial number of small rural hospitals.

C. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 2014, that threshold is approximately $141 million. This proposed rule would not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, of $141 million.

D. Federalism Analysis

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that impose substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This proposed rule would have no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.

List of Subjects in 42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 488—SURVEY, CERTIFICATION AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102, 1128I and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302, 1320a–7j, and 1395hh); Pub. L. 110–149, 121 Stat. 1819.

■ 2. Section 488.433 is revised to read as follows:

§ 488.433 Civil money penalties: Uses and approval of civil money penalties imposed by CMS.

(a) Ten percent of the collected civil money penalty funds that are required to be held in escrow pursuant to § 488.431 and that remain after a final administrative decision will be deposited with the Department of the Treasury in accordance with § 488.442(f). The remaining ninety percent of the collected civil money penalty funds that are required to be held in escrow pursuant to § 488.431 and that remain after a final administrative decision must be used entirely for activities that protect or improve the quality of care or quality of life for residents consistent with paragraph (b) of this section and may not be used for survey and certification operations or State expenses, except that reasonable expenses necessary to administer, monitor, or evaluate the effectiveness of projects utilizing civil money penalty funds may be permitted.

(b) All activities and plans for utilizing civil money penalty funds, including any expense used to administer grants utilizing CMP funds, must be approved in advance by CMS and may include, but are not limited to:

(1) Support and protection of residents of a facility that closes (voluntarily or involuntarily).

(2) Time-limited expenses incurred in the process of relocating residents to home and community-based settings or another facility when a facility is closed (voluntarily or involuntarily) or downsized pursuant to an agreement with the State Medicaid agency.

(3) Projects that support resident and family councils and other consumer involvement in assuring quality care in facilities.

(4) Facility improvement initiatives, such as joint training of facility staff and surveyors or technical assistance for facilities implementing quality assurance and performance improvement programs.

(5) Development and maintenance of temporary management or receivership capability such as but not limited to, recruitment, training, retention or other system infrastructure expenses. However, as specified in § 488.415(c), a temporary manager's salary must be paid by the facility. In rare situations, if the facility is closing, CMS plans to stop or suspend continued payments to the facility under § 489.55 of this chapter during the temporary manager's duty period, and CMS determines that extraordinary action is necessary to protect the residents until relocation efforts are successful, civil money penalty funds may be used to pay the manager's salary.

(c) At a minimum, proposed activities submitted to CMS for prior approval must include a description of the intended outcomes, deliverables, and sustainability; and a description of the methods by which the activity results will be assessed, including specific measures.

(d) Civil money penalty funds may not be used for activities that have been disapproved by CMS.

(e) The State must maintain an acceptable plan for the effective use of civil money funds, including a description of methods by which the State will:

(1) Solicit, accept, monitor, and track projects utilizing civil money penalty funds including any funds used for state administration.

(2) Make information about the use of civil money penalty funds publicly available, including about the dollar amount awarded for approved projects, the grantee or contract recipients, the results of projects, and other key information.

(3) Ensure that:

(i) A core amount of civil money penalty funds will be held in reserve for emergencies, such as relocation of residents pursuant to an involuntary termination from Medicare and Medicaid.

(ii) A reasonable amount of funds, beyond those held in reserve under paragraph (i) of this section, will be awarded or contracted each year for the purposes specified in this section.

(f) If CMS finds that a State has not spent civil money penalty funds in accordance with this section, or fails to make use of funds to benefit the quality

of care or life of residents, or fails to maintain an acceptable plan for the use of funds that is approved by CMS, then CMS may withhold future disbursements of civil money penalty funds to the State until the State has submitted an acceptable plan to comply with this section.

Dated: April 16, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 22, 2014.

Kathleen Sebelius,

Secretary.

[FR Doc. 2014–10319 Filed 5–1–14; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0049; 4500030113]

RIN 1018–AZ33

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Diplacus vandenbergensis (Vandenberg Monkeyflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and reopening of the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed rule to designate critical habitat for *Diplacus vandenbergensis* (Vandenberg monkeyflower). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for *D. vandenbergensis* and an amended required determinations section of the proposal. In addition, in this document, we are proposing revised unit names for the four previously described subunits, and a revised acreage for one subunit based on information we received on the proposal. These revisions result in an increase of approximately 24 acres (10 hectares) in the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, the amended required determinations section, and the unit revisions described in this document. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: The comment period for the proposed rule published October 29, 2013 (at 78 FR 64446), is reopened. We will consider comments on that proposed rule or the changes to it proposed in this document that we receive or that are postmarked on or before June 5, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES:

Document availability: You may obtain copies of the proposed rule and the associated DEA (Industrial Economics, Incorporated (IEc) 2014; Service 2014) on the internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0049 or by mail from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R8–ES–2013–0049 (the docket number for the proposed critical habitat rule).

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2013–0049; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: Stephen P. Henry, Acting Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805–644–1766; facsimile 805–644–3958. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for *Diplacus vandenbergensis* (hereafter referred to as Vandenberg monkeyflower) that was published in the **Federal Register** on October 29, 2013 (78 FR 64446), our DEA (which comprises an economics screening memorandum (IEc 2014) and the Service's Incremental Effects Memorandum (Service 2014)) of the proposed designation, the amended required determinations provided in this document, and the revisions to the names and one unit as described in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (Act), including whether there are threats to the species from human activity, the degree those threats can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of Vandenberg monkeyflower and its habitat;

(b) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) What areas currently occupied by the species and that contain features essential to the conservation of the species should be included in the designation and why; and

(f) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the areas occupied by the species or proposed to be designated as critical habitat, and possible impacts of these activities on this species and proposed critical habitat.

(4) Comments or information that may assist us in identifying or clarifying the primary constituent elements (PCEs).

(5) Information on the projected and reasonably likely impacts of climate change on Vandenberg monkeyflower and proposed critical habitat.

(6) Any probable economic, national security, or other relevant impacts of designating any area that may be

included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(7) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the probable economic impacts.

(8) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(9) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. We specifically seek comments on the following:

(a) Whether the existing management plans for Burton Mesa Ecological Reserve and La Purisima Mission State Historic Park (SHP) provide a conservation benefit to Vandenberg monkeyflower and its habitat. We also seek comments on whether there is a reasonable expectation that the conservation management strategies and actions in these management plans will be implemented into the future.

(b) Whether or not to exclude the Burton Ranch area from the final critical habitat designation. Burton Ranch is a residential development project on private land that borders the Burton Mesa Ecological Reserve. We included Burton Ranch in our proposed critical habitat because the area met our criteria for designating critical habitat for Vandenberg monkeyflower. In comments on the proposed designation, the developers of Burton Ranch requested that this land be excluded from critical habitat.

(c) Whether or not to exclude a portion of the Burton Mesa Ecological Reserve, at a site where the Vandenberg Village Community Services District (VVCSD) is considering installation of new water wells. In comments on the proposed designation, the VVCSD requested exclusion of 106 acres (ac) (43 hectares (ha)) for the purpose of installing new water wells to replace their existing wells. The land VVCSD requested to exclude is within the Burton Mesa Ecological Reserve and owned and managed by the State of California. Vandenberg monkeyflower is known to occur within the 106-ac (43-ha) area.

(10) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed rule (78 FR 64446) during the initial comment period from October 29, 2013, to December 30, 2013, please do not resubmit them. Any such comments are incorporated as part of the public record of this rulemaking proceeding, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. This document contains revisions to the proposed rule; in addition, the final decision may differ from this revised proposed rule, based on our review of all information received during this rulemaking proceeding.

You may submit your comments and materials concerning the proposed rule or DEA (IEc 2014; Service 2014) by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed listing, proposed critical habitat, and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket Number FWS–R8–ES–2013–0049, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule to designate critical habitat and the DEA (IEc 2014; Service 2014) on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2013–0049, or by mail from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for Vandenberg monkeyflower (78 FR 64446) in this document. For more information on previous Federal actions concerning Vandenberg monkeyflower, refer to the proposed listing rule (78 FR 64840) that published in the **Federal Register** on October 29, 2013. Both proposed rules are available online at *http://www.regulations.gov* (at Docket No. FWS–R8–ES–2013–0078 for the proposed listing and Docket No. FWS–R8–ES–2013–0049 for the proposed critical habitat designation) or from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

On October 29, 2013, we published a proposed rule to designate critical habitat for Vandenberg monkeyflower (78 FR 64446). We proposed to designate approximately 5,785 ac (2,341 ha) in four subunits as critical habitat for Vandenberg monkeyflower in Santa Barbara County, California. That proposal had an initial 60-day comment period ending December 30, 2013. This document announces proposed revisions of the subunit names (now called units) and acreage of one unit (Encina, Unit 3) described in the October 29, 2013, proposed rule to designate critical habitat. In a separate rulemaking, we proposed to list Vandenberg monkeyflower as an endangered species on October 29, 2013 (78 FR 64840). If the listing and critical habitat rules are finalized, we anticipate submitting for publication in the **Federal Register** a final critical habitat designation for Vandenberg monkeyflower by October 2014.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule designating critical habitat is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal

agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Revisions to Proposed Critical Habitat Designation

On October 29, 2013, we proposed critical habitat for Vandenberg monkeyflower in four subunits, consisting of approximately 5,785 ac (2,341 ha) in Santa Barbara County, California (78 FR 64446). We are now revising the 'subunit' designation used in the October 29, 2013, proposed rule to 'unit' for added clarity for the public and to be consistent with critical habitat naming across the nation. The revised unit names are: Unit 1 (Vandenberg), Unit 2 (Santa Lucia), Unit 3 (Encina), and Unit 4 (La Purisima). Additionally, we are revising the proposed designation to include an additional 24 ac (10 ha) for a total of approximately 5,809 ac (2,351 ha) (see Table 1). The added acreage occurs north of Davis Creek in the parcel designated as open space at Clubhouse Estates, consisting of maritime chaparral mixed with oak woodland and scrub vegetation that is contiguous with the Burton Mesa Ecological Reserve. This area was added to the proposed critical habitat designation because it contains the physical and biological features essential to the conservation of Vandenberg monkeyflower, and also supports a portion of a population of Vandenberg monkeyflower. We propose this increase based on new information received from several commenters who pointed out that we had omitted a portion of a parcel along the boundaries of Unit 3 (Encina). Apart from the acreages and ownership percentages provided in the Unit 3 description in the October 29, 2013, proposed rule, the general information in the Unit 3 description in that proposal remains unchanged.

TABLE 1—REVISIONS TO PROPOSED CRITICAL HABITAT UNITS FOR VANDENBERG MONKEYFLOWER

[Area estimates reflect all land within critical habitat unit boundaries]

Proposed critical habitat unit	Land ownership by type	October 29, 2013, proposed critical habitat in acres (hectares)	Current proposed revised acres (hectares)	Change from 10/29/2013 proposal (acres (hectares))
1. Vandenberg Unit	Federal	277 (75)	277 (112)	0 (0)
2. Santa Lucia Unit	State	1,422 (576)	1,422 (576)	0 (0)
	Local Agency	10 (4)	10 (4)	0 (0)
	Private	52 (21)	52 (21)	0 (0)
3. Encina Unit	State	1,460 (591)	1,460 (591)	0 (0)
	Local Agency	24 (10)	24 (10)	0 (0)
	Private	516 (209)	540 (218)	+24 (+10)
4. La Purisima Unit	State	1,792 (725)	1,792 (725)	0 (0)
	Local Agency	4 (2)	4 (2)	0 (0)
	Private	228 (92)	228 (92)	0 (0)
Revised Totals for All 4 Units [1]	Federal	277 (112)	277 (112)	0 (0)
	State	4,674 (1,892)	4,674 (1,892)	0 (0)
	Local Agency	38 (16)	38 (16)	0 (0)
	Private	796 (322)	820 (332)	+24 (+10)
	Total	5,785 (2,341)	5,809 (2,351)	0 (0)

Note: Area sizes may not sum due to rounding.

[1] This total does not include 4,159 ac (1,683 ha) of lands within Vandenberg AFB that were identified as areas that meet the definition of critical habitat but are exempt from critical habitat designation under section 4(a)(3)(B) of the Act (see Exemptions section of proposed critical habitat rule that published on October 29, 2013 (78 FR 64446)).

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider, among other factors, the additional regulatory benefits that an area would receive through the analysis under section 7 of the Act addressing the destruction or adverse modification of critical habitat as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of identifying areas containing essential features that aid in the recovery of the listed species, and any ancillary benefits triggered by existing local, State, or Federal laws as a result of the critical habitat designation.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to incentivize or result in conservation; the continuation, strengthening, or encouragement of partnerships; and the implementation of a management plan. In the case of Vandenberg monkeyflower, the benefits of critical habitat include public awareness of the presence of the species, the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Vandenberg monkeyflower. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken, authorized, funded, or otherwise permitted by Federal agencies. We have not proposed to exclude any areas from critical habitat.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable

economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from the proposed designation of critical habitat (Service 2014). The information contained in our IEM was then used to develop a screening analysis (IEc 2014) of the probable effects of the designation of critical habitat for Vandenberg monkeyflower. In the screening analysis of the proposed designation of critical habitat, we focused our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. This screening analysis (IEc 2014) combined with the information contained in our IEM (Service 2014) are what we consider our DEA of the proposed critical habitat designation for Vandenberg monkeyflower, which is summarized in the narrative below.

Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the Executive Orders' regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess, to the extent practicable, the probable impacts, if sufficient data are available, to both directly and indirectly impacted entities. Potential incremental economic impacts associated with the following categories of activities could occur in Vandenberg monkeyflower proposed critical habitat: (1) Conservation or restoration activities; (2) utilities management (e.g., maintenance of an existing pipeline); (3) fire management; (4) transportation (e.g., maintenance of existing roads); (5) recreation; or (6) development (Service 2014, pp. 4–6, 10). We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement.

Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where Vandenberg monkeyflower is present, Federal agencies will be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species, if the Vandenberg monkeyflower is listed under the Act. If we finalize the proposed critical habitat designation and listing rule, consultations to avoid the destruction or adverse modification of critical habitat would be included in the consultation process that will also consider jeopardy to the listed species. Therefore, disproportionate impacts to any geographic area or sector are not likely as a result of this critical habitat designation.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (i.e., difference between the jeopardy and adverse modification standards) for Vandenberg monkeyflower (Service 2014, pp. 7–19). Because the designation of critical habitat for Vandenberg monkeyflower was proposed concurrently with the listing, it is more difficult at this time to discern which conservation efforts are attributable to the species being listed and those that will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical and biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would constitute jeopardy to Vandenberg monkeyflower would also likely adversely affect the essential physical and biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species (Service 2014, pp. 7–19). This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

Summary Findings of the Draft Economic Analysis (DEA)

Critical habitat designation for Vandenberg monkeyflower is unlikely to generate costs exceeding $100 million in a single year. Data limitations prevent the quantification of critical habitat benefits (IEc 2014, pp. 3, 22, 24).

All proposed units are considered occupied. However, Vandenberg monkeyflower is an annual plant that may only be expressed above ground once a year or even less frequently (Service 2014, p. 15). Even though all proposed units contain Vandenberg

monkeyflower seed banks below ground, some project proponents may not be aware of the presence of the species absent a critical habitat designation. The characteristics of the plant make it difficult to determine whether future consultations will result from the presence of the listed species or designated critical habitat.

Throughout our analysis (IEc, 2014, entire), we have considered two scenarios:

(1) *Low-end scenario.* Project proponents identify the monkeyflower at their site, and most costs and benefits are attributable to listing the species.

(2) *High-end scenario.* Costs and benefits are attributed to the designation of critical habitat.

Projects with a Federal nexus within Vandenberg monkeyflower proposed critical habitat are likely to be rare. We project fewer than three projects annually, associated with the Lompoc Penitentiary, the existing oil pipeline and utilities running through the Burton Mesa Ecological Reserve, and road projects using Federal funding (Iec 2014, pp. 3, 12). In the high-end scenario, costs in a single year are likely to be on the order of magnitude of tens to hundreds of thousands of dollars (IEc 2014, pp. 3, 12). In the low-end scenario, assuming above-ground expression of the monkeyflower, total costs in a single year will likely be less than $100,000.

The potential exists for critical habitat to trigger additional requirements under the California Environmental Quality Act (CEQA). In the low-end scenario, impacts at all sites except the Burton Ranch Specific Plan area would be attributed to listing Vandenberg monkeyflower. In the high-end scenario, properties that could experience relatively larger impacts include the Burton Ranch Specific Plan area (Unit 3), potentially developable parcels along the northern border of Vandenberg Village (Units 2 and 3), the Freeport-McMoRan parcels overlapping the state-designated Lompoc Oil Field (Units 2 and 3), and preferred sites for new drinking water wells in the Burton Mesa Ecological Reserve (Unit 3). Given the value of possible impacts in these areas, we conclude that designating critical habitat for Vandenberg monkeyflower will not generate costs that exceed $100 million in a single year (i.e., the threshold according to Executive Order 12866 for determining if the costs and benefits of regulatory actions may have a significant economic impact in any one year).

Additional information and discussion regarding our economic analysis is available in our DEA (IEc 2014, entire; Service 2014, entire) available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0049.

As stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our October 29, 2013, proposed rule (78 FR 64446), we indicated that we would defer our determination of compliance with several statutes and executive orders until we had evaluated the probable effects on landowners and stakeholders and the resulting probable economic impacts of the designation. Following our evaluation of the probable incremental economic impacts resulting from the designation of critical habitat for Vandenbeg monkeyflower, we have amended or affirmed our determinations below. Specifically, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on our evaluation of the probable incremental economic impacts of the proposed designation of critical habitat for Vandenberg monkeyflower, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and E.O. 12630 (Takings).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself, and therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory

requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation for Vandenberg monkeyflower would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

E.O. 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Vandenberg monkeyflower in a takings implications assessment. As discussed above, the designation of critical habitat directly affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The DEA found that no significant economic impacts are likely to result from the designation of critical habitat for Vandenberg monkeyflower. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the DEA and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for Vandenberg monkeyflower does not pose significant takings implications for lands within or affected by the designation.

Authors

The primary authors of this notice are the staff members of the Pacific Southwest Regional Office (Region 8), with assistance from staff of the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended on October 29, 2013, at 78 FR 64446, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.96(a) by revising paragraphs (5), (6), and (7) in the entry proposed for ''Family Phrymaceae: *Diplacus vandenbergensis* (Vandenberg monkeyflower)'' at 78 FR 64446, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

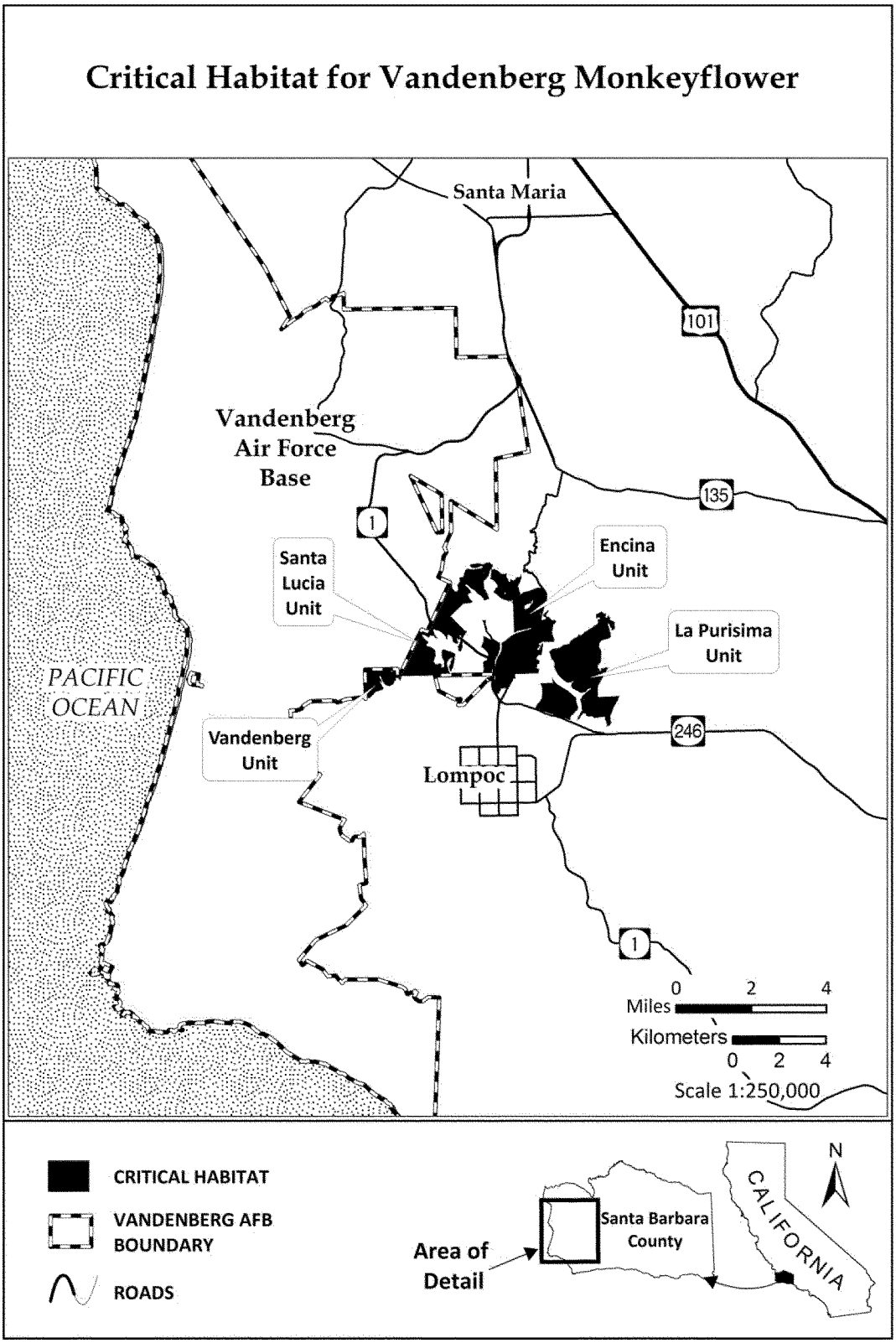
* * * * *

Family Phrymaceae: *Diplacus vandenbergensis* (Vandenberg monkeyflower)

* * * * *

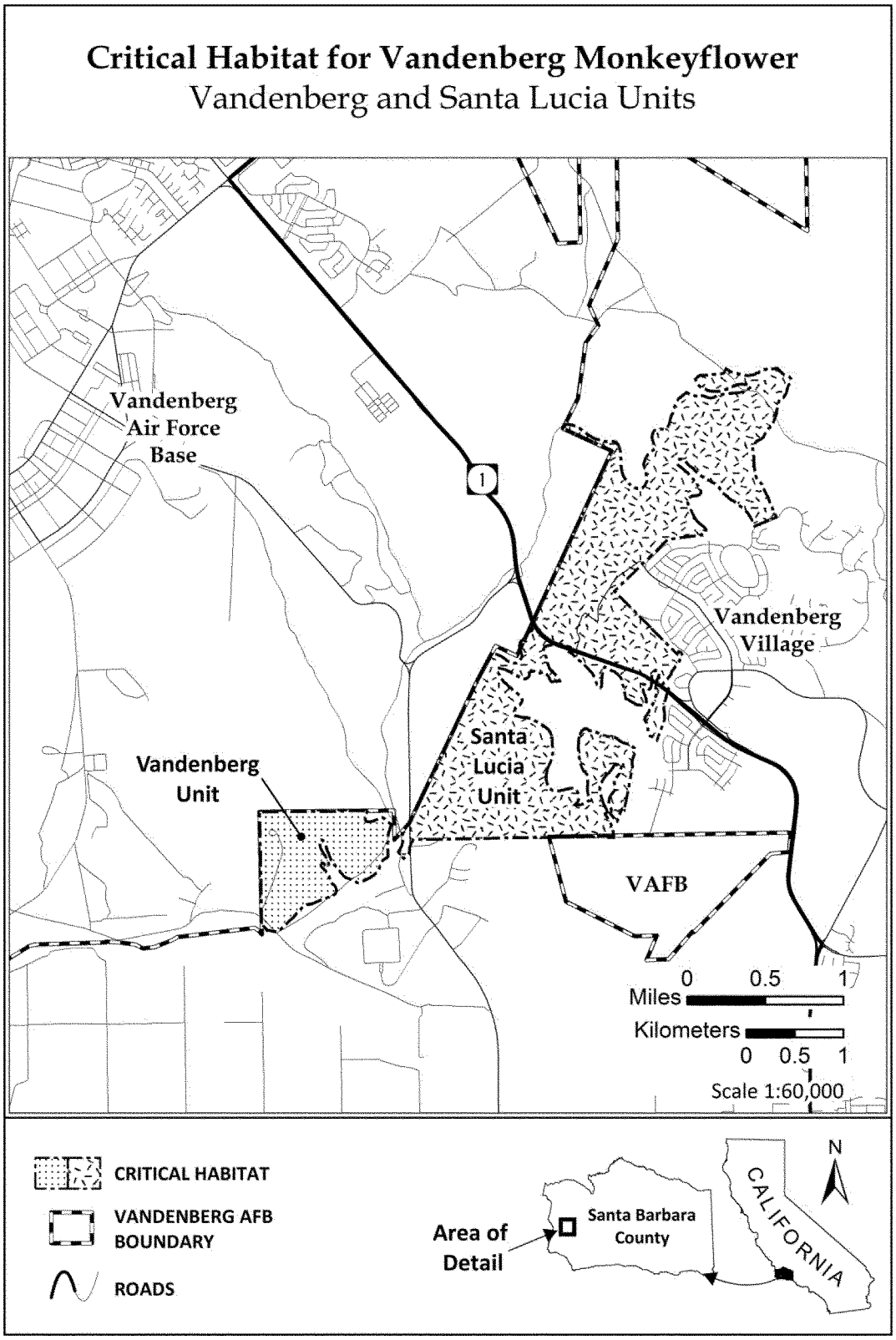
(5) Index map follows:

BILLING CODE 4310–55–P



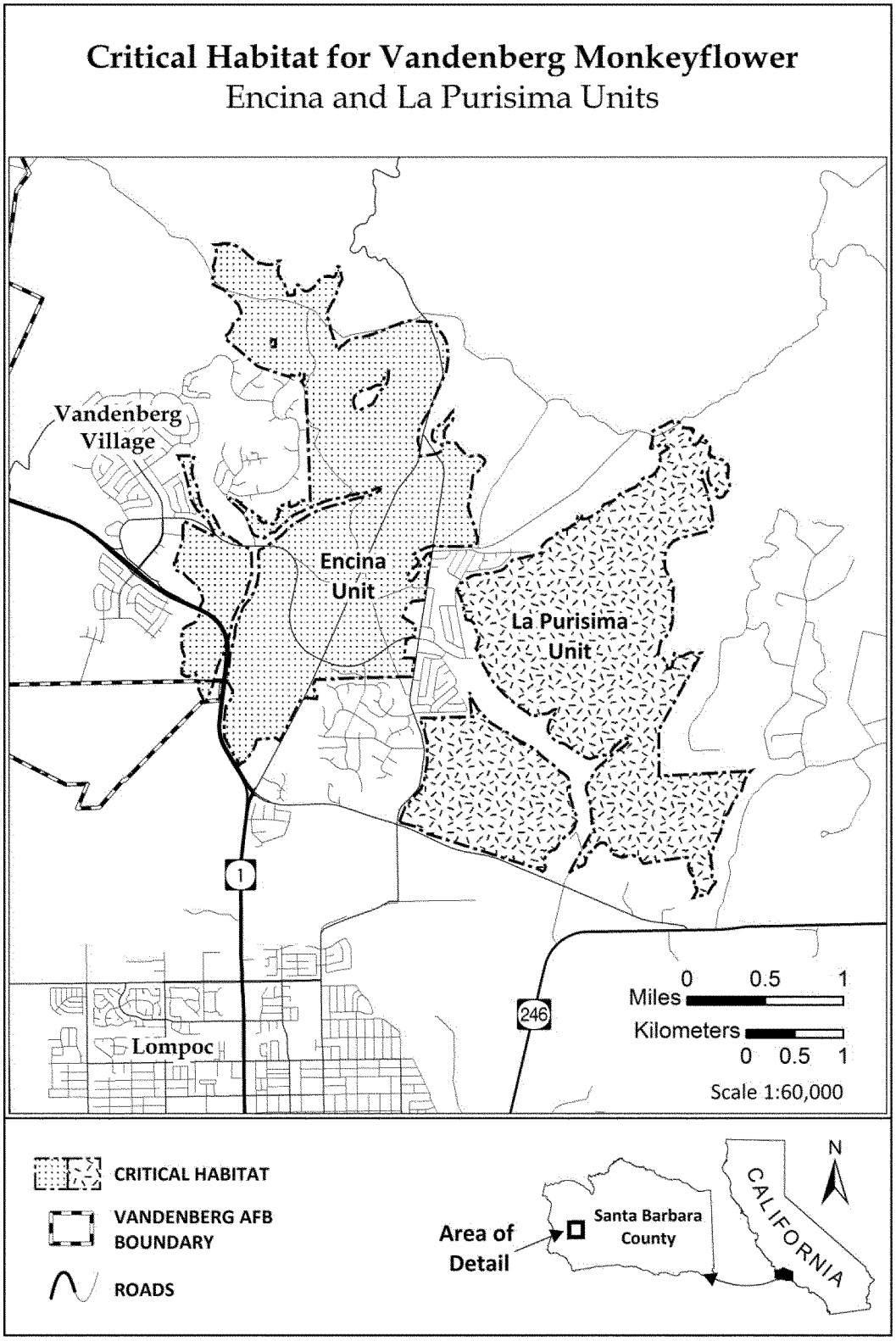
(6) Unit 1 (Vandenberg) and Unit 2 (Santa Lucia): Santa Barbara County, California. Map of Units 1 and 2, follows:

BILLING CODE 4310–55–P



(7) Unit 3 (Encina) and Unit 4 (La Purisima): Santa Barbara County, California. Map of Units 3 and 4, follows:

BILLING CODE 4310–55–P


Critical Habitat for Vandenberg Monkeyflower
Encina and La Purisima Units
Vandenberg Village
Encina Unit
La Purisima Unit
1
246
Lompoc
0 0.5 1
Miles
Kilometers
0 0.5 1
Scale 1:60,000
CRITICAL HABITAT
VANDENBERG AFB BOUNDARY
ROADS
Area of Detail
Santa Barbara County
CALIFORNIA
N

* * * * *

Dated: April 24, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–10053 Filed 5–5–14; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R6–ES–2013–0081; FWS–R6–ES–2013–0082; 4500030113]

RIN 1018–AY95; 1018–AZ61

Endangered and Threatened Wildlife and Plants; Threatened Species Status and Designation of Critical Habitat for the Penstemon grahamii (Graham's beardtongue) and Penstemon scariosus var. albifluvis (White River beardtongue)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rules; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment periods on the August 6, 2013, proposed listing determination and the August 6, 2013, proposed designation of critical habitat for *Penstemon grahamii* (Graham's beardtongue) and *Penstemon scariosus* var. *albifluvis* (White River beardtongue) under the Endangered Species Act of 1973, as amended (Act). For the proposed listing determination, we also announce the availability of a draft conservation agreement. For the proposed designation of critical habitat for Graham's beardtongue and White River beardtongue, we also announce the availability of a draft economic analysis (DEA); draft environmental assessment (draft EA); and amended required determinations section. In addition, we request public comment on new occurrence data that have become available since the publication of the proposed rules. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rules. We also announce that we will hold a public hearing on our proposed listing and proposed designation of critical habitat for these plants (see **DATES** and **ADDRESSES**).

DATES: *Written comments:* In order to ensure full consideration of your comments, submit them by close of business on July 7, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public informational session and public hearing: We will hold a public informational session from 4:30 p.m. to 6:00 p.m., followed by a public hearing from 6:30 p.m. to 8:30 p.m., on Wednesday, May 28, 2014, (see **ADDRESSES**).

ADDRESSES: *Document availability:* You may obtain copies of the listing proposed rule and the draft conservation agreement on the Internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0081, and copies of the critical habitat proposed rule and its associated DEA and draft EA on the Internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0082. All of these documents are also available on the Internet at *http://www.fws.gov/mountain-prairie/species/plants/2utahbeardtongues/,* or by mail from the Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Submit comments on the proposed listing rule and draft conservation agreement by searching for Docket No. FWS–R6–ES–2013–0081, which is the docket number for this rulemaking. Submit comments on the critical habitat proposal and its associated DEA and draft EA by searching for Docket No. FWS–R6–ES–2013–0082, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit comments on the proposed listing and draft conservation agreement by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2013–0081; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. Submit comments on the critical habitat proposal and its associated DEA and draft EA by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2013–0082; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

Public informational session and public hearing: We will hold a public informational session and public hearing at the Uintah County Public Library, at 204 E 100 N in Vernal, Utah.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119; telephone (801–975–3330); or facsimile (801–975–3331). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on (1) our proposed listing of Graham's beardtongue and White River beardtongue as threatened species that was published in the **Federal Register** on August 6, 2013 (78 FR 47590); (2) our proposed critical habitat designation for Graham's beardtongue and White River beardtongue that was published in the **Federal Register** on August 6, 2013 (78 FR 47832); (3) our DEA of the proposed critical habitat designation; (4) our draft EA of the proposed critical habitat designation; (5) the draft conservation agreement; (6) the amended required determinations provided in this document for the proposed critical habitat designation; and (7) new occurrence data for Graham's beardtongue and White River beardtongue. We will consider information from all interested parties. We are particularly interested in:

(1) Specific information on:

(a) The amount and distribution of Graham's beardtongue and White River beardtongue occupied and suitable habitat;

(b) Areas that are currently occupied and that contain features essential to the conservation of the species that should be included in the designation and why;

(c) What areas not currently occupied are essential for the conservation of the species and why;

(d) What may constitute ''physical or biological features essential to the conservation of the species'' within the geographical range currently occupied by the species;

(e) Where the ''physical or biological features essential to the conservation of the species'' are currently found;

(f) Information indicating how these species respond to natural and anthropogenic disturbances;

(g) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(h) Whether the new occurrence data for Graham's beardtongue and White River beardtongue should affect the boundaries of our critical habitat designation.

(2) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on the species or its proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on Graham's beardtongue and White River beardtongue and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final critical habitat designation; in particular, we seek information on the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(8) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(9) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the likely economic impacts and the description of the environmental impacts in the draft EA is complete and accurate.

(10) Whether the draft conservation agreement provides sufficient conservation measures to reduce threats to one or both species, and whether these measures are sufficiently certain to be implemented and effective.

If you submitted comments or information on the proposed rules (78 FR 47590 and 78 FR 47832) during the initial comment period from August 6, 2013, to October 7, 2013, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determinations. Our final determinations concerning listing and critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final critical habitat determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion. We may, during the development of our final listing decision, decide that either species should be listed as endangered; should be listed as threatened; or is no longer warranted for listing under the Act, in which case we would withdraw the proposed rules.

You may submit your comments and materials concerning the proposed rules, DEA, draft EA, draft conservation agreement, or new information by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will also post all hardcopy comments on *http://www.regulations.gov.* If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rules, DEA, and draft EA will be available for public inspection at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0081 for the listing proposal and at Docket No. FWS–R6–ES–2013–0082 for the critical habitat proposal and its associated documents. All comments, materials, and supporting documentation are available by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rules, the DEA, draft EA, and draft conservation agreement on the Internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0081 for the proposed listing rule, or at Docket No. FWS–R6–ES–2013–0082 for the proposed critical habitat rule and its associated documents, or by mail from the Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Informational Session and Public Hearing

We will hold a public informational session and public hearing on the date shown in the **DATES** section at the address shown in the **ADDRESSES** section. Registration to present oral comments on the proposed rules at the public hearing will begin at the start of the informational session. People needing reasonable accommodations in order to attend and participate in the public hearing should contact Larry Crist, Field Supervisor, Utah Ecological Services Field Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat (including the DEA and draft EA) and the development of a draft conservation agreement for Graham's beardtongue and White River beardtongue in this document. For more information on previous Federal actions concerning Graham's beardtongue and White River beardtongue, or for more information on Graham's beardtongue and White River beardtongue or their habitat, refer to the proposed listing rule published in the **Federal Register** on August 6, 2013 (78 FR 47590), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R6–ES–2013–0081) or from the Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On August 6, 2013, we published a proposed rule to list Graham's beardtongue and White River beardtongue under the Act (78 FR 47590), and a proposed rule to designate critical habitat for Graham's beardtongue and White River beardtongue (78 FR 47832). We proposed to designate 67,959 acres (ac)

(27,502 hectares (ha)) of critical habitat for Graham's beardtongue in five units located in Duchesne and Uintah Counties in Utah and Rio Blanco County in Colorado. We also proposed to designate 14,914 acres (ac) (6,036 hectares (ha)) as critical habitat for White River beardtongue in three units located in Uintah County in Utah and Rio Blanco County in Colorado. That proposal had a 60-day comment period, ending October 7, 2013. We will publish in the **Federal Register** a final listing rule or withdrawal for Graham's beardtongue and White River beardtongue on or before August 6, 2014, and if appropriate, we will also publish a final critical habitat designation for Graham's beardtongue and White River beardtongue.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider among other factors, the additional regulatory benefits that an area would receive through the analysis under section 7 of the Act addressing the destruction or adverse modification of critical habitat as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of identifying areas containing essential features that aid in the recovery of the listed species, and any ancillary benefits triggered by existing local, State, or Federal laws as a result of the critical habitat designation.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to incentivize or result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of Graham's beardtongue and White River beardtongue, the benefits of critical habitat include public awareness of the presence of these species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Graham's beardtongue and White River beardtongue due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken or permitted by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional 4(b)(2) exclusion analysis.

For this designation, we developed an incremental effects memorandum (IEM, April 15, 2014) considering the probable incremental economic impacts that may result from the proposed designation of critical habitat. We used the information in our IEM to develop a screening analysis of the probable economic effects of the designation of critical habitat for Graham's beardtongue and White River beardtongue (Industrial Economics, Inc. May 1, 2014). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The

screening analysis filters out particular areas of critical habitat that are already subject to such protections and are therefore unlikely to incur incremental economic impacts. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation and may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM is what we consider our DEA of the proposed critical habitat designation for Graham's beardtongue and White River beardtongue and is summarized in the narrative below.

Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the Executive Orders' regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess to the extent practicable, the probable impacts, if sufficient data are available, to both directly and indirectly impacted entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from our proposed designation of critical habitat for Graham's beardtongue and White River beardtongue, first we identified, in the IEM dated April 15, 2014, probable incremental impacts associated with the following categories of activities: (1) Oil and gas development (includes oil shale, tar sands, and traditional oil and gas development); (2) livestock grazing; and (3) conservation activities (specifically nonnative weed control). We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we finalize the proposed listing rule, in areas where Graham's beardtongue and White River beardtongue are present, Federal agencies already will be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect these species. If we finalize the proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. Therefore, disproportionate impacts to any geographic area or sector would not be likely as a result of the critical habitat designation.

In our IEM, we attempted to clarify the distinction between the effects that would result from these species being listed and those attributable to the critical habitat designations (i.e., difference between the jeopardy and adverse modification standards) for Graham's beardtongue and White River beardtongue. Because the designations of critical habitat for Graham's beardtongue and White River beardtongue were proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which would result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical and biological features identified for critical habitat are the same features essential for the life requisites of the species and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to Graham's beardtongue and White River beardtongue would also likely adversely affect the essential physical and biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of the proposed designation of critical habitat.

The proposed critical habitat designation for Graham's beardtongue includes the Sand Wash, Seep Ridge, Evacuation Creek, White River, and Raven Ridge units (Table 1), all five of which are occupied by the species.

TABLE 1—ACREAGE AND LAND OWNERSHIP STATUS FOR THE PROPOSED CRITICAL HABITAT UNITS FOR GRAHAM'S BEARDTONGUE. AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES. BLM IS BUREAU OF LAND MANAGEMENT

Critical habitat unit	Land ownership	Size of unit
1. Sand Wash	BLM	3,056 ha (7,550 ac)
	State	27 ha (66 ac)
	Private	76 ha (189 ac)
	Total	3,159 ha (7,805 ac)
2. Seep Ridge	BLM	6,649 ha (16,430 ac)
	State	2,650 ha (6,549 ac)
	Private	862 ha (2,131 ac)
	Total	10,162 ha (25,110 ac)
3. Evacuation Creek	BLM	3,879 ha (9,586 ac)
	State	1,417 ha (3,502 ac)
	Private	1,632 ha (4,033 ac)
	Total	6,929 ha (17,122 ac)
4. White River	BLM	2,243 ha (5,542 ac)
	State	401 ha (991 ac)
	Private	2,047 ha (5,059 ac)
	Total	4,691 ha (11,592 ac)
5. Raven Ridge	BLM	2,257 ha (5,578 ac)
	Private	304 ha (752 ac)
	Total	2,562 ha (6,330 ac)
Total Across All Units	BLM	18,084 ha (44,686 ac)
	State	4,495 ha (11,108 ac)
	Private	4,921 ha (12,164 ac)

TABLE 1—ACREAGE AND LAND OWNERSHIP STATUS FOR THE PROPOSED CRITICAL HABITAT UNITS FOR GRAHAM'S BEARDTONGUE. AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES. BLM IS BUREAU OF LAND MANAGEMENT—Continued

Critical habitat unit	Land ownership	Size of unit
	Total	27,502 ha (67,959 ac)

Note: Area sizes may not sum due to rounding.

The proposed critical habitat designation for White River beardtongue includes the North Evacuation Creek, Weaver Ridge, and South Raven Ridge units (Table 2), all three of which are occupied by the species.

TABLE 2—ACREAGE AND LAND OWNERSHIP STATUS FOR THE PROPOSED CRITICAL HABITAT UNITS FOR WHITE RIVER BEARDTONGUE. AREA ESTIMATES REFLECT ALL LAND WITHIN CRITICAL HABITAT UNIT BOUNDARIES

Critical habitat unit	Land ownership	Size of unit
1. North Evacuation Creek	BLM	1,368 ha (3,382 ac)
	State	185 ha (457 ac)
	Private	1,415 ha (3,498 ac)
	Total	2,969 ha (7,336 ac)
2. Weaver Ridge	BLM	788 ha (1,946 ac)
	State	651 ha (1,608 ac)
	Private	1,397 ha (3,452 ac)
	Total	2,836 ha (7,006 ac)
3. South Raven Ridge	BLM	191 ha (472 ac)
	Private	41 ha (101 ac)
	Total	232 ha (573 ac)
Total Across All Units	BLM	2,347 ha (5,800 ac)
	State	836 ha (2,065 ac)
	Private	2,853 ha (7,051 ac)
	Total	6,036 ha (14,914 ac)

All proposed critical habitat units are occupied by the species. For the purposes of section 7 consultations, the areas of critical habitat within the consultation buffer are considered occupied, while the areas outside of the consultation buffer but within the ecologically important pollinator buffer are considered unoccupied. Without critical habitat, the Service would not require formal consultation or conservation measures within the pollinator buffer. In the draft economic screening memorandum, the pollinator buffer was analyzed separately from the consultation buffer to determine the incremental costs of critical habitat. The incremental costs within the consultation buffer are expected to consist of minor administrative costs associated with addressing critical habitat in consultation documents. Within the consultation buffer, any actions that may affect the species or its habitat would also affect designated critical habitat and it is unlikely that any additional conservation efforts would be recommended in addition to those necessary to avoid jeopardizing the continued existence of Graham's beardtongue and White River beardtongue. While this additional analysis within the consultation buffer will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant. However, for projects within the pollinator buffer, the incremental cost of critical habitat would include the full costs of the formal consultation and conservation efforts. Within the pollinator buffer, the recommended conservation efforts would be additional to what would be recommended as necessary to avoid jeopardizing the continued existence of Graham's beardtongue and White River beardtongue. A summary of recommended conservation efforts is provided in the screening analysis (Industrial Economics, Inc. May 1, 2014).

The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Activities we expect would be subject to consultations that may involve private entities as third parties are related to energy development, primarily oil shale development, that may occur on State or private lands. The incremental costs associated with activities occurring within the consultation buffer are expected to be relatively minor (administrative costs of less than $10,000 per consultation effort); however, for activities occurring within the pollinator buffer, the incremental costs include the section 7 consultation and additional conservation efforts. The total quantifiable section 7 costs for energy development (traditional oil and gas, oil shale, and tar sands) and grazing activities associated with the proposed critical habitat designation are estimated to be $2,900,000 (2013 dollars) in a single year. The incremental cost associated with grazing activities is a relatively minor component of the total cost ($9,000); the major component of the total cost is associated with energy development activities. In summary, the draft economic screening memorandum concludes that future probable economic impacts are not likely to exceed $100 million in any given year.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rules and our amended required determinations. We may revise the proposed rules or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the

benefits of including the area, provided the exclusion will not result in the extinction of the Graham's beardtongue or White River beardtongue.

Draft Conservation Agreement

We have worked with key federal and non-federal landowners to develop a draft conservation agreement intended to provide for the conservation of Graham's beardtongue and White River beardtongue. This 15-year conservation agreement was developed in early 2014 with the BLM Utah State Office, BLM Utah Vernal Field Office, BLM White River Field Office, State of Utah School and Institutional Trust Lands Administration (SITLA), Utah Public Lands Policy Coordination Office, and Uintah County, Utah. The draft agreement outlines detailed and specific conservation measures that will be enacted throughout the range of each species to address the threats that were identified in our August 6, 2013, proposed listing rule (78 FR 47590). The draft agreement is a new agreement and not an amendment to the 2007 conservation agreement for Graham's beardtongue, as described in the proposed rule (August 6, 2013, 78 FR 47832).

The draft conservation agreement provides conservation benefits to Graham's beardtongue by protecting 64 percent of the total population, and to White River beardtongue by protecting 76 percent of the total population. Conservation measures set forth in the agreement address threats to both species from energy development (traditional oil and gas, oil shale, and tar sands) and the cumulative effect of increased energy development, livestock grazing, invasive weeds, small population sizes, and climate change. In summary, the range of each species on Federal, State, and private lands is divided into conservation areas—totaling 44,373 acres for Graham's and White River beardtongue. Within these conservation areas, new and permanent surface disturbance is limited to a 5-percent and 2.5-percent disturbance cap, respectively. Additionally, surface disturbance will be avoided within 300 feet of plants. If federal land within a conservation area is transferred to the State of Utah, the State will maintain the land as a designated conservation area. On federal lands outside of conservation areas, surface disturbance will be sited to avoid plants by 300 feet. To address livestock grazing impacts, a livestock monitoring plan will be developed and implemented within 1 year of the signed agreement date; the livestock monitoring plan will identify impacts for which management actions are necessary. To address invasive weeds, a weed management plan will be developed and implemented within 1 year of the signed agreement date. To address small population size, conservation areas limit disturbance to protect against habitat fragmentation and maintain population connectivity. To address climate change, weather monitoring equipment will be installed near long-term population monitoring sites to determine basic species responses to climate patterns. In an attempt to restore both species to reclaimed sites within their ranges, a restoration study will be implemented to assess the success of seedling recruitment, plant establishment, and population trend on restored sites. The development and implementation of all of these plans and studies will be funded and supervised by the conservation team identified in the draft conservation agreement.

We intend to consider this conservation agreement once it has been signed in our final decisions on whether to list Graham's beardtongue and White River beardtongue under the Act, and invite the public to comment on the agreement and its impact on the conservation of these species, and whether the draft agreement sufficiently ameliorates the threats to Graham's beardtongue and White River beardtongue. We intend to evaluate this agreement under our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE policy) (68 FR 15100, March 28, 2003). The draft conservation agreement is available at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0081 and at *http://www.fws.gov/mountain-prairie/species/plants/2utahbeardtongues/.*

New Survey Information

Since the publication of the proposed rules, we have received additional survey information for Graham's beardtongue and White River beardtongue. Survey information was provided to us with location and, in some instances, plant abundance information. For Graham's beardtongue, we now know of an additional 8,631 plants, with 5,814 falling outside of our proposed critical habitat. For White River beardtongue, a total of 792 additional plants were documented, of which 276 are located outside of our proposed critical habitat. Maps of additional plant locations are available at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0081 and at *http://www.fws.gov/mountain-prairie/species/plants/2utahbeardtongues/.* We request the public review these data and provide comment on whether and how they should be considered for the designation of critical habitat, and how this information might impact our assessment of the species status under the Act.

Required Determinations—Amended

In our August 6, 2013, proposed critical habitat rule (78 FR 47832), we indicated that we would defer our determination of compliance with several statutes and executive orders until we had evaluated the probable effects on landowners and stakeholders and the resulting probable economic impacts of the designation. Following our evaluation of the probable incremental economic impacts resulting from the designation of critical habitat for Graham's beardtongue and White River beardtongue, we have amended or affirmed our determinations below. Specifically, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). However, based on our evaluation of the probable incremental economic impacts of the proposed designation of critical habitat for Graham's beardtongue and White River beardtongue, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), E.O. 12630 (Takings), E.O. 13211 (Energy, Supply, Distribution, or Use), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). See below for more information on these determinations.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will

not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to adversely modify critical habitat. Therefore, under these circumstances only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

When the range of a species includes States within the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, pursuant to that court's ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F .3d 1429 (10th Cir. 1996), we will complete an analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) on critical habitat designations. The ranges of Graham's beardtongue and White River beardtongue are entirely within the States of Utah and Colorado, which are within the Tenth Circuit.

The draft EA presents the purpose of and need for critical habitat designation; the proposed action and alternatives; and an evaluation of the direct, indirect, and cumulative effects of the alternatives under the requirements of NEPA as implemented by the Council on Environmental Quality regulations (40 CFR part 1500 *et seq.*) and according to the Department of the Interior's NEPA procedures.

We will use the draft EA to decide whether or not critical habitat will be designated as proposed; if the proposed action requires refinement, or if another alternative is appropriate; or if further analyses are needed through preparation of an environmental impact statement. If the proposed action is selected as described (or is changed minimally) and no impacts will be significant, then a finding of no significant impact (FONSI) would be the appropriate conclusion of this process. We are seeking data and comments from the public on the draft EA, which is available at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0082 and at *http://www.fws.gov/mountain-prairie/species/plants/2utahbeardtongues/.*

E.O. 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Graham's beardtongue and White River beardtongue in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding or assistance, or that require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for Graham's beardtongue and White River beardtongue. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the draft economic analysis, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for Graham's beardtongue and White River beardtongue does not pose significant takings implications for lands within or affected by the designation.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Graham's beardtongue and White River beardtongue both occur in areas with energy development activity. Existing well pads and proposed oil shale and tar sands development projects are within proposed critical habitat units. On Federal lands, entities conducting energy-related activities would need to consult within areas designated as critical habitat. As stated in the Consideration of Economic Impacts section, above, we do not anticipate additional conservation efforts related to oil and gas beyond those requested to avoid jeopardy to the species within occupied beardtongue habitat, which

comprises the majority of the area proposed as critical habitat. Incremental effects of the proposed critical habitat designation are assumed to occur for energy projects in the pollinator buffer of proposed critical habitat. As of January 2014, 88 and 21 producing or newly permitted wells are located within proposed critical habitat for Graham's beardtongue and White River beardtongue, respectively. Within the pollinator buffer of proposed critical habitat, there are 75 and 16 producing or newly permitted wells for Graham's beardtongue and White River beardtongue, respectively. The number of wells within the proposed designation represents less than 1 percent of wells in the States of Utah and Colorado. We do not anticipate that the designation of critical habitat would result in significant impacts to the energy industry on a national scale. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that there are no tribal lands that are occupied by Graham's beardtongue or White River beardtongue and that contain the features essential for conservation of the species, and no tribal lands unoccupied by Graham's beardtongue or White River beardtongue that are essential for the conservation of these species. Therefore, we are not proposing to designate critical habitat for Graham's beardtongue or White River beardtongue on tribal lands. However, tribal lands belonging to the Ute Tribe do occur adjacent to proposed critical habitat, and a recently developed suitable habitat model for both beardtongues indicates suitable habitat exists within the Reservation boundary. Since December of 2013, the Service has been in communication with the Ute Tribe regarding the proposed listing and critical habitat designation, and the Service will conduct government-to-government consultation with the Ute Tribe throughout the development of the final rules.

Authors

The primary authors of this notice are the staff members of the Utah Ecological Services Field Office, Region 6, U.S. Fish and Wildlife Service.

Authority

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

Dated: April 29, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–10274 Filed 5–5–14; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 79, No. 87

Tuesday, May 6, 2014

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

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (Board) will meet in Rapid City, South Dakota. The Board is established consistent with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. II), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et.seq.), the National Forest Management Act of 1976 (16 U.S.C. 1612), and the Federal Public Lands Recreation Enhancement Act (Pub. L. 108–447). The meeting is open to the public. The purpose of the meeting is to provide:

(1) Update on Farm Bill
(2) Briefing from U.S. Fish and Wildlife on Threatened and Endangered Species
(3) Update from the Forest Health working group
(4) Update from the Recreational Facility working group
(5) Briefing on Bearlodge Project/Rare Element Resources proposed mine

DATES: The meeting will be held Wednesday, May 21, 2014 at 1:00 p.m.

All meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Mystic Ranger District, 8221 South Highway 16, Rapid City, South Dakota.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Black Hills National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Committee Coordinator, by phone at 605–673–9216, or by email at *sjjacobson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional information concerning the Board, including the meeting summary/minutes, can be found by visiting the Board's Web site at: *http://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by May 12, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and time requests for oral comments must be sent to Scott Jacobson, Black Hills National Forest Supervisor's Office, 1019 North Fifth Street, Custer, South Dakota 57730; by email to *sjjacobson@fs.fed.us,* or via facsimile to 605–673–9208.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: April 29, 2014.

Dennis Jaeger,

Deputy Forest Supervisor.

[FR Doc. 2014–10328 Filed 5–5–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sitka Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sitka Resource Advisory Committee (RAC) will meet in Silica, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is discuss new project proposals and update on exsisting RAC projects.

DATES: The meeting will be held on June 6, 2014 from 4 p.m. to 6 p.m. All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under For Further Information Contact.

ADDRESSES: The meeting will be held at the Sitka Ranger District, Katlian Conference Room, 204 Katlian Street, Sitka Alaska.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Sitka Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lisa Hirsch, RAC Coordinator, by phone at 907–747–4214 or via email at *lisahirsch@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/07924D017A51AEC5882575440062EFB1?OpenDocument.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 2, 2014, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lisa Hirsch, RAC Coordinator, Sitka Ranger District, 204 Siginaka Way, Sitka, Alaska 99835; or by email to *lisahirsch@fs.fed.us,* or via facsimile to 907–747–4253.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: April 22, 2014.

Don Martin,

Acting District Ranger.

[FR Doc. 2014–10074 Filed 5–5–14; 8:45 am]

BILLING CODE 3411–15–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC51

Proposed Directive on Groundwater Resource Management, Forest Service Manual 2560

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed directive; request for comment; announcement of national informational webinars.

SUMMARY: The Forest Service proposes to amend its internal Agency directives for Watershed and Air Management to establish direction for management of groundwater resources on National Forest System (NFS) lands as an integral component of watershed management. Specifically, the proposed amendment would provide direction on the consideration of groundwater resources in agency activities, approvals, and authorizations; encourage source water protection and water conservation; establish procedures for reviewing new proposals for groundwater withdrawals on NFS lands; require the evaluation of potential impacts from groundwater withdrawals on NFS resources; and provide for measurement and reporting for some larger groundwater withdrawals. This proposed amendment would supplement existing special uses and minerals and geology directives to address issues of groundwater resource management and would help ensure consistent and adequate analyses for evaluating potential uses of NFS lands that could affect groundwater resources. Public comment is invited and will be considered in development of the final directive. This proposed groundwater directive represents a change in the Forest Service's national policy on water management. The Forest Service wants to ensure that there is sufficient time for potentially affected parties, including States, to comment. Thus the Agency is providing an extended comment period for the proposed directive. In addition, the Forest Service will host a webinar on the proposed directive to present information and answer questions on the proposed policy and the comment process during the first half of the comment period. Additional meetings and/or webinars will be offered as needed. Specific information regarding the dates and times of the webinar will be announced by news release and at the following Web site: *http://www.fs.fed.us/geology/groundwater.* A recording of the webinar will also be posted on the Web site.

DATES: Comments must be received by August 4, 2014.

ADDRESSES: Send comments electronically by following the instructions at the Federal eRulemaking portal at *http://www.regulation.gov.* Comments may also be submitted by electronic mail to *fsm2500@fs.fed.us* or by mail to Groundwater Directive Comments, USDA Forest Service, Attn: Elizabeth Berger—WFWARP, 201 14th Street SW., Washington, DC, 20250. If comments are sent electronically, the public is requested not to send duplicate comments by mail. Please confine comments to issues pertinent to the proposed directive; explain the reasons for any recommended changes; and, where possible, refer to the specific wording being addressed. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect the comments received on the proposed directive at the USDA Forest Service Headquarters, located in the Yates Federal Building at 201 14th Street SW., Washington, DC, on regular business days between 8:30 a.m. and 4:30 p.m. Those wishing to inspect the comments are encouraged to call ahead at (202) 205–0967 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Joseph Gurrieri, Watershed, Fish, Wildlife, Air and Rare Plants Staff and Minerals and Geology Management Staff, (303) 275–5101. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service at (800) 877–8339 between 8:00 a.m. and 8:00 p.m. on regular business days.

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Directive

Despite concerns regarding water availability and quality across the country for ecosystem viability and new and existing human uses, the Forest Service does not have any comprehensive direction for management of groundwater resources on NFS lands. Ongoing climate and land use changes in combination with increasing societal water uses are resulting in substantial effects on the spatial and temporal distribution of water resources, including those on NFS lands. The proposed directives better position the Forest Service to identify and manage the consequences of those changes for the groundwater resources on NFS lands.

The Forest Service manages 193 million acres of Federal lands, much of which is located in the headwaters and recharge areas of the nation's streams and aquifers. NFS lands provide sources of drinking water for people in 42 States and the Commonwealth of Puerto Rico. Thus, the Forest Service has a critical role in maintaining the integrity of the water resources associated with NFS lands and needs to take an active role, in cooperation with the States, in comprehensive management of water resources on those lands. The Washington Office Watershed, Fish, Wildlife, Air and Rare Plants and the Minerals and Geology Management staffs propose Forest Service Manual (FSM) 2560 as a key component of this effort.

The Forest Service recognizes a need to establish a consistent approach for addressing both surface and groundwater issues that appropriately protects water resources, recognizes existing water uses, and responds to the

growing societal need for high-quality water supplies. Establishing comprehensive direction for groundwater resource management would round out existing policy (FSM 2500) to include all relevant components of watershed resources.

The Forest Service currently provides some groundwater program direction in FSM 2880, entitled ''Geologic Resources, Hazards, and Services,'' which addresses agency inventory and monitoring activities for groundwater. FSM 2560 (formerly FSM 2543), entitled ''Groundwater Resource Management,'' would focus on Forest Service projects and authorizations potentially affecting groundwater resources. Proposed FSM 2560 is being published for public notice and comment because it establishes new policies and procedures for both water resources management and special use authorizations that involve access to or utilization of groundwater resources on NFS lands. Many of these policies and procedures, although new to the Forest Service nationally, are consistent with management and regulatory approaches in many States and localities across the country.

Pursuant to statutory direction from Congress, NFS lands were set aside or acquired at least in part for the protection and management of water resources, and the Forest Service recognizes the need to address water in a comprehensive manner. Since groundwater is an integral component of the hydrological cycle in all watersheds, it is appropriate to include groundwater on NFS lands within an integrated water resources management program. The Forest Service recognizes that States and tribes also have responsibilities for water resources within their boundaries and that management of groundwater needs to be conducted cooperatively with the States and tribes to be successful.

This proposed directive addresses components of some other Federal initiatives involving water, including Executive Order (E.O.) 13423, dated January 24, 2007, E.O. 13514, dated October 5, 2009, and the National Science and Technology Council (NSTC) Strategy for Federal Science and Technology to Support Water Availability and Quality, dated September 2007 (*http://www.ostp.gov/cs/nstc/documents_reports*). The proposed directive directly addresses portions of sections 1, 2(c), 3(a)(iii), 3(b)(iii), and 3(f) of E.O. 13423 and section 2(d) of E.O. 13514 concerning water use and conservation in activities conducted by the Forest Service and its authorization holders and would help bring the Forest Service into compliance with the relevant portions of the E.O. The proposed directive responds to the 2012 Planning Rule for National Forest System land management planning (36 CFR Part 219) specifying that forest plans must include components to maintain or restore water resources including groundwater. The proposed directive also would respond to recommendations in the National Science & Technology Council's water strategy calling for Federal agencies to inventory existing water resources and uses.

Summary of Proposed Changes

Under the proposed directives:

- Management efforts would be focused on portions of the groundwater system that if depleted or contaminated would adversely affect surface resources, such as groundwater-dependent ecosystems and present or future uses of water.
- Ground and surface water would be assumed to be hydraulically connected, unless demonstrated otherwise using site-specific information.
- Implementation of appropriate water conservation measures would be required for Forest Service uses and special uses involving groundwater resources.
- The Forest Service and holders of special use authorizations involving large groundwater withdrawals and injections would be required to measure and report the volume of water pumped. Obtaining information about the nature, extent, and ongoing uses of groundwater resources on NFS lands would allow the Forest Service to manage those resources appropriately and sustainably.
- Consideration of the effects on the groundwater resources on NFS lands of all proposed and authorized groundwater uses would be required prior to authorization or reauthorization.
- A framework would be established for evaluating effects of existing and proposed uses of NFS lands on the associated groundwater resources, based upon a framework established in 2001 in a Forest Service Southwestern Region supplement to FSM 2540.
- Monitoring and mitigation would be required for major groundwater withdrawals and injections.
- In recognition of the uncertainty inherent in evaluation of impacts from uses on groundwater resources and the changing availability and distribution of those resources due to climate change, terms and conditions of special use authorizations involving groundwater withdrawals or injections would be modified, as appropriate, based upon the results from project monitoring.

Section-by-Section Analysis

2560.01—Authorities

This proposed section enumerates the authority in statutes, regulations, executive orders, and directives for groundwater resource management on NFS lands.

2560.02—Objectives

This proposed section would establish the objectives for groundwater resource management on NFS lands. Paragraph 1 would establish the objective of cooperatively managing groundwater with States to promote long-term maintenance or restoration of groundwater systems and the groundwater-dependent ecosystems they support.

Paragraph 2 would establish the objective of collecting and distributing groundwater-related information for use in planning and decisionmaking.

Paragraph 3 would establish the objective of evaluating all activities on and proposed uses of NFS lands for effects on groundwater resources and avoiding, minimizing, or mitigating adverse effects.

Paragraph 4 would establish the objective of authorizing development and use of groundwater on NFS lands only when those uses adequately protect resources on those lands.

2560.03—Policy

This proposed section would address the policies for groundwater management on NFS lands. Paragraph 1 would provide for focusing Forest Service groundwater resource management on those portions of the groundwater system that, if depleted or contaminated, would have an adverse effect on surface resources or present or future uses of groundwater.

Paragraph 2 would provide for evaluation and management of surface and groundwater as a single hydraulically interconnected resource, unless it can be demonstrated that they are not, using site-specific information.

Paragraph 3 would provide for evaluation and management of the combined surface and groundwater hydrological system on an appropriate spatial scale, taking into account surface water and groundwater watersheds, which may not be identical, and relevant aquifer systems.

Paragraph 4 would provide for consideration of effects of proposed activities on groundwater resources. Specifically, paragraph 4a would provide for consideration of the effects

of proposed actions upon groundwater quantity, quality, and timing prior to approval of a proposed use or implementation of a Forest Service activity. Paragraph 4b would require use of appropriate science, technology, models, information, and expertise to address groundwater resources when revising or amending applicable land management plans and evaluating project alternatives. Paragraph 4c would provide that the Forest Service receive all groundwater monitoring data and information required by other permitting authorities and would require that the Forest Service appropriately utilize that information when evaluating effect from the project on groundwater resources. Paragraph 4d would provide for conducting, evaluating, and reporting of monitoring and mitigation appropriate to the scale and nature of potential effects when approving or authorizing a proposed use or Forest Service activity that has a significant potential to adversely affect groundwater resources on NFS lands.

Paragraph 5 would provide that adverse impacts from Forest Service actions on groundwater resources and groundwater-dependent ecosystems located on NFS lands must be prevented, minimized, or mitigated to the extent practical, unless otherwise required by law.

Paragraph 6 would address work with other entities and organizations on groundwater. Paragraph 6a would provide for management of groundwater quantity and quality on NFS lands in cooperation with appropriate State agencies, and, if applicable, the United States Environmental Protection Agency (EPA).

Paragraph 6b would provide for collaboration with other Federal agencies, such as experts from the U.S. Geological Survey, State, tribal and local agencies, State geological surveys, universities, and industry and other appropriate organizations when locating, investigating, or assessing the hydrogeology and groundwater resources of NFS lands.

Paragraph 6c would provide for submission of comments regarding proposed activities either on or off of NFS lands that may adversely affect groundwater resources on NFS lands to project proponents and to responsible local, State, tribal, or other Federal entities with the authority to regulate those activities.

Paragraph 6d would provide for management of wellhead protection areas, source water protection areas, and critical aquifer protection areas that are formally designated pursuant to the provisions of the Safe Drinking Water Act (SDWA) or State equivalent in accordance with the procedures in regulations and directives governing municipal supply watersheds.

Paragraph 6e would require water rights to be obtained under applicable State procedures for groundwater and groundwater-dependent surface water needed by the Forest Service; and would require authorization holders operating on NFS lands to obtain water rights under applicable State procedures.

Paragraph 6f would provide for evaluation of all applications to States for water rights on NFS lands and those applications on adjacent lands that could adversely affect NFS groundwater resources and for identification of any potential injury to those resources or to Forest Service water rights under applicable State procedures.

Paragraph 7 would address use of groundwater. Specifically, and consistent with the provisions of E.O. 13423 and E.O. 13514, paragraph 7a would provide for efficient use of groundwater needed to meet NFS purposes, especially in water-scarce areas or during periods of drought.

Paragraph 7b would provide for favoring development of suitable and available groundwater sources rather than surface water sources for drinking water at Forest Service administrative and recreational sites, due to the generally more stable water quality and quantity of groundwater sources.

Consistent with existing special uses requirements, Paragraph 7c would encourage the use of water sources located off NFS lands when the water use is largely or entirely off NFS lands, unless the applicant is a public water supplier and the proposed source is located within a designated municipal supply watershed for that supplier.

In accordance with the provisions of E.O. 13423 and E.O. 13514, paragraph 7d would require implementation of water conservation strategies in Forest Service administrative and recreational uses and incorporation of these strategies in operating plans for new and reissued special use authorizations involving groundwater withdrawals from high-capacity wells and for public drinking water systems at the time of issuance or reissuance of the authorization.

Paragraph 8 would address measurement of groundwater withdrawals and injections on NFS lands, which is a key component of E.O. 13423 and the NSTC water strategy. Specifically, paragraph 8a would require measurement and reporting to the Forest Service of the quantity of water utilized for all public drinking water systems that withdraw water from NFS lands and that are classified as community water systems under the SDWA in applicable authorizations. For those affected public drinking water systems, this requirement would be added at the time of authorization, reauthorization, or modification. This requirement would be added to an existing authorization, if the authorization allows for amendment to incorporate new terms required by a directive at the discretion of the authorized officer or if the holder consents.

Paragraph 8b would require measurement and reporting of the quantity of water utilized for all groundwater withdrawals from high-capacity wells located on NFS lands (including those sourced from springs) in applicable authorizations. Withdrawals would not have to be measured or reported from wells equipped only with a hand or windmill pump. For those affected wells, this requirement would be added at the time of authorization, reauthorization, or modification. This requirement would be added to an existing authorization, if the authorization allows for amendment to incorporate new terms required by a directive at the discretion of the authorized officer or if the holder consents.

Paragraph 8c would require measurement and reporting of flows for all large water-injection wells located on NFS lands that open into a geologic formation containing fresh water (involving less than 1000 parts per million total dissolved solids) in applicable authorizations. For those affected wells, this requirement would be added at the time of authorization, reauthorization, or modification. This requirement would be added to an existing authorization, if the authorization allows for amendment to incorporate new terms required by a directive at the discretion of the authorized officer or if the holder consents.

Paragraph 9 would address compliance with groundwater requirements. In particular, paragraph 9a would provide for prevention of groundwater contamination by following applicable Federal, State, and local requirements and the applicable provisions of the Forest Service's Health and Safety Code Handbook and applying best management practices for all Forest Service activities involving transporting, storing, mixing, and applying pesticides and other potentially toxic or hazardous materials; cleaning, repairing and fueling equipment; and disposing of fuels,

lubricants, pesticides, or other potentially toxic or hazardous materials.

Paragraph 9b would require all Forest Service uses and activities that are authorized or to be authorized and that involve water wells (including monitoring wells) to be in compliance with applicable Federal, State, or local standards or, as applicable, American Society for Testing and Materials (ASTM), American Water Works Association (AWWA), National Ground Water Association (NGWA), or other water well industry standards for the design, construction, and abandonment of wells. This requirement would be added to existing and new authorizations for affected water wells.

Paragraph 9c would require that wells that are no longer needed or maintained to be abandoned in compliance with applicable Federal, State, or local standards or, as applicable, ASTM, AWWA, NGWA, or other water well industry standards for decommissioning wells. This requirement would be added to existing and new authorizations for affected water wells.

Paragraph 9d would require all Forest Service uses and activities that are authorized or to be authorized and that involve on-site wastewater systems, including septic systems and holding tanks, to be in compliance with applicable Federal, State, or local standards for the design, construction, operation, and maintenance of wastewater systems. This requirement would be added to existing and new authorizations for affected on-site wastewater systems.

In accordance with E.O. 13423 and E.O. 13514, paragraph 9e would require installation of appropriate water conservation equipment and utilization of suitable water conservation practices at all federally owned facilities.

Paragraph 9f would require Forest Service-operated drinking water systems that use groundwater to comply with EPA's National Primary Drinking Water Regulations, including the National Primary Drinking Water Standards. Paragraph 9f also would provide for holders that operate public drinking water systems using water wells located on NFS lands to comply with the National Primary Drinking Water Standards and to submit the results of any required monitoring to the Forest Service.

Paragraph 9g would require compliance with applicable State and EPA SDWA regulations in evaluating whether a groundwater source of drinking water is under the direct influence of surface water.

Paragraph 9h would require compliance with applicable Federal, State, tribal, and local requirements for wellhead and critical aquifer protection and underground injection control, including septic systems. Paragraph 9h also would require all underground injection wells (Classes I through V under the SDWA) on NFS lands to be inventoried with the appropriate State agency or EPA.

Paragraph 9i would require management of groundwater resources in municipal supply watersheds per applicable regulations and directives.

Paragraph 10 would address cleanup of contaminated groundwater. Specifically, paragraph 10a would require use of the procedures in FSM 2160 to conduct the appropriate response to contaminated groundwater or a potential threat of contamination of groundwater and to notify the National Response Center, as appropriate.

Paragraph 10b would require the use of the Forest Service's authority under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to ensure clean up of contaminated groundwater or otherwise respond to a potential threat of contamination resulting from a release or threat of a release of a hazardous substance, pollutant, or contaminant that presents an imminent and substantial danger to the public health or welfare.

In circumstances where exercise of Forest Service CERCLA authority may not be appropriate, paragraph 10c would require working with EPA or other Federal agencies under other applicable authorities, such as the Resource Conservation and Recovery Act, Surface Mining Control and Reclamation Act, or Clean Water Act, or working with States under applicable State authority to clean up contaminated groundwater or otherwise respond to a potential threat of contamination resulting from a release or threat of a release of a hazardous substance, pollutant, contaminant, or petroleum or petroleum product.

Paragraph 11 would address land valuation and groundwater. This proposed section would require that an appropriate assessment of potential groundwater availability be conducted by qualified groundwater personnel as part of the appraisal process when water availability may be of significance on NFS lands proposed for a land exchange.

2560.04—Responsibility

This proposed section delineates the duties of the specified Forest Service officials for implementation of the proposed groundwater policy.

2560.05—Definitions

This proposed section includes definitions of technical terms used in the proposed directive. There are a substantial number of definitions, and most are straightforward or standard in the field of groundwater science. The other material definitions follow.

Groundwater-dependent ecosystems would be defined to be communities of plants, animals, and other organisms that depend on access to or discharge of groundwater, such as springs, fens, seeps, areas of shallow groundwater, cave and karst systems, hyporheic and hypolentic zones, and groundwater-fed lakes, streams, and wetlands.

A high-capacity well would be defined as a well, a set of wells located within a limited area and accessing the same aquifer or spring system, or a spring development that is or is capable of withdrawing water at a continuous rate of 35 gallons per minute (equivalent to 50,400 gallons per day; 6,737 cubic feet per day; or 0.15 acre-feet per day) or greater based upon a capacity test, pumping test, or measured or estimated daily water usage. Non-artesian wells accessed only using a hand or windmill pump would be excluded from the definition of high-capacity wells. This definition would be consistent with the approach taken by most States that have defined non-irrigation high-capacity wells for water management purposes, and the flow rate in the definition is within the range of values established by those States. This flow rate is larger than that generally necessary to supply water to a single household and many small recreational enterprises.

A large water injection well would be defined to be an injection well utilized for water or wastewater that has a casing with an inside diameter of 4 inches or more. This casing size would be larger than that of most on-site wastewater disposal systems.

A publicly accessible water supply would be defined to be a water supply that is used to provide drinking water or water of potable or near-potable quality to a business, organization, or unit thereof; to a water distribution system that services more than one property, facility, or lease; or to a governmental facility, and that is not to be confused with a ''public water system'' defined in Forest Service policy and the SDWA.

A written authorization would be defined to be a grazing permit, plan of operations, special use authorization, or other type of written instrument issued by the Forest Service that authorizes the use and occupancy of NFS lands and resources subject to certain terms and conditions set forth in the instrument.

2560.08—References

This proposed section would reference the Forest Service Technical Guide to Managing Ground Water Resources, FS–881, May 2007 (Technical Guide).

2561—Consideration of Groundwater Resources in Agency Projects, Approvals, and Authorizations

This proposed section would establish procedures for addressing consideration of the effects on groundwater resources on NFS lands during decisionmaking for agency projects, approvals, and authorizations. This proposed section would address the potential effects on groundwater resources from the conjunctive use of groundwater and surface water, minerals development, and tunneling operations and the potential effects on groundwater quality from other authorized uses.

In particular, paragraph 1 would require the Forest Service to assume that groundwater and surface water are hydrologically connected, unless demonstrated otherwise using site-specific data. This assumption is consistent with scientific understanding of the role and importance of groundwater in the planet's hydrological cycle.

Paragraph 2 would require the Forest Service to assess the potential for proposed projects, approvals, and authorizations to affect groundwater resources on NFS lands prior to implementation or approval. In addition, if there is a high probability of substantial impact on groundwater resources on NFS lands, an evaluation of those potential impacts must be conducted in a manner appropriate to the scope and scale of the proposal.

Paragraph 3 would require the Forest Service to include in new and reissued written authorizations, terms that require the holder to provide the Forest Service all groundwater monitoring data and information collected in compliance with applicable local, State, and other Federal requirements.

2561.1—Conjunctive Uses of Groundwater and Surface Water

For proposed actions involving the conjunctive use of groundwater and surface water, paragraph 1 would require the Forest Service to consider the effects of the actions upon water resources, including but not limited to the effect on quantity, quality, timing, and spatial distribution. In addition, paragraph 2 would require the Forest Service to evaluate effects on water resources from proposed conjunctive uses through a hydrological assessment of the project area. Conjunctive use of groundwater and surface water for water supply needs can maximize the productive use of limited supplies of water. However, depending on the specifics of the system and its hydrological setting, the potential exists for substantial impacts on aquifer water quality and on the viability of linked groundwater-dependent ecosystems. These provisions would help ensure that these concerns are adequately addressed in Forest Service decisionmaking.

2561.2—Minerals and Energy Development

This proposed section would apply to Forest Service actions involving locatable and leasable mineral mining; mineral materials development; oil, gas, and coal-bed methane development; and geothermal development. In addition, this proposed section would require the Forest Service for mining purposes to work with the appropriate entity under the SDWA to make sure that written authorizations for minerals or energy development appropriately address compliance with the Underground Injection Control Program. If not conducted appropriately, minerals and energy development activities have the potential to adversely affect groundwater resources on NFS lands. These provisions would help ensure that such concerns are adequately addressed in Forest Service decisionmaking.

2561.21—Locatable Mineral Mining

This proposed section would require that groundwater resources be addressed appropriately at both existing and proposed locatable mineral mines. The section would clarify that allowing use of groundwater for mining is a discretionary action to be addressed through authorization in the mining Plan of Operations. Facilities at existing mines would be evaluated as potential sources of groundwater contamination and would be monitored appropriately. Prior to approval, plans of operation for proposed mines would have to include provisions for appropriate operating procedures, facility designs, bonding, and groundwater monitoring. In reviewing a plan of operations for a proposed mine, the Forest Service would have to evaluate the mine's potential to adversely affect groundwater resources.

2561.22—Leasable Mineral Mining

This proposed section would require the Forest Service to consider the potential for proposed leasable mineral mines to adversely affect groundwater resources and to recommend to the leasing and permitting agencies appropriate lease terms, design modifications, and approval conditions, as applicable, to protect groundwater resources on NFS lands.

2561.23—Mineral Materials Development

This proposed section would require the Forest Service to consider the effects on groundwater resources of proposed mineral materials development, such as sand and gravel operations and landscaping stone quarries, prior to approval. Additionally, the Forest Service would be required to include appropriate terms to protect groundwater resources in any new contracts or authorizations for mineral materials development.

2561.24—Oil, Gas, and Coal-Bed Natural Gas Operations

This proposed section would require the Forest Service to work with the Bureau of Land Management (BLM) to gather relevant information regarding oil, gas, and coal-bed natural gas operations. Evaluation of the potential effects of oil, gas, and coal-bed natural gas exploration and development on groundwater resources would be required prior to consenting to lease NFS lands and prior to approving surface use plans of operations for those purposes. A specific geological and hydrogeological assessment would be required for leasing or development of non-traditional shallow natural gas, such as coal-bed methane. The Forest Service would be required to work with BLM and the appropriate Clean Water Act and SDWA agencies to develop terms for leases and surface use plans of operations, when necessary, for monitoring and protecting water resources on NFS lands during oil, gas, and coal-bed natural gas exploration and development. Additionally, the Forest Service would be required to work with BLM and the appropriate SDWA agency to evaluate the capability of local geological formations to accept injected production waters from oil, gas, and coal-bed natural gas development operations.

2561.25—Geothermal Resource Operations

This proposed section would require the Forest Service to work with BLM to gather relevant information regarding geothermal operations. Evaluation of the potential effects of geothermal exploration and development on groundwater resources would be required prior to consenting to lease

NFS lands and prior to approving surface use plans of operations for that purpose. The Forest Service would be required to provide to BLM appropriate terms for geothermal leases and recommendations for geothermal authorizations to protect groundwater resources. Additionally, the Forest Service would be required to work with BLM and the appropriate SDWA agency to evaluate the capability of local geological formations to accept injected production waters from geothermal development operations.

2561.3—Tunneling Operations

This proposed section would require the Forest Service to evaluate proposed tunneling operations beneath NFS lands that are not approved as part of an authorized minerals or energy development for their potential to affect water resources on NFS lands. The Forest Service would be required to conduct environmental analyses that include evaluation of groundwater resources, as appropriate to the proposal and its setting. In addition, the Forest Service would be required to utilize appropriate expertise to address potential issues associated with tunneling projects. If not conducted appropriately, tunneling activities have the potential to adversely affect groundwater resources on NFS lands. These provisions would help ensure that these concerns are adequately addressed in Forest Service decisionmaking.

2561.4—Effects of Authorized and Administrative Uses on Groundwater Quality

This proposed section would provide that before authorizing uses that are not approved as part of an authorized minerals or energy development or conducting activities with a significant potential to adversely affect groundwater quality, the Forest Service must perform appropriate analyses, understand the range of potential impacts, and develop appropriate monitoring and mitigation measures. In addition, this section would require the Forest Service to encourage these activities to be sited on non-NFS lands. If not conducted appropriately, many uses of NFS lands have the potential to adversely affect the quality of groundwater on NFS lands. These provisions would help ensure that such concerns are adequately addressed in Forest Service decisionmaking.

2562—Source Water Protection and Water Supplies

This proposed section would require the Forest Service to work with EPA, State and local governments, tribes, drinking water providers, and holders of special use authorizations to protect drinking water systems located entirely or partially on NFS lands through delineation and appropriate management of source water protection areas under the SWDA and applicable State law.

In addition, this proposed section would clarify that NFS lands designated as source water protection areas under the SWDA or applicable State law should be managed in accordance with regulations and directives governing management of municipal supply watersheds. This proposed section would encourage treatment of degraded water in lieu of siting new water supplies on NFS lands.

Source water management and protection are necessary for the sustainability of NFS lands. The provisions of this section would reinforce their significance in Forest Service decisionmaking.

2562.1—Authorizations for Water Supply Facilities

This proposed section would clarify the existing requirement that public water suppliers and other proponents and applicants for authorizations involving water supply facilities on NFS lands provide an evaluation of all other reasonable alternatives to the Forest Service before authorizing access to new water sources or increased capacity at existing water sources on NFS lands, unless the proposed use is entirely on NFS lands or the proponent or applicant is a public water supplier and the proposed water source is located in a designated municipal watershed. In addition, this proposed section would require all Forest Service uses and activities that are authorized or to be authorized and that involve a water supply to have water conservation strategies for limiting total water withdrawals from NFS lands, as deemed appropriate by the authorized officer depending on the type of use; existing administrative and other authorized uses in the area; the physical characteristics of the setting; and other relevant factors. For those affected water supply uses authorized or to be authorized under a special use authorization, this requirement would be added at the time of issuance or reissuance of the authorization or approval of modification of the authorized use. This requirement would be added to an existing authorization, if the holder consents.

2562.11—Siting of Water Supply Facilities in Response to Water Supply Emergencies

This proposed section would require that local public water suppliers develop safeguards, contingencies, and, when possible, plans that can serve as an acceptable permanent solution when proposing to develop new or expanded water supply facilities on NFS lands in response to emergency water supply shortages.

2563—Authorizations Involving Water Wells or Water Pipelines

This proposed section would apply only to water wells or water pipelines that are authorized under special use authorities. This proposed section would not apply to water wells and water pipelines authorized under other statutes, such as minerals and energy laws. Water wells and spring developments, both on and adjacent to NFS lands, have the potential to substantially affect ground and surface waters and the ecosystems they support well beyond the area in proximity of the water withdrawal. These provisions would help ensure that such concerns are adequately addressed in Forest Service decisionmaking.

The Technical Guide contains some case studies of water well proposals in the Forest Service Southwestern Region and includes a flow chart (fig. 1 of the Technical Guide) illustrating the decisionmaking process from proposal to authorization of a use. Note that FSM 2560 is referred to as FSM 2543 in the Technical Guide.

2563.1—General Requirements for Authorizing Water Wells and Water Pipelines

This proposed section would clarify that existing policy regarding special uses of NFS lands applies to proposed uses of water resources.

2563.2—Pre-Proposal Meetings for Proponents of New Water Wells or Water Pipelines

This proposed section would establish procedures for evaluating special use proposals for water wells or water pipelines to minimize the resources expended by both proponents and the Forest Service. In addition, this proposed section would provide that the Forest Service must require proponents of new water wells or water pipelines to submit copies of other water-related permits, approvals, and compliance documentation required for the proposed project.

2563.3—Requirements for Proposals Involving New Water Wells or Water Pipelines

This proposed section would reinforce that proposed uses of water resources are subject to existing policy regarding denying approval of special uses when they could be conducted on non-NFS lands and NFS lands are proposed merely because they afford a lower cost or less restrictive location. In addition, this proposed section would clarify the information needed to complete second-level screening of proposals for water wells or water pipelines. These clarifications would help both the Forest Service and proponents better understand expectations for proposals for use of groundwater resources, respond consistently, and better plan for and minimize costs.

Specifically, paragraph 2a would require the Forest Service to ensure that proposals identify current and anticipated quantities of water involved and, for water withdrawals, the beneficial uses of the water. If a proponent seeks to inject water into a geological formation containing fresh water, the Forest Service would have to ensure that the proposal identify the quantity, sources, and quality of both the proposed source of the injection and the receiving waters and the likely effects on NFS resources. In addition, the Forest Service would have to ensure that proponents of all community water systems, high-capacity wells, and injection wells that open into geological formations containing fresh water propose to equip the water systems and wells with flow metering devices and to maintain the devices in good working order.

Paragraph 2b would require the Forest Service to ensure that any proposal to withdraw groundwater underlying NFS lands using a well or set of wells within a limited area or from springs on NFS lands include the use of appropriate water conservation measures.

Paragraph 2c would require the Forest Service to ensure that proposals for water wells or water pipelines include sufficient information, including a description of the geological and hydrological setting and the drilling methods to be employed, to demonstrate that there is a reasonable likelihood of successfully completing any water wells proposed to be located on NFS lands and adequately mitigating any associated resource damage from drilling activities.

Paragraph 2d would require the Forest Service to ensure that proposals for water wells or water pipelines identify anticipated associated facilities, such as roads, power lines, pipelines, water storage tanks, runoff control basins, and pumping stations, that are expected to be needed to produce, inject, or convey water on or across NFS lands.

Paragraph 2e would require the Forest Service to ensure that proposals for water wells or water pipelines identify key resources and existing water withdrawals in the vicinity of the proposed project to allow for evaluation of its potential to adversely affect NFS resources and facilities and neighboring non-NFS water supplies.

2563.4—Requirements for All Applications Involving Water Wells or Water Pipelines

This proposed section would clarify procedures for applicants for proposed uses of NFS lands involving water wells or water pipelines. In particular, paragraphs 1 and 2 would clarify that applicants for water wells and water pipelines are responsible for informing the Forest Service of any State and local water permits that are necessary for the proposed activity and that issuance of an authorization by the Forest Service is contingent upon the applicant receiving all necessary State and local water-related approvals.

Paragraphs 3 and 4 would require applicants to evaluate potential impacts upon groundwater and surface water resources from new water wells and injection wells that would be drilled on NFS lands and new pipelines that would transport water across NFS lands.

Paragraph 5 would clarify existing policy that Forest Service CERCLA response actions are not subject to NEPA procedures. Paragraph 6 would clarify that any application that would compromise groundwater resources on NFS lands would be denied.

2563.5—Additional Requirements for Applications for Certain Water Supplies

This section would require the Forest Service to ensure that applicants for new or reissued authorizations for publicly accessible water supplies that utilize high-capacity wells submit a water supply development and operation plan that would be subject to the approval of the authorized officer. This provision would help both the Forest Service and the holder understand the nature of the water sources involved and would enhance the Forest Service's ability to manage them appropriately. The water supply development and operation plan would have to:

a. Address development and implementation of source water protection plans for water supply wells and well fields used for drinking water in accordance with applicable State and local procedures.

b. Characterize the groundwater systems from which the water is sourced and connections to surface water at a scale and resolution appropriate to the water withdrawal.

c. Provide for periodic water quality monitoring at each water source and, as appropriate, at nearby potential contaminant sources, including any CERCLA or equivalent State removal or remediation sites.

d. Provide for regular reporting to the Forest Service in an electronic format acceptable to the agency of the results of all monitoring and testing, including monitoring and testing required by local, State, or other Federal agencies.

e. Include a copy of all water-related permits or approvals required by local, State, or other Federal agencies or, if pending, the applications for those permits or approvals.

f. Include a contingency plan addressing safeguarding of facilities, provision of alternate water supplies, and response to potential contamination.

2563.6—Additional Analyses for Applications Involving Water Wells or Water Pipelines

This proposed section would establish additional procedures for testing and analysis that would apply case by case when evaluating applications for new uses that include high-capacity water wells, water wells with the potential to adversely affect important groundwater-dependent ecosystems, or pipelines crossing NFS lands or when evaluating applications involving modifications to existing uses involving these water wells or pipelines. This proposed section would establish consistent procedures for evaluation of complex applications involving the use of groundwater resources on NFS lands. This proposed section is based upon existing procedures established in the Forest Service Southwestern Region supplement to FSM 2540.

2563.7—Terms and Conditions in Special Use Authorizations for Water Wells and Water Pipelines

This section would require inclusion of a provision in new or reissued special use authorizations involving water wells and water pipelines that allows modification of their terms and conditions at the discretion of the authorized officer if:

1. Deemed necessary to comply with applicable laws or regulations, the applicable land management plan, or project decisions implementing a land

management plan pursuant to 36 CFR part 215; or

2. Deemed necessary, based on a written analysis conducted by qualified groundwater personnel, an aquatic biologist, or another similarly trained professional of the results of monitoring, to prevent the authorized groundwater withdrawals or injections from significantly reducing the quantity or unacceptably modifying the quality of surface or groundwater resources on NFS lands.

The provisions of this section are crucial to the Forest Service's ability to manage NFS lands using the principles of adaptive management; no one can foresee all exigencies—especially those related to climate change. The Forest Service believes that the scope of these provisions is appropriately limited to protect holders and their investments from unnecessary and unreasonable modifications to the terms of new and reissued authorizations for water wells and water pipelines.

2563.8—Monitoring and Mitigation for Water Wells and Water Pipelines

This proposed section would provide guidance to the Forest Service and authorization holders regarding consistent application and use of monitoring and mitigation to evaluate and protect groundwater resources on NFS lands. The Forest Service believes that this approach to monitoring and mitigation is reasonable and consistent with approaches used by other governmental agencies with responsibilities to protect and manage water resources.

Paragraph 1 would provide that all new or reissued authorizations involving water wells or water pipelines that have a substantial potential to adversely affect groundwater resources on NFS lands be monitored in a manner appropriate to the scale and nature of the potential effects. Paragraph 2 would provide that mitigation measures be incorporated where appropriate to protect NFS resources and that those measures be monitored and evaluated. Paragraph 3 would require holders of authorizations that involve monitoring or mitigation to address implementation of mitigation measures and monitoring of those measures in their operating plan.

Paragraph 4 would require that if monitoring detects insufficiency of mitigation measures or additional or unforeseen adverse impacts on NFS resources from groundwater withdrawals or injections, the Forest Service notify the holder and work with the holder to identify alternative mitigation measures that adequately protect NFS resources. In addition, paragraph 4 would provide for adding monitoring or mitigation measures, changing or limiting the activities authorized, modifying the holder's operations, or otherwise modifying the terms and conditions of the authorization if deemed necessary, based on an analysis conducted by qualified groundwater personnel, an aquatic biologist, or another similarly trained professional of the results of monitoring, to prevent the authorized groundwater withdrawals or injections from significantly reducing the quantity or unacceptably modifying the quality of surface or groundwater resources on NFS lands.

Paragraph 5 would provide that if monitoring or mitigation is not conducted as required by the authorization, the Forest Service would provide notice and an opportunity to correct the deficiencies and take appropriate action in accordance with applicable regulations and the special use authorization.

2564—Measuring and Reporting Volume of Extracted or Injected Water

This proposed section would require holders of new and reissued special use authorizations involving water uses to:

1. Measure in gallons per day or liters per day, on a continuous basis, the volume of groundwater extracted for all public water systems classified as community water systems and for all Forest Service and other authorized uses that involve a high-capacity well. Measurement of withdrawals from wells equipped only with a hand or windmill pump would not be required.

2. Measure in gallons per day or liters per day, on a continuous basis, the volume of water injected into the ground from wells on NFS lands that have a casing with an inside diameter of 4 inches or more.

3. Report measured groundwater withdrawals and injections quarterly, or more frequently if appropriate, in an electronic format acceptable to the Forest Service.

4. Report to the Forest Service on the same timetable in an electronic format acceptable to the Forest Service any groundwater withdrawal, injection, or use that is reported to State or local authorities.

5. Holders of existing authorizations would be required to measure and report groundwater withdrawals and injections at the time of reissuance of the authorization or approval of modification of the authorized use. This requirement would be added to an existing authorization, if the holder consents.

Withdrawal from the groundwater and injection into the groundwater have the potential to substantially affect ground and surface waters and the ecosystems they support well beyond the area in proximity to the withdrawal or injection. To understand and appropriately manage groundwater use on NFS lands under future constraints of climate and land use changes and increasing societal needs for water, the Forest Service needs to know the current State of the resource and the extent of its use. These proposed provisions would help ensure that appropriate information is available for Forest Service decisionmaking. The Forest Service recognizes that limiting measurement and reporting to those wells or sets of wells that meet the definition of a high-capacity well will result in the loss of some information on groundwater uses on NFS lands. Following implementation and the development of better information on groundwater use on NFS lands, the Forest Service will evaluate whether wells that do not meet the definition of a high-capacity well should also be required to measure and report. Items 1 through 3 above would not apply to authorized minerals or energy development on NFS lands.

2565—Cleanup of Contaminated Groundwater

This proposed section would clarify Forest Service responsibilities to address cleanup of contaminated groundwater on NFS lands under existing authorities.

2566—Information and Data Management for Groundwater

This proposed section would clarify Forest Service responsibilities to collect and manage groundwater data using servicewide data standards and systems.

2567—Legal Considerations in Managing Groundwater Resources

This proposed section would emphasize the need to work cooperatively with States and other appropriate entities to manage groundwater resources on NFS lands and to ensure that applicable Federal statutes are appropriately implemented.

Paragraph 1 would provide for working cooperatively with State agencies to ensure that applicable State and Federal water-related laws and regulations are implemented on NFS lands so as to allow the Forest Service to provide for multiple uses such as outdoor recreation, authorized special uses and livestock grazing, and fish and wildlife management. Paragraph 1 also would provide for negotiation and

collaboration with appropriate State agencies whenever possible, including establishing a process for mutual consultation on groundwater-related issues on NFS lands.

Paragraph 2 would require compliance with the rules promulgated under the SDWA, including those governing underground injection control, and other applicable Federal laws and regulations to protect groundwater resources on NFS lands.

Paragraph 3 would require the Forest Service to comply with applicable direction and applicable State law when filing groundwater use claims during State water rights adjudications and administrative proceedings. Paragraph 3 also would require application of the Reservation or Winters Doctrine to groundwater, as well as surface water, consistent with the purposes of the Organic Administration Act, the Wild and Scenic Rivers Act, and the Wilderness Act.

Paragraph 4 would require the Forest Service to work cooperatively with the Department of the Interior and affected tribes during tribal water settlement negotiations involving NFS groundwater resources.

Paragraph 5 would require consultation with the Office of the General Counsel whenever specific questions arise regarding groundwater laws and regulations and would reference a source for additional guidance and information on laws, rules, regulations, and case law related to groundwater in the 43 States and territories containing NFS lands.

2568—Strategies for Sustaining Groundwater Resources

This proposed section would provide guidance on sustainable management of groundwater resources on NFS lands. In particular, this proposed section would provide for:

1. Collaboration with State, local, and other Federal agencies and Tribes to sustain the availability and usability of groundwater over the long term through the use of conventional and innovative approaches.

2. Consideration of conjunctive use of surface and groundwater, artificial recharge of water, and appropriate use of recycled and reclaimed water where those approaches also protect the quality of the receiving water and affected water-dependent ecosystems.

3. Protection of local groundwater resources through utilization of one or more of the following conventional strategies where impacts on surface and groundwater resources are deemed acceptable:

a. Modification of rates or spatial patterns of groundwater withdrawal.

b. Use of water sources other than local groundwater or importation of surface or groundwater from outside the basin where laws, water quality, and channel conditions allow.

Regulatory Certifications

Environmental Impact

This proposed directive would establish direction for management of groundwater resources on NFS lands as a component of watersheds. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. The Agency's assessment is that this proposed directive falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This proposed directive has been reviewed under USDA procedures and E.O. 12866 on regulatory planning and review. It has been determined that this is not a significant directive. This directive would not have an annual effect of $100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This proposed directive would not interfere with an action taken or planned by another agency, nor would it raise new legal or policy issues. Finally, this proposed directive would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, this proposed directive is not subject to review by the Office of Management and Budget under E.O. 12866.

This proposed directive has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This proposed directive would have the potential to have economic impacts on small entities. Therefore, a preliminary regulatory flexibility analysis was conducted using available information on existing special use authorizations and small business receipts. Based on (1) the relatively low number of special use authorizations potentially affected, (2) the relatively low percentage of annual costs as a percentage of annual receipts for small businesses, and (3) the uncertainty and conservative assumptions associated with estimates of costs and small entity populations, the results suggest that impacts on small entities from the proposed directive would not be significant or substantial. Any additional data the Agency is able to obtain about ranges of costs, as well as populations of small entities associated with special use authorizations affected by the proposed directive, should help confirm these observations and provide information to guide any necessary additional mitigation of potential impacts under the final directive. Based upon the preliminary regulatory flexibility analysis and any additional analyses that may be conducted prior to publication of the final directive, the Forest Service believes that it will be able to certify that the final directive will not have a significant economic impact on a substantial number of small entities.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Forest Service has considered this proposed directive under the requirements of E.O. 13132 on federalism. The Agency has determined that the proposed directive conforms with the federalism principles set out in this E.O.; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further determination of federalism implications is necessary at this time.

The Forest Service has initiated tribal consultation per E.O. 13175, Consultation and Coordination with Indian Tribal Governments. The consultation period is anticipated to extend through the duration of the public comment period, for at least 120 days.

No Takings Implications

This proposed directive has been analyzed in accordance with the principles and criteria in E.O. 12630. It has been determined that this proposed directive does not pose the risk of a taking of private property.

Civil Justice Reform

This proposed directive has been reviewed under E.O. 12988 on civil justice reform. After adoption of this proposed directive, (1) all State and

local laws and regulations that conflict with this proposed directive or that impedes its full implementation would be preempted; (2) no retroactive effect would be given to this proposed directive; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the agency has assessed the effects of this proposed directive on State, local, and tribal governments and the private sector. This proposed directive would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Energy Effects

This proposed directive has been reviewed under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply. The Agency has determined that this proposed directive does not constitute a significant energy action as defined in the E.O.

Controlling Paperwork Burdens on the Public

This proposed directive may contain recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 may apply. The Forest Service has identified three existing approved information collections that may be affected by this proposed directive: 0596–0022, Locatable Minerals; 0596–0081, Disposal of Mineral Materials; and 0596–0082, Special Use Administration. Any change in the approved information collection and increases in burden under the final directive will be addressed at the time of regularly scheduled renewal of or through an amendment to the approved information collection.

Text of the Proposed Directive

Reviewers may obtain a copy of the proposed directive from the Forest Service Minerals and Geology Management Staff Web site, *http://www.fs.fed.us/geology/groundwater,* or from the Regulations.gov Web site, *http://www.regulations.gov*.

Dated: April 30, 2014.

Robert Bonnie,

Under Secretary, NRE.

[FR Doc. 2014–10366 Filed 5–5–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

[0596–AC71]

Proposed Directives for National Best Management Practices (BMPs) for Water Quality Protection on National Forest System (NFS) Lands

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed directives; request for public comment.

SUMMARY: The Forest Service proposes to revise Forest Service Manual (FSM 2500) and Handbook (FSH 2509.19) directives for best management practices (BMPs) for water quality protection on National Forest System (NFS) lands to establish a National system of BMPs and associated monitoring protocols and require their use on NFS lands in order to meet existing mandates under the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act) (Pub. L. 92–500) and corresponding State laws. The National system of BMPs would provide a systematic approach to protect water quality from land and resource management activities taking place on National forests and grasslands and utilize suitable monitoring, and established Regional, State, Tribal, and local BMPs. These proposed revisions would help ensure the consistent use and monitoring of BMPs and provide appropriate analyses for evaluating BMP implementation and effectiveness on a regular basis. Public comment is invited and will be considered in development of the final directives.

DATES: Comments must be received by July 7, 2014.

ADDRESSES: Submit comments electronically by following the instructions at the federal eRulemaking portal at *http://www.regulation.gov.* Comments may also be submitted by electronic mail to *fsm2500@fs.fed.us* or by mail to BMP Directive Comments, USDA Forest Service, Attn: Michael Eberle —WFWARP, 201 14th St. SW., Washington, DC 20250. If comments are submitted electronically, duplicate comments should not be sent by mail. Please confine comments to issues pertinent to the proposed directive, explain the reasons for any recommended changes, and, where possible, reference the specific section and wording being addressed. All comments, including names and addresses when provided, will be placed in the record and will be made available to the public for review and copying. The public may inspect the comments received on the proposed directive at the USDA Forest Service Headquarters, located in the Yates Federal Building at 201 14th Street SW., Washington, DC, on regular business days between 8:30 a.m. and 4:30 p.m. Those wishing to inspect the comments are encouraged to call ahead at (202) 205–1205 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Michael Eberle, Watershed, Fish, Wildlife, Air and Rare Plants Staff at (202) 205–1093. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service at (800) 877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

1. Background and Need for the Proposed Directive

The Clean Water Act directs States and Tribes to develop BMPs to control water pollution from nonpoint sources. The Forest Service has a long history of using BMPs on NFS lands in cooperation with Federal, State, Tribal, and local water quality agencies. However, there has been no systematic, National approach that provides for consistent, credible documentation for BMP implementation and effectiveness with regard to land and resource management activities on NFS lands.

The Forest Service recently placed renewed emphasis on water resources and subsequently developed several new initiatives for watershed protection and restoration which involve accelerated restoration, climate change, integrated resource management, fire-adapted ecosystems, and the Agency-wide water framework. These efforts clarify the Forest Service need to improve performance and accountability in BMP implementation and effectiveness. The need for a more systematic approach to BMPs was incorporated into the 2012 Land Management Planning Rule, which includes a provision requiring the Agency to establish requirements for National water quality BMPs in its directive system (36 CFR Part 219.8(a)(4)).

The Forest Service manages 193 million acres of Federal lands, much of which are located in the headwaters and

recharge areas of the Nation's water supplies. NFS lands provide sources of drinking water for people in 42 states and the Commonwealth of Puerto Rico. Thus, the Forest Service plays a critical role in the maintenance of water resource integrity associated with NFS lands and plans to take an active role, in cooperation with the States and Tribes, in the comprehensive management of water resources on those lands. The Washington Office, Watershed, Fish, Wildlife, Air and Rare Plants staff propose to amend the Forest Service Manual (FSM) 2532 and adopt Forest Service Handbook (FSH) 2509.19 as a key component of this effort.

The Forest Service National BMP Program is a key resource management initiative in the agency. The Forest Service has successfully implemented BMPs for many years, often using individual State-by-State approaches and documentation requirements. However, within the last decade, it has become apparent that the lack of a National, systematic approach to document BMP implementation and effectiveness limits the Agency's ability to respond adequately to water quality concerns both on and adjacent to NFS lands. The Forest Service recognizes a need to establish a Nationally-consistent approach to address BMP implementation and effectiveness to clearly document the Agency's efforts to protect water resources. The establishment of clear national direction for BMP use and monitoring, for implementation on all NFS lands, would meet this need.

NFS lands were set aside or acquired, at least in part, for the protection and management of water resources pursuant to statutory direction from Congress and the Forest Service recognizes the need to address water quality protection in a comprehensive manner. The Agency also recognizes that States, Tribes, and local governments also have responsibilities for water quality and that the management of water resources needs to be conducted cooperatively with those entities to be successful. Many States, Tribes, local governments, Federal Agencies, Forest Service Regions, and other entities have well-developed BMP programs that have been successfully implemented for many years. The Forest Service recognizes the importance of leveraging local knowledge to effectively protect water quality. Applicable State, Tribal, and local requirements and BMP programs, Forest Service regional guidance, and unit Land Management Plans are expected to provide the criteria for site-specific BMP prescriptions. This approach provides for the integration of the National program with existing BMPs.

The Forest Service currently provides general direction to use BMPs in FSM 2530, entitled ''Water Resources Management'' (FSM 2532). The revisions to FSM 2532 would require the use of the Agency's National Core BMPs and National Core BMP Monitoring Protocols detailed in Agency technical guides FS–990a (April 2012) and FS–990b (in development), respectively. The technical guides can be found at: *http://www.fs.fed.us/biology/resources/pubs/watershed/FS_National_Core_BMPs_April2012.pdf.* The new FSH 2509.19 formally sets the requirements for the National Core BMPs and Monitoring Protocols. The proposed revisions to FSM 2532 and proposed new FSH 2509.19 are being published for public notice and comment as required by the National Forest Management Act (16 USC 1612(a)) because they establish new policies and procedures for water resources management on NFS lands. The proposed directives can be found at: *http://www.fs.fed.us/biology/watershed/index.html.*

2. Section-by-Section Analysis of Proposed Changes to FSM 2532, Water Quality Management

Summary of Proposed Changes

Under the proposed directives:

- The National Best Management Practices Program would be formalized as the method for control of non-point sources of water pollution to achieve established Federal, State, Tribal or local water quality requirements.
- Implementation of the program would be required on all NFS lands.
- Forest Service staff roles and responsibilities would be modified to emphasize the establishment, implementation, and maintenance of the National BMP Program.
- Definitions for Best Management Practices for Water Quality (BMPs), National Core BMPs, National Core BMP Monitoring Protocols, and Reporting Period would be added for clarity.
- References would be added for guidance.

Some typographical errors would be corrected and necessary numbering changes would be made.

2532.01—Authorities

This section would be modified to add a reference to the legal authority for the establishment of agency requirements for BMPs for water quality.

2532.03—Policy

This section would be modified to address the policies for water resource management on NFS lands. Paragraph 1 would be modified to provide direction for establishing and applying the National BMP Program to all land and resources management activities to achieve all applicable water quality goals.

2532.04—Responsibility

This section would be modified to align the duties of the specified Forest Service staff with the modifications to the water quality management manual. The modifications would emphasize the establishment, implementation, and maintenance of the National BMP Program.

2532.05—Definitions

This section would be modified to include four new definitions of technical terms used in the proposed directives. Definitions would be added for ''Best Management Practices for Water Quality (BMPs),'' ''National Core BMPs,'' ''National Core BMP Monitoring Protocols,'' and ''reporting period,'' because they are key terms used in the proposed directives to explain the new National BMP Program. These definitions explain that the National Core BMPs and associated Monitoring Protocols are nationally standardized and apply to the broad range of activities that occur on all NFS lands.

2532.06—References

This proposed section would reference two Forest Service technical guides that provide details on the National Core BMPs and the associated monitoring protocols (National Best Management Practices for Water Quality Management on National Forest System Lands, Volume 1: National Core BMPs, FS–990a, and Volume 2: National Core BMP Monitoring Protocols, FS–990b).

2532.4—National BMP Program

Proposed Paragraph 1

The paragraph would be modified to contain a general description of the National BMP Program. Proposed paragraph 1 would explain that the National BMP Program is consistent with existing water quality programs and will be standardized to be nationally consistent and use an adaptive management approach to improve Agency compliance with the Clean Water Act and State and Tribal water quality programs.

Proposed Paragraph 2

Proposed paragraph 2 would establish the various parts of the National BMP Program and direct the use of the program on all NFS lands.

Proposed Paragraph 3

Proposed paragraph 3 would explain how the National Core BMPs are intended to integrate with existing State, Tribal, or local BMPs to meet the objectives of the program.

3. Section-by-Section Analysis of Proposed Changes to FSH 2509.19, National Best Management Practices

2509.19—National BMP Program

Zero Code

This proposed chapter would establish the authority, objectives, policy, responsibilities, definitions, and references pertinent to the National BMP Program.

2509.19 01—Authority

This proposed section would reference both the FSM 2501 and the Land Planning regulation (36 CFR Part 219.8(a)(4)) for the authorities for water quality management on NFS lands.

2509.19 02—Objectives

This proposed section would establish the primary objective of the National BMP Program Handbook (Handbook) which is to create a nationally consistent approach to water quality protection for land and resource management activities on NFS lands.

Proposed Paragraph 1

Paragraph 1 would establish the objective of using BMPs to protect soil, water quality, and riparian resources to meet the intent of laws, Executive Orders, and USDA directives.

Proposed Paragraph 2

Paragraph 2 would establish the objective of providing a consistent process for rating and reporting the implementation and effectiveness of BMPs.

Proposed Paragraph 3

Paragraph 3 would establish the objective of applying adaptive management strategies to improve water quality protection if BMP implementation or effectiveness problems are found.

2509.19 03—Policy

Proposed Paragraph 1

This proposed section would provide the specific policy statements for the National BMP Program. Paragraph 1 would provide for a consistent national approach for the application of nonpoint source pollution management strategy on NFS lands.

Proposed Paragraph 2

Paragraph 2 would provide for adaptive management principles to be incorporated into the BMP Program.

Proposed Paragraph 3

Paragraph 3 would establish the use of National Core BMPs in land management activities as the method to meet established water quality goals. Paragraph 3a would direct the use of applicable direction or guidance to develop site-specific BMP prescriptions. Paragraph 3b would direct the proper installation and maintenance of appropriate site-specific BMP prescriptions to maintain or improve water quality.

Proposed Paragraph 4

Paragraph 4 would establish the use of National Core BMP Monitoring Protocols and reporting system. This paragraph would also provide guidance for monitoring BMP implementation and effectiveness and associated data management.

Proposed Paragraph 5

Paragraph 5 would establish the use of BMP monitoring results to inform adaptive management processes, improve administrative procedures, and enhance coordination with other agencies.

Proposed Paragraph 6

Paragraph 6 would provide for the sharing of BMP monitoring findings with partners.

2509.19 04—Responsibility

This proposed paragraph would reference FSM 2532.04 for the responsibilities that apply to this section.

2509.19 05—Definitions

This proposed section would include definitions of terms used in the proposed directive. Definitions would be added for ''Adaptive Management,'' ''Adaptive Monitoring,'' ''Aquatic Management Zone, '' ''Beneficial Use,'' ''BMP Effectiveness Monitoring,'' ''BMP Implementation Monitoring,'' ''Regional BMP Supplement,'' ''Reporting period,'' ''Site-specific BMP prescriptions,'' ''Water quality,'' and ''Waterbody.''

2509.19 06—References

This section would provide three additional references to those listed in the references section in the Water Quality Management Manual (FSM 2532.06).

Chapter 10—National Core Best Management Practices

This proposed chapter would establish direction for development of the National Core BMPs.

2509.19 10.3—Policy

This proposed section would provide specific policy statements for the National Core BMPs.

Proposed Paragraph 1

Paragraph 1 would provide the purpose for the National Core BMPs.

Proposed Paragraph 2

Paragraph 2 would describe the National Core BMPs primary function, how they relate to existing State, Tribal, and local BMPs, and how they can be utilized to protect water quality.

2509.19 11—Resource Categories for National Core BMPs

This proposed section would introduce resource management categories to facilitate the organization and development of the National Core BMPs.

2509.19 11.1—General Planning Activities

This proposed section would direct that the National Core BMPs provide guidance for the appropriate BMPs to use in land management planning and project planning.

2509.19 11.2—Aquatic Ecosystems Management Activities

This proposed section would direct that the National Core BMPs provide guidance for the appropriate BMPs to use while restoring aquatic ecosystems and working in or near waterbodies.

2509.19 11.3—Chemical Use Management Activities

This proposed section would direct that the National Core BMPs provide guidance for the appropriate BMPs to use while working with chemical products.

2509.19 11.4—Facilities and Non-Recreation Special Uses Management Activities

This proposed section would direct that the National Core BMPs provide guidance for the appropriate BMPs to use while constructing, operating, and restoring facilities and facility sites, and other non-recreation special uses.

2509.19 11.5—Wildland Fire Management Activities

This proposed section would direct that the National Core BMPs provide guidance for the appropriate BMPs to

use during wildland fire activities, while not compromising firefighter and public safety.

2509.19 11.6—Minerals Management Activities

This proposed section would direct that the National Core BMPs provide guidance for the appropriate BMPs to use in minerals management.

2509.19 11.7—Rangeland Management Activities

This proposed section would direct that the National Core BMPs provide guidance for the appropriate BMPs to use in rangeland management.

2509.19 11.8—Recreation Management Activities

This proposed section would direct that the National Core BMPs provide guidance for the appropriate BMPs to use while constructing and operating developed recreation sites and managing dispersed recreation uses.

2509.19 11.9—Road Management Activities

This proposed section would direct that the National Core BMPs provide guidance for the appropriate BMPs to use while performing construction, operations, and maintenance of the NFS road system.

2509.19 11.10—Mechanical Vegetation Management Activities

This proposed section would direct that the National Core BMPs provide guidance for the appropriate BMPs to use while performing mechanical vegetation treatments.

2509.19 11.11—Water Uses Management Activities

This proposed section would direct that the National Core BMPs provide guidance for the appropriate BMPs to use during the construction and operation of water use developments and associated infrastructure.

2509.19 12—Focus National Core BMPs on Water Quality

This proposed section would provide guidance on the primary intent, focus, and use of the National Core BMPs.

2509.19 13—General Nature of the National Core BMPs

This proposed section would describe the use and applicability of the National Core BMPs and how to use site-specific BMPs prescriptions to address a variety of conditions and requirements. National Core BMPs may be supplemented to fulfill Regional needs.

2509.19 14—Source Documents for National Core BMPs

This proposed section would describe an array of documents that can be used to develop the National Core BMPs to protect water quality.

2509.19 15—Maintenance of the National Core BMPs

This proposed section would direct the use of adaptive management principles to modify and update National Core BMPs and resource management practices and direct a review interval of at least once every five years, to ensure the National Core BMPs and site-specific BMP prescriptions are current and effective.

Chapter 20—National Core Best Management Practices Implementation

This proposed chapter would provide policy and direction for the incorporation of the National Core BMPs into Agency planning processes.

2509.19 20.3—Policy

This proposed section would provide direction for establishing a process for the use of National Core BMPs and would describe when the planning-level National Core BMPs should be used.

2509.19 21—Land Management Planning

This proposed section would require the establishment of plan components that address National Core BMPs that are consistent with Forest Service planning regulations. This section would also require water quality-related plan components to be specific to the administrative unit and to meet or exceed applicable requirements and regulations.

2509.19 22—Project Planning

This proposed section would require the identification of appropriate National Core BMPs early in the planning process and would require the documentation of site-specific BMP prescriptions.

2509.19 23—Project Implementation

This proposed section would require the inclusion and documentation of the site-specific BMP prescriptions throughout the project implementation process.

Chapter 30—National Core Best Management Practices Monitoring

This proposed chapter would establish direction for the development of the National Core BMP Monitoring Protocols.

2509.19 30.3—Policy

This proposed section would provide direction for the development and maintenance of National Core BMP Monitoring Protocols. National Core BMP Monitoring Protocols would evaluate the implementation and effectiveness of the National Core BMPs, utilize adaptive management principles to improve project implementation, and utilize adaptive monitoring principles to improve monitoring protocols.

2509.19 31—National Core BMP Monitoring Structure

This proposed section would direct the development of a consistent national monitoring structure to assess the implementation and effectiveness of National Core BMPs and their performance at multiple scales.

2509.19 31.1—Purpose

This proposed section would describe the primary purposes of National Core BMPs monitoring.

2509.19 31.2—Monitoring Objectives

This proposed section would provide guidance on the objectives of National Core BMPs monitoring which is to use the standardized National Core BMP Monitoring Protocols to evaluate the implementation and effectiveness of the prescribed BMPs.

2509.19 31.3—National Sampling Design

This proposed section would provide guidance on the establishment of a national sampling design to evaluate implementation and effectiveness monitoring of the National Core BMPs in each resource category for the established reporting period.

2509.19 32—National Core BMP Monitoring Protocols

This proposed section would provide direction for the development of the National Core BMP Monitoring Protocols.

2509.19 32.1—Protocol Goals

This proposed section would describe the goals of the National Core BMP Monitoring Protocols and broadly assess outcomes to maximize monitoring and data collection efficiency, and document key information regarding implementation and effectiveness at multiple scales.

2509.19 32.2—Protocol Quality Assurance and Quality Control

This proposed section would direct the use of quality assurance and quality control measures throughout the monitoring process.

2509.19 32.31—Population Development and Site Selection

This proposed section would direct that each protocol provides a process for the establishment of population and final sample pool of sites monitoring.

2509.19 32.31a—Randomly Selected Sites

This proposed section would explain the intent to select random sample sites from the final sample pool of sites to be monitored to achieve National Core BMP Monitoring Protocols goals.

2509.19 32.31b—Non-Randomly Selected Sites

This proposed section would allow for targeted monitoring to meet local or regional management goals.

2509.19 32.4 Monitoring Team

This proposed section would direct protocols to provide guidance on the composition of an interdisciplinary review team needed to monitor the National Core BMPs within the corresponding protocol.

2509.19 32.5—Implementation Monitoring

This proposed section would direct protocols to provide guidance for a two-step process for BMP implementation monitoring.

2509.19 32.51—Implementation Monitoring Questions

This proposed section would direct protocols to include implementation questions to determine if appropriate BMPs are being used and applied as planned in land and resource management activities.

2509.19 32.52—Timing of Implementation Monitoring

This proposed section would direct protocols to provide guidance on when the implementation monitoring portion of the evaluation should be performed relative to the completion of the activity being monitored.

2509.19 32.53—Implementation Monitoring Document Review

This proposed section would direct that the protocols provide guidance on the type of project documents to be examined for site-specific BMP prescriptions and the timing of the document review.

2509.19 32.54—Field Review of Implementation Monitoring

This proposed section would direct protocols to provide guidance for defining the area at the project location to be evaluated for implementation of National Core BMPs and for defining criteria to rate how well BMP prescriptions are applied.

2509.19 32.6—Effectiveness Monitoring

This proposed section would direct that the protocols provide guidance on water pollutant evidence assessment when leaving the project area and entering the aquatic management zone or nearby waterbody.

2509.19 32.61—Effectiveness Monitoring Questions

This proposed section would direct protocols to include effectiveness questions to determine whether the BMPs, as implemented, protect water quality.

2509.19 32.62—Timing of Effectiveness Monitoring

This proposed section would direct that the protocols provide guidance on the timing of effectiveness monitoring relative to the completion of the activity being monitored. In all cases, effectiveness monitoring would occur after implementation monitoring at the sites have been completed.

2509.19 32.63—Field Review of Effectiveness Monitoring

This proposed section would direct protocols to provide guidance on defining the area at the project location to be evaluated for BMP effectiveness and how BMP effectiveness would be evaluated.

2509.19 32.7—Protocol Maintenance

This proposed section would provide guidance on the timing and methods used for to update and maintain the National Core BMP Monitoring Protocols to ensure they are effective tools for gathering BMP monitoring information.

2509.19 33—Evaluating Outcomes

This proposed section would provide guidance for the establishment of a method for each National Core BMP Monitoring Protocol to separately rate implementation and effectiveness of the National Core BMPs evaluated by that protocol.

2509.19 33.1—Implementation Outcomes

This proposed section would provide the criteria for implementation outcomes ratings of ''Fully Successful,'' ''Mostly Successful,'' ''Marginally Successful,'' or ''Not Successful''. If no site-specific BMP prescriptions were developed or identified, a ''No BMPs'' option is available.

2509.19 33.2—Effectiveness Outcomes

This proposed section would provide the criteria for effectiveness outcome ratings of ''Effective,'' ''Moderately Effective,'' or ''Not Effective''.

2509.19 33.3—Combined Evaluation Rating

This proposed section would provide a matrix to determine a combined implementation and effectiveness rating for a BMP evaluation by assigning a rating of ''Excellent,'' ''Good,'' ''Fair,'' ''Poor,'' or ''No Plan'' for a BMP evaluation.

2509.19 34—Data Management

This proposed section would provide guidance on the development and use of data management capability within the agency corporate information management system for National Core BMP monitoring data.

2509.19 35—Monitoring Report

This proposed section would provide guidance on the evaluation of the national BMP monitoring results, the development of reports, and how these results should be used at multiple scales.

Regulatory Certifications

Environmental Impact

The directives revise the administrative policies and procedures for conducting Water Quality Management activities on National Forest System lands. Agency regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The Agency has concluded that these directives fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an environment assessment or environmental impact statement.

Regulatory Impact

The directives have been reviewed under USDA procedures and E.O. 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that the directives are non-significant for purposes of E.O. 12866. This action to clarify Agency direction will not have an annual effect of $100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This directive will not interfere with an

action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, the directive will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of those programs.

The directives have been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A small entities flexibility assessment has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA. The directives are focused on National Forest System Water Quality Management activities and impose no requirements on small or large entities.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Agency has considered the directives under the requirements of E.O. 13132 on federalism and has determined that the directives conform with the federalism principles set out in this Executive order; will not impose any compliance costs on the states; and will not have substantial direct effects on the states, the relationship between the Federal Government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

Moreover, the proposed directives do not have tribal implications as defined by E.O. 13175, entitled ''Consultation and Coordination with Indian Tribal Governments,'' and, therefore, advance consultation with Tribes is not required.

No Taking Implications

The Agency has analyzed the directives in accordance with the principles and criteria contained in E.O. 12630. The Agency has determined that the directives do not pose the risk of a taking of private property.

Civil Justice Reform

The directives have been reviewed under E.O. 12988 of February 7, 1996, ''Civil Justice Reform''. At the time of adoption of the directives, (1) all State and local laws and regulations that conflict with the directives or that impede full implementation of the directives were preempted; (2) no retroactive effect was given to the directives; and (3) administrative proceedings are not required before parties can file suit in court to challenge its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, (2 U.S.C. 1531–1538), the Agency has assessed the effects of the directives on State, local, and Tribal governments and the private sector. The directives will not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Energy Effects

The Agency has reviewed the directives under E.O. 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' The Agency has determined that the directives do not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

The directives do not contain any additional record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and therefore imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: April 30, 2014.

Thomas. L. Tidwell,

Chief, Forest Service.

[FR Doc. 2014–10363 Filed 5–5–14; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

2014 Farm Bill Implementation Listening Session—Healthy Food Financing Initiative

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As part of our implementation of the Agricultural Act of 2014 (commonly referred to as the 2014 Farm Bill), the Rural Business-Cooperative Service (RBS) is hosting a listening session for public input about the Healthy Food Financing Initiative (HFFI) for which USDA has been granted new authority to implement. The 2014 Farm Bill contains a provision outlining the details of this Initiative in Section 4206.

The listening session will provide an opportunity for stakeholders to voice their comments, concerns, or requests regarding the implementation of this initiative. Instructions regarding registering for and attending the listening session are in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: *Listening session:* The listening session will be on May 30, 2014, and will begin at 1:00 p.m. and is scheduled to end by 4:00 p.m.

Registration: You must register by May 26, 2014, to attend the in-person and to provide oral comments during the listening session.

Comments: Public comments during the listening session on May 30, 2014, will be recorded. Written comments are also due by May 30, 2014. Written comments must be submitted electronically via the Federal eRulemaking Portal: *Regulations.gov.*

ADDRESSES: We invite you to participate in the listening session. The listening session is open to the public. The meeting will be held at USDA headquarters, in the Whitten Building, 1400 Jefferson Drive SW., Room 107–A, Washington, DC 20250.

For participants who cannot make it to the listening session in-person, remote ''listen only'' participation will be available:

- All interested participants are encouraged to use this URL to listen in: *http://m.onsm.com/mvp/@usda3.* This is a ''listen only'' URL.
- For participants who do not have access to a computer, dial 1–888–790–1837. Participant passcode is USDA (given verbally). This is a ''listen only'' line and is very limited.
- For participants requiring special accommodation, live captioning is available here: *http://www.captionedtext.com/client/event.aspx?CustomerID=190&EventID=2351577.*

We invite all participants to submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments; or
- Orally at the listening session; please also provide a written copy of your comments online as specified.

FOR FURTHER INFORMATION CONTACT: Primary program point of contact is Claudette Fernandez, Phone: 202–365–5320, Email:

Claudette.fernandez@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: On February 7, 2014, the 2014 Farm Bill (Pub. L. 113–79) was signed into law. The Secretary of Agriculture and the respective USDA agencies, including RBS, are working to implement the provisions of the 2014 Farm Bill as expeditiously as possible to meet the needs of stakeholders. To plan and implement the newly authorized HFFI program, it is important to engage with our stakeholders to learn and understand their comments, concerns, or requests.

RBS will hold the HFFI listening session on May 30, 2014, to receive oral comments from stakeholders and the public. Oral comments received from this listening session will be documented and/or recorded. All attendees of this listening session who submit oral comments must also submit a written copy to help the agency accurately capture public input. (See the **ADDRESSES** section above for information about submitting written comments.) In addition, stakeholders and the public who do not wish to attend or speak at the listening session are invited to submit written comments, which must be received by May 30, 2014.

At the listening session, the focus is for RBS to hear from the public; this is not a discussion with RBS officials or a question and answer session. As noted above, the purpose is to receive public input that RBS can consider in order to implement the HFFI provision of the 2014 Farm Bill.

Date: May 30, 2014.

Time: 1:00 p.m.–4:00 p.m.

Location information: USDA headquarters, in the Whitten Building, 1400 Jefferson Drive SW., Room 107A, Washington, DC 20250.

The listening session will begin with brief opening remarks from USDA leadership in Rural Development and a general background on HFFI. Individual speakers providing oral comments are requested to be succinct (no more than 5 minutes) as we do not know at this time how many participants there will be. As noted above, we request that speakers providing oral comments also provide a written copy of their comments. (See the **ADDRESSES** section above for information about submitting written comments.) All stakeholders and interested members of the public are welcome to register to provide oral comments; however, due to the time constraints a limited number will be selected on a first come, first serve basis.

Instructions for Attending the Meeting

Space for attendance at the meeting is limited. Due to USDA headquarters security and space requirements, all persons wishing to attend the public meeting or provide oral comments to RBS during the listening session must send an email to *Claudette.Fernandez@wdc.usda.gov* by May 26, 2014, to register the names of those planning to attend. Registrations will be accepted until maximum room capacity is reached. To register, provide the following information:

- First Name
- Last Name
- Organization
- Title
- Email
- Phone Number
- City
- State

Upon arrival at the USDA Whitten Building, registered persons must provide valid photo identification in order to enter the building; visitors need to enter the Whitten Building on the mall side. Please allow extra time to get through security. Additional information about the listening session, agenda, directions to get to the listening session, and how to provide comments are available at the USDA Farm Bill Web site*http://www.usda.gov/wps/portal/usda/usdahome?navid=farmbill.*

All written comments received will be publicly available on *www.regulations.gov.* If you require special accommodations, such as a sign language interpreter, use the contact information above. The listening session location is accessible to persons with disabilities.

Dated: April 30, 2014.

Lillian Salerno,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 2014–10278 Filed 5–5–14; 8:45 am]

BILLING CODE 3410–XY–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

[4/29/2014 through 4/30/2014]

Firm name	Firm address	Date accepted for investigation	Product(s)
Nameplates, Inc	325 S. Quincy Ave., Tulsa, OK 74120.	4/29/2014	The firm manufactures product name plate identification markers.
Toddler Teepee, Inc., dba Fairy Finery.	224 Burntside Drive, Golden Valley, MN 55427.	4/29/2014	The firm manufactures children's clothing and related products.
Jerrico Manufacturing, Inc	2009 Silver Street, Garland, TX 75042.	4/30/2014	The firm manufacturers machined medical and dental equipment.

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: April 30, 2014.

Michael DeVillo,

Eligibility Examiner.

[FR Doc. 2014–10322 Filed 5–5–14; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–36–2014]

Proposed Foreign-Trade Zone—Eastern Coachella Valley, California Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Four Winds Foreign Trade Zone Corporation to establish a foreign-trade zone at sites in the eastern Coachella Valley area of Riverside and Imperial Counties, California, adjacent to the Calexico U.S. Customs and Border Protection (CBP) port of entry, under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new ''subzones'' or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone project. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on April 29, 2014. The applicant is authorized to make the proposal under California statute 6301–6305.

The proposed zone would be the second zone for the Calexico CBP port of entry. The existing zone is: FTZ 257, Imperial County, California (Grantee: County of Imperial, California, Board Order 1286, October 9, 2003, 68FR 61393, 10/28/2003).

The applicant's proposed service area under the ASF would include portions of Riverside and Imperial Counties, California, as described in the application. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Calexico CBP port of entry.

The proposed zone would include two ''magnet'' sites: Proposed Site 1 (2,353 acres)—Jacqueline Cochran Regional Airport, 56–850 Higgins Drive, Thermal; and, Proposed Site 2 (1,160 acres)—Torres/Martinez/Desert/Cahuilla Indians tribally-owned land, Hayes Street and 64th Avenue, Riverside County. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 2 be so exempted.

The application indicates a need for zone services in the eastern Coachella Valley of California. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. Specific production approvals are not being sought at this time. Such requests would be made to the FTZ Board on a case-by-case basis.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 7, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 21, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*.

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: April 29, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–10351 Filed 5–5–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before May 27, 2014. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 14–006. Applicant: Columbia University, 500 West 120 St., Suite 200, New York, NY 10027. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to obtain bright-field and dark-field images of materials microstructures, to do high resolution lattice imaging, to obtain diffraction patterns to identify crystalline phases, to determine what elements are in a particular phase using the energy dispersive spectrometer, and to obtain atomic number contrast, or Z-contrast, images using the high angle annular dark field detector. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 15, 2014.

Docket Number: 14–007. Applicant: University of California, Davis, One Shields Ave., Davis, CA 95616. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to execute damage free and contamination free preparation of high quality samples such as metals, ceramics, metal/ceramic interfaces, and polymers for subsequent in situ

transmission electron microscopy investigations. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 14, 2014.

Docket Number: 14–008. Applicant: California Institute of Technology, 1200 E. California Blvd., MC 213–15, Pasadena, CA 91125. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to conduct nano-mechanical experiments like tension, compression, and bending, lithiation-delithiation experiments on battery electrodes, and nano-tensile deformation of metallic glass nano pillars. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 3, 2014.

Docket Number: 14–010. Applicant: Dana Farber Cancer Institute, 450 Brookline Ave., Boston, MA 02215. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to study the three-dimensional structure of biomolecules such as proteins, nucleic acids, carbohydrates and/or lipids to assist our understanding of how they perform and their function. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 15, 2014.

Dated: April 29, 2014.

Gregory W. Campbell,

Director of Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2014–10355 Filed 5–5–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee—Environmental Trade Working Group Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC)—Environmental Trade Working Group (ETWG).

DATES: The meeting is scheduled for Wednesday, May 28, 2014, at 9 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held in Room 4830 at the U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Hinman, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230 (Phone: 202–482–0627; Fax: 202–482–5665; email: *maureen.hinman@trade.gov*.) This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225 no less than one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The meeting will take place from 9 a.m. to 3:30 p.m. EDT. The general meeting is open to the public and time will be permitted for public comment from 3–3:30 p.m. EDT. Those interested in attending must provide notification by Monday, May 19, 2014 at 5 p.m. EDT, via the contact information provided above. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topics to be considered: The agenda for this meeting will include a joint ETTAC–ETWG discussion wherein executives of the Trade Promotion Coordinating Committee (TPCC) Environmental Trade Working Group (ETWG) will receive and provide feedback to the ETTAC's recommendations to the Secretary of Commerce and the ETWG. The status of the U.S. Environmental Export Initiative will also be discussed.

Background: The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently re-chartered until September 2014.

Catherine Vial,

Office Director, Acting; Office of Energy and Environmental Industries.

[FR Doc. 2014–09876 Filed 5–5–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee; Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (RE&EEAC) will meet via conference call on May 15, 2014 to consider proposed recommendations from the U.S. Competitiveness, Trade Policy, Finance and Trade Promotion Subcommittees that address issues affecting U.S. competitiveness in exporting renewable energy and energy efficiency (RE&EE) products and services.

DATES: May 15, 2014, from 2 p.m. to 4 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held via conference call.

FOR FURTHER INFORMATION CONTACT: Ryan Mulholland, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–4693; email: *ryan.mulholland@trade.gov*. This conference call is accessible to people with disabilities. Requests for auxiliary aids should be directed to OEEI at (202) 482–4693 at least 3 working days prior to the event.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Commerce established the RE&EEAC pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) on June 19, 2012. The RE&EEAC provides the Secretary of Commerce with consensus advice from the private sector on the development and administration of programs and policies to enhance the international competitiveness of the U.S. RE&EE industries. The RE&EEAC held its first meeting on February 20, 2013 and several subsequent meetings

throughout 2013. The Committee's charter expires June 18, 2014.

The meeting is open to the public. Members of the public wishing to attend the conference call must notify Mr. Ryan Mulholland at the contact information above by 5 p.m. EDT on Friday, May 9, in order to pre-register and receive call-in instructions. Please specify any request for reasonable accommodation by Friday, May 9. Last minute requests will be accepted, but may be impossible to fill.

Any member of the public may submit pertinent written comments concerning the RE&EEAC's affairs at any time before or after the meeting. Comments may be submitted to *ryan.mulholland@trade.gov* or to the Renewable Energy and Energy Efficiency Advisory Committee, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, Room 4053; 1401 Constitution Avenue NW., Washington, DC 20230. To be considered during the meeting, comments must be received no later than 5 p.m. EDT on Friday, May 9, 2014, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members, but may not be considered at the meeting.

Copies of RE&EEAC meeting minutes will be available within 30 days of the meeting.

Dated: April 24, 2014.

Catherine P. Vial,

Team Leader for Environmental Industries, Office of Energy and Environmental Industries.

[FR Doc. 2014–09877 Filed 5–5–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 140321260–4260–01]

National Cybersecurity Center of Excellence (NCCoE) and Financial Services Sector IT Asset Management Use Case

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide products and technical expertise to support and demonstrate security platforms for IT asset management for the financial services sector. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the Financial Services sector program. Participation in the use case is open to all interested organizations.

DATES: Interested parties must contact NIST to request a letter of interest. Letters of interest will be accepted on a rolling basis. Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than June 5, 2014. When the use case has been completed, NIST will post a notice on the NCCoE financial services program Web site at *nccoe.nist.gov/financial-services/* announcing the completion of the use case and informing the public that it will no longer accept letters of interest for this use case.

ADDRESSES: The NCCoE is located at 9600 Gudelsky Drive, Rockville, MD 20850. Letters of interest must be submitted to *financial_NCCoE@nist.gov;* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9600 Gudelsky Drive; Rockville, MD 20850. Organizations whose letters of interest are accepted in accordance with the Process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a Cooperative Research and Development Agreement (CRADA) with NIST. A CRADA template can be found at: *http://nccoe.nist.gov/The-Center/Get_Involved/NCCoE_Consortium_CRADA_Example.pdf.*

FOR FURTHER INFORMATION CONTACT: Mike Stone via email at *financial_NCCoE@nist.gov;* or telephone 240–314–6813; National Institute of Standards and Technology, NCCoE; 9600 Gudelsky Drive; Rockville, MD 20850. Additional details about the NCCoE Financial Services Sector program are available at *http://nccoe.nist.gov/financial-services.*

SUPPLEMENTARY INFORMATION:

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process: NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for IT asset management for the financial services sector. Interested parties should contact NIST using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. NIST will then provide each interested party with a letter of interest, which the party must complete, certify that it is accurate, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the use case objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below up to the number of participants in each category necessary to carry out this use case. However, there may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into a consortium CRADA with NIST. NIST published a notice in the **Federal Register** on October 19, 2012 (77 FR 64314) inviting U.S. companies to enter into National Cybersecurity Excellence Partnerships; (NCEPs) in furtherance of the NCCoE. For this demonstration project, NCEP partners will not be given priority for participation.

Use Case Objective: To effectively manage, utilize and secure an asset, you first need to know the asset's location and function. While many financial sector companies label physical assets with bar codes and track them with a database, this approach does not answer questions such as, ''What operating systems are our laptops running?'' and ''Which devices are vulnerable to the latest threat?'' The goal of this project is to provide answers to questions like these by tying existing data systems for physical assets and security and IT security and support into a comprehensive IT asset management (ITAM) system. In addition, financial services companies can employ this ITAM system to dynamically apply business and security rules to better utilize information assets and protect enterprise systems and data. In short,

this ITAM system will give companies the ability to track, manage and report on an information asset throughout its entire life cycle.

Requirements

Each responding organization's letter of interest should identify which security platform components or capabilities it is offering. Components are listed in section six of the IT Asset Management for Financial Services use case and include, but are not limited to:

1. Physical asset management systems/databases.
2. Physical security management systems/databases.
3. Multiple virtual testing networks and systems simulating receiving, security, IT support, network security, development and sales departments.
4. Physical access controls with standard network interfaces.

Each responding organization's letter of interest should identify how their products address one or more of the following desired solution characteristics in section two of the IT Asset Management for Financial Services use case:

1. Be capable of interfacing with multiple existing systems.
2. Complement existing asset management, security and network systems.
3. Provide APIs for communicating with other security devices and systems such as firewalls and intrusion detection and identity and access management (IDAM). systems
4. Know and control which assets, both virtual and physical, are connected to the enterprise network.
5. Provide fine-grain asset accountability supporting the idea of data as an asset.
6. Automatically detect and alert when unauthorized devices attempt to access the network, also known as asset discovery.
7. Integrate with ways to validate a trusted network connection.
8. Enable administrators to define and control the hardware and software that can be connected to the corporate environment.
9. Enforce software restriction policies relating to what software is allowed to run in the corporate environment.
10. Record and track the prescribed attributes of assets.
11. Audit and monitor changes in the asset's state and connection.
12. Integrate with log analysis tools to collect and store audited information.

Responding organizations need to understand and, in their letters of interest, commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components.
2. Support for development and demonstration of the IT Asset Management for the Financial Services Sector use case in NCCoE facilities which will be conducted in a manner consistent with Federal requirements (e.g., FIPS 200, FIPS 201, SP 800–53, and SP 800–63).

Additional details about the IT Asset Management for the Financial Services sector Use Case are available at *http://nccoe.nist.gov/financial-services*.

NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium agreement in the development of the IT Asset Management for Financial Services capability. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each prospective participant will train NIST personnel as necessary, to operate its product in capability demonstrations to the healthcare community. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the IT Asset Management for Financial Services Use Case. These descriptions will be public information.

Under the terms of the consortium agreement, NIST will support development of interfaces among participants' products, including IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the IT Asset Management for Financial Services capability will be announced on the NCCoE Web site at least two weeks in advance at *http://nccoe.nist.gov/*. The expected outcome of the demonstration is to improve IT asset management across an entire financial services enterprise. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE Web site *http://nccoe.nist.gov/*.

Dated: May 1, 2014.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2014–10349 Filed 5–5–14; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD279

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) and Alaska Board of Fisheries (AK BOF) Joint Protocol Committee will meet in Anchorage, AK.

DATES: The meeting will be held on May 21, 2014, from 10 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Clarion Suites, 1110 8th Avenue, Heritage Room, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: AK BOF Staff; telephone: (907) 465–4110 or Council staff: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Committee will review the following: Update on Council action on Gulf of Alaska trawl bycatch management; Board of Fisheries Pollock Workgroup; Bering Sea Aleutian Island (BSAI) Pacific cod Total Allowable Catch split and state-water Guideline Harvest Levels fisheries; BSAI crab actions; Board actions in March; Council crab bycatch motion; Proposed Change to Groundfish Possession and Landing Requirements.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/*.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will

be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: April 30, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–10268 Filed 5–5–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD105

Small Takes of Marine Mammals Incidental to Specified Activities; Cape Wind's High Resolution Survey in Nantucket Sound, MA

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), notification is hereby given that NMFS issued an Incidental Harassment Authorization (IHA) to Cape Wind Associates (CWA) to take marine mammals, by harassment, incidental to pre-construction high resolution survey activities in Nantucket Sound.

DATES: Effective April 25, 2014, through April 24, 2015.

ADDRESSES: An electronic copy of the application, authorization, and associated document may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, National Marine Fisheries Service, Office of Protected Resources, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On December 20, 2013, NMFS received an application from CWA for the taking of marine mammals incidental to high resolution survey activities. NMFS determined that the application was adequate and complete on December 20, 2013. NMFS published a notice of proposed IHA on February 3, 2014 (79 FR 6167).

CWA will conduct a high resolution geophysical survey in Nantucket Sound, Massachusetts. The activity will occur during daylight hours over an estimated 109-day period beginning in May 2014. The following equipment used during the survey is likely to result in the take of marine mammals: Shallow-penetration subbottom profiler and medium-penetration subbottom profiler. Take, by Level B harassment only, of individuals of five species is anticipated to result from the specified activity.

NMFS issued CWA an IHA in 2011 (76 FR 80891, December 27, 2011) for survey work that was to be completed in 2012. However, subsequent to the issuance of that IHA, CWA found it necessary to divide their survey into two seasons. They completed approximately 20 percent of the survey in 2012 and obtained a second IHA to conduct the remaining 80 percent in 2013 (78 FR 19217, March 29, 2013). Due to scheduling adjustments, the work was not conducted in 2013 and this request is an extension of the original request. CWA is not changing their survey activities in any way. However, the geotechnical portion of the survey was completed in 2012 and will not be continued during the 2014 season.

Description of the Specified Activity

CWA will conduct a high resolution geophysical survey in order to acquire remote-sensing data around Horseshoe Shoal which will be used to characterize resources at or below the seafloor. The purpose of the survey is to identify any submerged cultural resources that may be present and to generate additional data describing the geological environment within the survey area. The survey will satisfy the mitigation and monitoring requirements for ''cultural resources and geology'' in the environmental stipulations of the Bureau of Ocean Energy Management's lease. The survey is part of the first phase of a larger Cape Wind energy project, which involves the installation of 130 wind turbine generators on Horseshoe Shoal over a 2-year period. The survey will collect data along predetermined track lines using a towed array of instrumentation, which will include a side scan sonar, magnetometer, shallow-penetration subbottom profiler, multibeam depth sounder, and medium-penetration subbottom profiler. Survey activities will not result in any disturbance to the sea floor.

Dates and Duration

Survey activities are necessary prior to construction of the wind turbine array and are scheduled to begin in the spring of 2014, continuing on a daily basis for up to five months. Survey vessels will operate during daytime hours only and CWA estimates that one survey vessel will cover about 17 nautical miles (31 kilometers) of track

line per day. Therefore, CWA conservatively estimates that survey activities will take 109 days (28 days less than what was expected under the 2012 IHA). However, if more than one survey vessel is used, the survey duration will be considerably shorter. NMFS is issuing an authorization that extends from May 1, 2014, to April 31, 2015.

Specified Geographic Region

Survey vessels are expected to depart from Falmouth Harbor, Massachusetts, or another nearby harbor on Cape Cod. In total, the survey will cover approximately 110 square kilometers (km^2). This area includes the future location of the wind turbine generators—an area about 8.4 km from Point Gammon, 17.7 km from Nantucket Island, and 8.9 km from Martha's Vineyard—and cables connecting the wind park to the mainland. The survey area within the wind park will be transited by survey vessels towing specialized equipment along primary track lines and perpendicular tie lines. Preliminary survey designs include primary track lines with northwest-southeast orientations and assume 30-meter (m) line spacing. Preliminary survey designs also call for tie lines to likely run in a west-east orientation covering targeted areas of the construction footprint where wind turbine generators would be located. The survey area along the interconnecting submarine cable route includes a construction and anchoring corridor, as part of the wind farm's area of potential effect. The total track line distance covered during the survey is estimated to be about 3,432 km (as opposed to the 4,292 km included in the 2012 IHA).

Multiple survey vessels may operate within the survey area and will travel at about 3 knots during data acquisition and approximately 15 knots during transit between the survey area and port. If multiple vessels are used at the same time, they will be far enough apart that sounds from the chirp and boomer will not overlap. The survey vessels will acquire data continuously throughout the survey area during the day and terminate survey activities before dark, prior to returning to port. NMFS believes that the likelihood of a survey vessel striking a marine mammal is low considering the low marine mammal densities within Nantucket Sound, the relatively short distance from port to the survey site, the limited number of vessels, and the small vessel size. Vessel sounds during survey activities would result from propeller cavitations, propeller singing, propulsion, flow noise from water dragging across the hull, and bubbles breaking in the wake. The dominant sound source from vessels will be from propeller cavitations; however, sounds resulting from survey vessel activity are considered to be no louder than the existing ambient sound levels and sound generated from regular shipping and boating activity in Nantucket Sound (MMS, 2009).

Detailed Description of Activities

NMFS expects that acoustic stimuli resulting from the operation of the survey equipment have the potential to harass marine mammals. Background information on the characteristics and measurement of sound were provided in the 2013 proposed IHA notice (78 FR 7402, February 1, 2013) and have not changed. Further information on the sound equipment was provided in the 2014 proposed IHA notice (79 FR 6167, February 3, 2014) and that information is not repeated here. In summer, the dominant sources of sound during the survey activities will be from the towed equipment used to gather seafloor data. Two of the seismic survey devices used during the high resolution geophysical survey emit sounds within the hearing range of marine mammals in Nantucket Sound: Shallow-penetration and medium-penetration subbottom profilers (known as a ''chirp'' and ''boomer,'' respectively).

Comments and Responses

A proposed authorization and request for public comments was published in the **Federal Register** on February 3, 2014 (79 FR 6167). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission), Natural Resources Defense Council, the Alliance to Protect Nantucket Sound (Alliance), and over 100 private citizens. Over 40 people expressed general disapproval for CWA's proposed activity and NMFS' proposed authorization; and over 70 people, including the Natural Resources Defense Council, supported CWA's proposed activity and NMFS' proposed authorization. All comments have been compiled and posted at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Any application-specific comments that address the MMPA statutory and regulatory requirements or findings NMFS must make to issue an IHA are addressed in this section.

Comment 1: The Commission recommended that NMFS (1) require CWA to estimate the number of marine mammals taken when the shallow-penetration sub-bottom profiler would be used based on the 120-dB threshold (Level B harassment threshold for continuous sound) rather than the 160-dB threshold (for non-continuous sound); and (2) consult with experts in the field of sound propagation and marine mammal hearing to revise the acoustic criteria as necessary to specify threshold levels that would be more appropriate for a wider variety of sound sources, including the shallow-penetration sub-bottom profiler.

Response 1: As explained in the previous authorizations for this activity, using the 120-dB threshold for the shallow-penetration sub-bottom profiler is not consistent with NMFS' current acoustic thresholds. The shallow-penetration sub-bottom profiler (''chirper'') is a non-impulsive, but intermittent (as opposed to continuous), sound source. Continuous sound sources are best represented by vibratory pile driving or drilling and produce sounds that are quite different from sub-bottom profilers. NMFS has previously applied the 160-dB threshold to non-tactical sonar sources used in conjunction with seismic surveys. The pseudo-random noise stimulus and tactical sonar-like signals that were used in the SOCAL–10 behavioral response study are also considered non-impulsive intermittent sources and were authorized by NMFS using the 160-dB threshold. NMFS believes that the 160-dB threshold is appropriately applied to the shallow-penetration sub-bottom profiler and there is no need for CWA to estimate take using a different criteria.

As the Commission is aware, NMFS is in the process of updating acoustic guidelines for assessing the effects of anthropogenic sound on marine mammals. Until those guidelines are complete, we are relying on the existing criteria.

Comment 2: The Commission recommended that NMFS, in our guidance regarding revised Level B harassment thresholds for behavior, include thresholds and take estimates for all types of sources that might be used during site characterization surveys.

Response 2: NMFS is currently updating and revising all of its acoustic thresholds, but is initially focused on thresholds for injury. NMFS notes the Commission's recommendation and will address this comment when the process for revising the Level B harassment thresholds begins.

Comment 3: The Commission recommended that NMFS require CWA to reestimate the number of takes of gray and harbor seals based on (1) a more conservative correction factor to account

for negative biases associated with CWA's at-sea aerial survey counts; or (2) using density estimates from other proposed activities occurring in the same area that have been adjusted by a haul-out correction factor.

Response 3: NMFS disagrees that CWA needs to reestimate the number of takes of gray and harbor seals. As explained in previous authorizations for this activity, CWA included a correction factor when calculating seal density estimates. NMFS disagrees that this correction factor needs to be more conservative, especially considering that CWA observed no living marine mammals during 28 days and 459 nautical transect miles of survey activity during 2012.

Also explained in previous authorizations for this activity, CWA did not use density estimates for seals based on haul out counts due to the distance of haul outs from the activity area (12.7 miles to Monomoy Island and 7.4 miles to Muskeget Island). Gray seals and harbor seals congregating in these locations are not expected to hear sounds from the survey equipment at 160 dB or higher. The seals most likely to be exposed to potentially disturbing sounds are the individuals swimming and/or foraging within 444 m of the activated medium-penetration subbottom profiler. Again, NMFS disagrees that the density estimates need to be adjusted, especially considering that CWA observed no living marine mammals during 2012 survey activities.

Comment 4: The Commission recommended that NMFS include in each proposed IHA a sufficiently detailed description of the proposed activities and the potential impacts on marine mammals to allow the public to review and comment on the proposed authorization as a stand-alone document.

Response 4: NMFS provided a detailed description of the activity in the proposed IHA notice, including specific sound sources and their characteristics, dates and duration of the activity, location of the activity, and sound source verification results from monitoring in 2012. NMFS also provided a general description/background of potential effects to marine mammals and referred the reader to the 2013 proposed IHA notice (78 FR 7402, February 1, 2013) in order to streamline the document, particularly considering that this is not a new action.

Comment 5: The Alliance suggested that NMFS cannot issue an IHA for the proposed activity because CWA is attempting to segment their larger wind energy project and avoid the issuance of a Letter of Authorization (LOA) and associated regulations. The Alliance further suggested that allowing an applicant to apply for multiple IHAs prevents NMFS from properly analyzing the specified activity and its potential impacts on marine mammals.

Response 5: As explained in the 2011 and 2013 final IHA notices (76 FR 80891, December 27, 2011 and 78 FR 19217, March 29, 2013), CWA requested an IHA for a discrete, specified activity: a high resolution geophysical survey that is required prior to construction of CWA's long-term energy project. The definition of a ''specified activity'' is ''any activity, other than commercial fishing, that takes place in a specified geographical region and potentially involves the taking of small numbers of marine mammals.'' *See* 50 CFR 216.103. The MMPA and its implementing regulations do not provide any further definition or restriction to this term. The Alliance claims that the ''specified activity'' is the entire Cape Wind energy project, citing BOEM's approval of the entire project. NMFS' definition of a specified activity is not related to how other federal agencies define or approve projects.

The MMPA directs NMFS to allow, upon request, the incidental taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity within a specified geographical region if certain findings are made. All statutory requirements have been met in this instance. The issuance of regulations and an LOA is only required if the proposed activity has the potential to result in incidental takings of marine mammals by serious injury or mortality. Applicants have the option of applying for a 1-year IHA if their specified activity (in this case, the high resolution geophysical survey) would not result in the serious injury or mortality of marine mammals. The MMPA and its implementing regulations do not prohibit IHAs for activities that may occur for more than a 1-year period. In fact, NMFS has often issued IHAs for activities that occur for longer than a 1-year period. In some cases, applicants choose to pursue LOAs governed by regulations for activities that will not result in the serious injury or mortality of marine mammals because it streamlines the authorization process and prevents the need for an annual application and public comment period. Based on factors addressed in the application and proposed IHA (e.g., estimated sound propagation, slow vessel speeds, and monitoring and mitigation measures,) CWA does not anticipate, nor is NMFS authorizing, the incidental taking of marine mammals by serious injury or mortality. Therefore, an IHA is appropriate. NMFS has notified CWA that future activities may also require separate authorization(s) under the MMPA.

The questions an applicant must answer are the same whether applying for an IHA or an LOA. NMFS evaluates the specified activity in the same manner and addresses the same questions regarding impacts. Further, NMFS must make the same determinations regarding negligible impact and small numbers, which are addressed at the end of this document.

Comment 6: The Alliance suggested the CWA's application is defective because it does not request incidental take of right whales and fails to impose a vessel speed restriction to protect right whales.

Response 6: CWA's application does mention the presence of right whales in New England waters, but does not request authorization for incidental take of this species. The presence of right whales in Nantucket Sound is uncommon. NMFS has determined, based on 10 years of right whale data collection in Nantucket Sound, that the incidental take of a right whale by vessel strike or Level B (behavioral) harassment is unlikely. In 2008, NMFS published a final rule in the **Federal Register** instituting Mid-Atlantic Seasonal Management Areas with a mandatory 10-knot speed restriction to reduce the threat of ship collisions with right whales. The Seasonal Management Areas were established to provide additional protection for right whales and the timing, duration, and geographic extent of the speed restrictions were specifically designed to reflect right whale movement, distribution, and aggregation patterns. Nantucket Sound is not considered a Seasonal Management Area; however, Nantucket Sound was included as part of a Dynamic Management Area (with a voluntary 10-knot speed zone) through March 13, 2013. There are currently no active Dynamic Management Areas.

The very qualities that make right whales susceptible to being struck by vessels in certain areas also make them highly detectable. NMFS believes that the size of right whales, their slow movements, and the amount of time they spend at the surface would make them extremely likely to be spotted by Protected Species Observers (PSO) before they are exposed to sounds that constitute harassment. Furthermore, CWA's survey vessels would be traveling at low speeds (3 knots) during survey operations. Whenever sub-bottom profiling activities are underway, at least one PSO will be

monitoring the 500-m exclusion zone—which is larger than both the Level A (30 m) and Level B (444 m) harassment isopleths—and will call for a shutdown if any marine mammal is observed within or moving toward the exclusion zone. Furthermore, right whales are not common in Nantucket Sound and there are no known foraging grounds or other important habitats for right whales in Nantucket Sound. However, as stated in the Biological Opinion for the long-term Cape Wind energy project, CWA will monitor the Right Whale Sighting Advisory System and can modify their survey schedule in the unlikely event that whales are present within Nantucket Sound. CWA did not propose, and NMFS is not authorizing, the take of right whales from survey activities. Although there have been a limited number of right whale sightings in Nantucket Sound over the past 10 years (as seen on NMFS Northeast Fisheries Science Center Web site: *http://www.nefsc.noaa.gov/psb/surveys/*), these have not overlapped with the proposed survey area on Horseshoe Shoal, likely due to the shallower water depths. Thus, we do not anticipate that CWA's activities will result in the take of right whales.

Comment 7: The Alliance takes issue with NMFS' conclusion that there is no anticipated impact on marine mammal habitat from the proposed activities.

Response 7: In the Anticipated Effects on Marine Mammal Habitat section of each **Federal Register** notice that NMFS has published regarding CWA's survey, we state that marine mammals may avoid the survey area temporarily due to ensonification, but that survey activities are not expected to result in long-term abandonment of marine mammal habitat. Furthermore, we note that the proposed activity is not expected to have any effects on important marine mammal habitat (because there are no known areas of significance such as rookeries or mating grounds in the proposed survey area). Because of the limited spatial extent of the effects on acoustic habitat, NMFS does not think that the survey will contribute to adverse impacts on annual rates of recruitment or survival.

The Alliance cites the ''prolonged introduction of acoustic energy into Nantucket Sound'' and the fact that the survey activity is taking place over a 3-year period (rather than 1 year as originally planned). As explained in CWA's application and the numerous **Federal Register** notices NMFS has published, the distances at which sound levels could result in harassment are relatively short (30 m for Level A and 444 m for Level B). Furthermore, CWA will be required to implement a 500-m exclusion zone for all marine mammals in order to prevent harassment. The fact that CWA's original proposed survey has extended into multiple years does not change NMFS' determinations. CWA has not increased the amount or duration of survey work originally proposed.

Comment 8: The Alliance commented that the number of PSOs required aboard CWA's survey vessel remains unclear and appears inadequate.

Response 8: As detailed in the Mitigation and Monitoring sections of this document, at least one PSO will monitor the 500-m radius exclusion zone (an area that is larger than the Level A and Level B harassment zones) during all survey activities involving the shallow-penetration and medium penetration subbottom profilers. This PSO(s) will monitor (using bincoluars and other appropriate equipment to record species, movement, and behavior) 60 minutes prior to starting or restarting surveys, during surveys, and 60 minutes after survey equipment has been turned off. Due to the survey vessel's small size and limited space for up to six personnel, it is not feasible for CWA to guarantee that more than one PSO will be available for mitigation monitoring. In addition, at least one PSO shall conduct behavioral monitoring from the survey vessel at least twice for every 7 days of survey activity to estimate take and evaluate the behavioral impacts that survey activities have on marine mammals outside of the 500-m exclusion zone. Lastly, a separate vessel with another PSO will collect data on species presence and behavior before surveys begin and once a month during survey activities. All PSOs must be able to effectively monitor the 500-m exclusion zone whenever the subbottom profilers are in use. CWA will only conduct survey efforts during daylight hours and visibility must not be obscured by fog, lighting conditions, etc.

NMFS believes this monitoring is sufficient to minimize the exposure of sound to marine mammals and record potential behavioral impacts to marine mammals, considering the following: The relatively small size of the mitigation zone (500-m) and the fact that it extends beyond the Level A and Level B harassment zones, the slow speed of survey vessels during survey operations (3 knots), the low density of marine mammals in Nantucket Sound, the time/weather restrictions, and the lack of any live marine mammal observations during 28 days of survey activity in 2012. Furthermore, CWA performed sound source verification monitoring in 2012 and the received 90-percent RMS sound pressure levels from the subbottom profilers did not exceed 175 dB. The longest distance to the 160-dB isopleth was 12 m, as opposed to the estimated 444 m.

Comment 9: The Alliance stated that the IHA application and NMFS' 2011 Environmental Assessment (EA) lack a current, activity-specific cumulative impact analysis and fail to properly address impacts on sea turtles.

Response 9: The MMPA does not require a cumulative impact analysis for incidental take authorizations. However, in accordance with the National Environmental Policy Act (NEPA), NMFS prepared an EA in 2011 that addressed cumulative impacts. In addition, NMFS wrote a memo to the record that evaluates whether a supplement to the 2011 EA is needed. The EA and memo are available online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

The effects of CWA's underlying action on sea turtles were already considered in the Biological Opinion. NMFS' issuance of an IHA under the MMPA relates only to impacts on marine mammals and their habitat. Furthermore, the scope of NMFS' 2011 EA is focused on NMFS' proposed issuance of an IHA for the take of marine mammals. However, NMFS Permits and Conservation Division consulted with NMFS' Greater Atlantic Regional Fisheries Office on the effects to ESA-listed marine mammals from issuance of the IHA. The region concurred with a 'not likely to adversely affect' determination on April 24, 2014.

Comment 10: The Alliance states that CWA's application fails to specify which port will be used for the survey vessels.

Response 10: As addressed in the 2011 IHA (76 FR 80892, December 27, 2011), the 2013 IHA (78 FR 19217, March 29, 2013), and the most recent proposed IHA (79 FR 6167, February 3, 2014), CWA's survey vessels are expected to depart from Falmouth Harbor, Massachusetts, or another nearby harbor on Cape Cod. This information was provided by CWA at NMFS' request.

Comment 11: The Alliance claims that NMFS has not complied with NEPA because the 2011 EA is insufficient, relies on a deficient 2009 Environmental Impact Statement (EIS), and must be made available for public comment.

Response 11: BOEM's 2009 EIS (which was recently upheld by the U.S. district court for the District of Columbia) assessed the physical, biological, and social/human impacts of Cape Wind's proposed project (the long-

term energy project). NMFS used this EIS to inform our analysis in the 2011 EA. NMFS' proposed action of issuing an IHA to CWA for the take of marine mammals incidental to a high-resolution geophysical survey has not changed. As mentioned in Response 9, NMFS evaluated whether or not a supplement to the 2011 EA was needed in a memo to the record. NMFS does not believe that there are substantive changes in the proposed action or new science that would change our determinations or the scope of our analysis. The Alliance cites the presence of right whales in the project area and the issuance of new leases in the region as making BOEM's 2009 EIS ''beyond its useful life as a NEPA document.'' NMFS addressed the presence of right whales in Response 6 of this section and pointed out that, although there have been a limited number of right whale sightings in Nantucket Sound over the past 10 years (as seen on NMFS Northeast Fisheries Science Center Web site: *http://www.nefsc.noaa.gov/psb/surveys/*), these have not overlapped with the proposed survey area on Horseshoe Shoal, likely due to the shallower water depths. The issuance of new BOEM leases in the region (outside of Nantucket Sound) is not likely to result in an overlap of activities in time and space. CWA's survey activity will take place over an approximate 109-day period and may be concluded by spring 2015.

As explained in numerous other **Federal Register** notices concerning this action, during the development of this action, including the 2011 EA, several documents were made available to the public, all of which provided a detailed description of the action and potential environmental impacts. For example, the analysis of impacts to marine mammals from the proposed high resolution geophysical survey activities was contained in NMFS' proposed issuance of an IHA (most recently in 2014 [79 FR 6167, February 3, 2014]) and is similar to what is contained in the EA. Additional environmental information was contained in CWA's 2011 and 2013 IHA applications, which were also made available to the public. Other documents used to inform the EA included the Biological Opinion (issued December 30, 2010 by NMFS Northeast Regional Office, and available at *http://www.epa.gov/region1/communities/pdf/CapeWind/CapeWindBiologicalOpinion-12-30-10.pdf*) and the Final Environmental Impact Statement (published by the Bureau of Ocean Energy Management) on January 21, 2009 [74 FR 3635]) for the long-term Cape Wind energy project. The EA describes potential environmental impacts from the limited action for which an IHA was requested—the take of marine mammals incidental to CWA's high resolution geophysical survey—which is similar to numerous other survey activities that NMFS has analyzed in the past. NMFS believes that sufficient environmental information was presented to the public and comments on the proposed IHA were taken into consideration during preparation of the EA.

Comment 12: The Alliance compares CWA's activity to Deepwater Wind's proposed Block Island transmission system and wind farm activities and suggests that because Deepwater Wind requested (and NMFS is proposing) take of right whales, that CWA should do the same. The Alliance also suggests that the monitoring requirements for CWA are deficient because Deepwater Wind is proposing to use a higher number of PSOs.

Response 12: NMFS published two proposed IHAs recently for Deepwater Wind's transmission system (79 FR 15573, March 20, 2014) and wind farm (79 FR 16301, March 25, 2014). Deepwater Wind's activities are substantially different from CWA's activities. Deepwater Wind is proposing to conduct pile driving and use vessels with dynamic positioning systems, while CWA will be conducting a high resolution geophysical survey. The sound source types, sound propagation, harassment zones, and PSOs necessary to monitor these zones are not comparable between activities.

Description of Marine Mammals in the Area of the Specified Activity

All marine mammals with possible or confirmed occurrence in the activity area were listed and discussed in the proposed IHA notice (79 FR 6167, February 3, 2014) and that information has not changed. In summary, sightings data suggest that whales do not commonly visit Nantucket Sound and there have been no sightings of ESA-listed large whales on Horseshoe Shoal. All of the right whales observed in Nantucket Sound during 2010 quickly transited the area and there is no evidence of any persistent aggregations around the project area. Nantucket Sound's shallower depths and location outside of the coastal migratory corridor are likely the cause of limited whale sightings.

Marine mammals with known occurrences in Nantucket Sound most likely to be harassed by high resolution geophysical survey activity are listed in Table 1 below. These are the species for which take was requested and authorized and all are not listed under the Endangered Species Act. Further information on the biology and local distribution of these species and others in the region can be found in the proposed IHA notice (79 FR 6167, February 3, 2014), CWA's application, which is available online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications,* and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species.*

TABLE 2—MARINE MAMMALS THAT COULD BE IMPACTED BY SURVEY ACTIVITIES IN NANTUCKET SOUND

Common name	Scientific name	Abundance	Population status	Time of year in New England
Minke whale	*Balaenoptera actuorostrata*	20,741	n/a	April through October.
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	48,819	n/a	October through December.
Harbor porpoise	*Phocoena phocoena*	79,883	n/a	Year-round (peak Sept–Apr).
Gray seal	*Halichoerus grypis*	348,900	increasing	Year-round.
Harbor seal	*Phoca vitulina*	99,340	n/a	October through April.

Potential Effects of the Specified Activity on Marine Mammals

Use of subbottom profilers on Horseshoe Shoal may temporarily impact marine mammal behavior within the survey area due to elevated in-water sound levels. Marine mammals are continually exposed to many sources of sound. Naturally occurring sounds such as lightning, rain, sub-sea earthquakes, and biological sounds (for example, snapping shrimp, whale songs) are widespread throughout the world's oceans. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to: (1) Social

interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance, or received levels of sound depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.,* 1995). Type and significance of marine mammal reactions to sound are likely dependent on a variety of factors including, but not limited to, (1) the behavioral state of the animal (for example, feeding, traveling, etc.); (2) frequency of the sound; (3) distance between the animal and the source; and (4) the level of the sound relative to ambient conditions (Southall *et al.,* 2007).

Background information on sound, marine mammal hearing, and potential effects of the specified activity on marine mammals (i.e., hearing impairment, threshold shift, and behavioral disturbance) was provided in the 2013 proposed IHA notice (78 FR 7402, February 1, 2013) and referenced in the 2014 proposed IHA notice (79 FR 6167, February 3, 2014); that information has not changed.

Anticipated Effects on Marine Mammal Habitat

The high resolution geophysical survey equipment will not come in contact with the seafloor and will not be a source of air or water pollution. Marine mammals may avoid the survey area temporarily due to ensonification, but survey activities are not expected to result in long-term abandonment of marine mammal habitat. The specified activity is not expected to have any effects on important marine mammal habitat.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must prescribe, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses (where relevant).

CWA proposed, with NMFS' guidance, the following mitigation measures to help ensure the least practicable adverse impact on marine mammals and these mitigation measures are requirements in the IHA:

Establishment of an Exclusion Zone

During all survey activities involving the shallow-penetration and medium-penetration subbottom profilers, CWA will establish a 500-m radius exclusion zone around each survey vessel. This area will be monitored for marine mammals 60 minutes (as stipulated by the BOEM lease) prior to starting or restarting surveys, and during surveys, and 60 minutes after survey equipment has been turned off. Typically, the exclusion zone is based on the area in which marine mammals could be exposed to injurious (Level A) levels of sound. CWA's lease specifies a 500-m exclusion zone, which exceeds both the estimated Level A and Level B isopleths for marine mammal harassment. Thus, CWA's proposed exclusion zone will minimize impacts to marine mammals from increased sound exposures. Finally, the exclusion zone must not be obscured by fog or poor lighting conditions.

Shut Down and Delay Procedures

If a PSO sees a marine mammal within or approaching the exclusion zone prior to the start of surveying, the observer will notify the appropriate individual who will then be required to delay surveying (i.e., not initiate any sound sources that could result in the harassment of marine mammals) until the marine mammal moves outside of the exclusion zone or if the animal has not been resighted for 60 minutes. If a protected species observer sees a marine mammal within or approaching the exclusion zone during survey activities, the observer will notify the appropriate individual who will then be required to shut down the relevant sound sources until the marine mammal moves outside of the exclusion zone or if the animal has not been resighted for 60 minutes.

Soft-Start Procedures

A ''soft-start'' technique will be used at the beginning of survey activities each day (or following a shut down of the relevant sound sources) to allow any marine mammal that may be in the immediate area to leave before the sound sources reach full energy. Sound sources will not commence at nighttime or when the exclusion zone cannot be effectively monitored.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures to ensure that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned
- The practicability of the measure for applicant implementation

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of underwater impulse sounds, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of impulse sound, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of impulse sound, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well

as other measures considered by NMFS, we have determined that the aforementioned mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, where applicable, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. CWA submitted a marine mammal monitoring plan as part of the IHA application, which can be found in section 12 of CWA's application.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

- An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below
- An increase in our understanding of how many marine mammals are likely to be exposed to levels of impulse sound that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS
- An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:
  - Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information)
  - Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information)
  - Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli
- An increased knowledge of the affected species
- An increase in our understanding of the effectiveness of certain mitigation and monitoring measures

Visual Monitoring

CWA will designate at least one biologically-trained, on-site individual, approved in advance by NMFS, to monitor the area for marine mammals 60 minutes before, during, and 60 minutes after all survey activities and call for shut down of the sound source if any marine mammal is observed within or approaching the designated 500-m exclusion zone.

CWA will also provide additional monitoring efforts to increase knowledge of marine mammal species in Nantucket Sound. At least one NMFS-approved protected species observer will conduct behavioral monitoring from the survey vessel for two days, every 7 days of survey activity, to estimate take and evaluate the behavioral impacts that survey activities have on marine mammals outside of the 500-m exclusion zone. In addition, CWA will also deploy an additional vessel with a NMFS-approved PSO to collect data on species presence and behavior before surveys begin and once a month during survey activities.

PSOs will be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, compass, and range-finder) in order to determine if animals have entered the harassment isopleths and to record marine mammal sighting information. PSOs must be able to effectively monitor the 500-m exclusion zone whenever the subbottom profilers are in use. Survey efforts will only take place during daylight hours and visibility must not be obscured by fog, lighting conditions, etc.

Reporting Measures

CWA will submit a report to NMFS within 90 days of expiration of the IHA or completion of surveying, whichever comes first. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. More specifically, the report will include the following information when a marine mammal is sighted:

- Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all survey operations and marine mammal sightings;
- Species, number, location, distance from the vessel, and behavior of any marine mammals, as well as associated survey activity (number of shut-downs or delays), observed throughout all monitoring activities;
- An estimate of the number (by species) of marine mammals that are known to have been exposed to the survey activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 uPa (rms) and/or 180 dB re 1 uPa (rms) for cetaceans and 190 dB re 1 uPa (rms) for pinnipeds with a discussion of any specific behaviors those individuals exhibited; and
- A description of the implementation and effectiveness of the mitigation measures of the IHA.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), CWA would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities may not resume until NMFS is able to review the circumstances of the unauthorized take. NMFS would work with CWA to determine what is necessary to minimize the likelihood of further unauthorized take and ensure MMPA compliance. CWA may not resume their

activities until notified by NMFS via letter, email, or telephone.

In the event that CWA discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), CWA would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with CWA to determine whether modifications in the activities are appropriate.

In the event that CWA discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), CWA would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*), within 24 hours of the discovery. CWA would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

Monitoring Results From Previously Authorized Activities

CWA complied with the requirements under their 2012 IHA and did not conduct any activities under their 2013 IHA. CWA completed 28 days and 459 nautical transect miles of survey activity during 2012 and no living marine mammals were sighted. On July 10, 2012, a deceased harbor seal was seen by two PSOs and survey equipment was immediately shut down. The observers determined that the seal had been deceased for 24–48 hours, based on signs of scavenger damage and bloating, which suggest moderate decomposition (Pugliares *et al.,* 2007). Both observers concurred that the animal was not injured due to survey activities; however, a 60-minute post watch was performed to ensure that no other protected species were in the vicinity. A full report was submitted to NMFS on July 11, 2012, within 24 hours of the initial sighting. No marine mammal takes were reported during the 2012 season. CWA's monitoring report is available online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Based on CWA's application and NMFS' subsequent analysis, the impact of the described survey activities may result in, at most, short-term modification of behavior by small numbers of non-ESA listed marine mammals within the action area. Marine mammals may avoid the area or change their behavior at time of exposure to elevated sound levels.

Current NMFS practice regarding exposure of marine mammals to anthropogenic sound is that in order to avoid the potential for injury of marine mammals (for example, PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB re: 1 μPa or above, respectively (Level A harassment). This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.,* 2007). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB re: 1 μPa for impulse sounds and 120 dB re: 1 μPa for non-pulse noise, but below the aforementioned thresholds. These levels are also considered precautionary. NMFS' current acoustic exposure criteria are summarized below in Table 3.

TABLE 3—NMFS' CURRENT ACOUSTIC CRITERIA, AS THEY PERTAIN TO THE SPECIFIED ACTIVITY

Non-explosive sound		
Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 microPa-m (cetaceans)/190 dB re 1 microPa-m (pinnipeds) root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 microPa-m (rms).
Level B Harassment	Behavioral Disruption (for continuous noise)	120 dB re 1 microPa-m (rms).

With NMFS' input, CWA estimated the number of potential takes resulting from survey activities by considering species density, the zone of influence, and duration of survey activities. This information was detailed in the proposed IHA notice (79 FR 6167, February 3, 2014) and has not changed. In summary, CWA requested, and NMFS is authorizing, incidental take based on the highest estimated possible species exposures to potentially disturbing levels of sound from the boomer (Table 3). No marine mammals are expected to be exposed to injurious levels of sound in excess of 180 dB during survey activities. These take numbers overestimate the number of animals likely to be taken because they are based on the highest density estimates and do not account for required mitigation measures (such as the 500-m exclusion zone, marine mammal monitoring, and ramp-up procedures). These numbers indicate the maximum number of animals expected to occur within 444 m of the boomer.

TABLE 4—AUTHORIZED TAKE OF MARINE MAMMALS BY THE SPECIFIED ACTIVITY

Common name	Estimated density	Estimated take by level b harassment	Abundance of stock	Percentage of stock potentially affected	Population trend
Minke whale	0.13–7.4 (species/1,000 km^2)	9	20,741	0.04	n/a
Atlantic white-sided dolphin	0.13–164.3 (species/1,000 km^2)	185	48,819	0.38	n/a
Harbor porpoise	0.13–98.1 (species/1,000 km^2)	110	79,883	0.01	n/a
Gray seal	0.13–0.28 (species/km^2)	314	348,900	0.09	increasing
Harbor seal	0.03–0.07 (species/km^2)	79	99,340	0.08	n/a

Any impacts to marine mammal behavior from the specified activity are expected to be temporary. Animals may avoid the area around the survey vessels, thereby reducing the probability of exposure. Any disturbance to marine mammals is likely to be in the form of temporary avoidance or alteration of opportunistic foraging behavior near the survey location.

Analysis and Determinations

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

In making a negligible impact determination, NMFS considers a number of factors which include, but are not limited to, number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur (for instance, will the takes occur in an area or time of significance for marine mammals, or are takes occurring to a small, localized population?). As described above, marine mammals would not be exposed to activities or sound levels which would result in injury (for instance, PTS), serious injury, or mortality. Anticipated impacts of CWA's survey activities on marine mammals are temporary behavioral changes due to avoidance of the area. All marine mammals in the vicinity of survey operations will be transient as no breeding, calving, pupping, or nursing areas, or haul-outs, overlap with the survey area. The closest pinniped haul-outs are about 20 km and 12 km away on Monomoy Island and Muskeget Island, respectively. Marine mammals approaching the survey area will likely be traveling or opportunistically foraging.

Furthermore, the amount of take CWA requested and NMFS is authorizing likely overestimates the actual take that will occur; no marine mammal takes were observed during 28 days of survey activity in 2012. It is important to note that the marine mammal exclusion zone that CWA will implement is larger than the Level A and Level B harassment zones, and sound source verification monitoring from 2012 suggests that the originally estimated zones are much smaller. No affected marine mammals are listed under the ESA and only the Atlantic white-sided dolphin and harbor porpoise are considered strategic under the MMPA. Marine mammals are expected to avoid the survey area, thereby reducing the risk of exposure and impacts. No disruption to reproductive behavior is anticipated and there is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of mitigation and monitoring measures, NMFS has determined that the total marine mammal take by Level-B harassment from CWA's survey activities will have a negligible impact on the affected species or stocks.

Small Numbers

The amount of take CWA requested, and NMFS is authorizing, is considered small (less than one percent) relative to the estimated populations of 20,741 minke whales, 48,819 Atlantic white-sided dolphins, 79,883 harbor porpoises, 348,900 gray seals, and 99,340 harbor seals. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that small numbers of marine mammals may be taken relative to the population of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

On April 16, 2014, the NMFS Permits and Conservation Division concluded that the issuance of the IHA to CWA is not likely to adversely affect any listed marine mammal, and we requested NMFS' Greater Atlantic Regional Fisheries Office's concurrence on our determination. The region concurred with this determination on April 24, 2014.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA). The EA includes an analysis of the direct, indirect, and cumulative effects to marine mammals and other applicable environmental resources resulting from the issuance of a 1-year IHA and the potential issuance of additional authorization for incidental

harassment for the ongoing project in 2012. While processing the 2014 IHA, NMFS wrote a memorandum to the record to determine and document whether any changes to the proposed MMPA decision or new circumstances or information required us to supplement the 2011 EA and FONSI. NMFS determined that the effects of the 2014 IHA fall within the scope of the 2011 EA and FONSI and the Bureau of Ocean Energy Management's Cape Wind Final Environmental Impact Statement and do not require further supplementation. This EA is available on the NMFS Web site listed in the beginning of this document.

Dated: April 28, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–10296 Filed 5–5–14; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Market Risk Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of establishment of the Market Risk Advisory Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, the Commodity Futures Trading Commission (Commission) announces the establishment of the Market Risk Advisory Committee (MRAC). The Commission has determined that the establishment of MRAC is necessary and in the public's interest. No earlier than fifteen (15) days following the date of the publication of this notice, the MRAC Charter will be filed with the Commission, the Senate Committee on Agriculture, Nutrition and Forestry, the House Committee on Agriculture, the Library of Congress, and the General Services Administration's Committee Management Secretariat.

FOR FURTHER INFORMATION CONTACT: Heather C. Gottry, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; (202) 418–5774.

SUPPLEMENTARY INFORMATION: The MRAC's purpose will be to advise the Commission on matters of public concern to the Commission, clearinghouses, exchanges, intermediaries, market makers, and end-users regarding systemic issues that threaten the stability of the derivatives markets and other financial markets, and to assist the Commission in identifying and understanding the impact and implications of an evolving market structure and movement of risk across clearinghouses, intermediaries, market makers and end-users. The MRAC will also monitor and advise the Commission on the effects that developments in the structure of the derivatives markets have on the systemic issues that threaten the stability of the derivatives markers and other financial markets. Further, the MRAC will make recommendations to the Commission on how to improve market structure and mitigate risk to support the Commission's mission of ensuring the integrity of the derivatives markets and monitoring and managing systemic risk. The MRAC will be a continuing advisory committee with an initial two-year term that will automatically expire two years from the date of the charter filing, unless renewed prior to the expiration. MRAC is expected to have approximately twenty to twenty-five (20–25) members, including the Chair, with a high-level of expertise and experience in the derivatives and financial markets and the Commission's regulation of such markets, including from a historical perspective. Membership in the MRAC is limited to the individuals appointed and is non-transferrable. No person who is a Federally-registered lobbyist may serve on the MRAC. MRAC members will not receive compensation or travel reimbursements from the Commission.

Dated: May 1, 2014.

Melissa D. Jurgens,

Secretary of the Commission.

[FR Doc. 2014–10325 Filed 5–5–14; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0112]

Agency Information Collection Activities; Proposed Collection; Comment Request; Contests, Challenges, and Awards

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a generic collection of information for CPSC-sponsored contests, challenges, and awards approved previously under OMB Control No. 3041–0151. The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by July 7, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0112, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov*. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov*. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov*, and insert the docket number, CPSC–2010–0112, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved generic collection of information:

Title: Contests, Challenges, and Awards.

OMB Number: 3041–0151.

Type of Review: Renewal of generic collection.

Frequency of Response: On occasion.

Affected Public: Contestants, award nominees, award nominators.

Estimated Number of Respondents: 500 participants annually. In addition, 20 participants may be required to provide additional information upon selection.

Estimated Time per Response: 5 hours/participant. 20 participants may require 2 additional hours each to provide additional information upon selection.

Total Estimated Annual Burden: 2,540 hours (500 participants × 5 hours/participant) + (20 participants × 2 hours/participant).

General Description of Collection: The Commission establishes contests, challenges, and awards to increase the public's knowledge and awareness of safety hazards, such as carbon monoxide poisoning. The Commission also recognizes those individuals, firms, and organizations that work to address issues related to consumer product safety through awards.

Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: May 1, 2014.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2014–10311 Filed 5–5–14; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled the AmeriCorps National civilian Community Corps (NCCC) Project Sponsor Survey for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Barbara Lane, at 202–606–6867 or email to *blane@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) *By email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;

• Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on February 19, 2014. This comment period ended April 19, 2014. No public comments were received from this Notice.

Description: CNCS is seeking approval of the AmeriCorps NCCC Project Sponsor Survey, which is used by AmeriCorps NCCC to capture the short and long-term outcomes of the NCCC program on the organizations and the communities that the members serve.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps NCCC Sponsor Survey.

OMB Number: 3045–0138.

Agency Number: None.

Affected Public: The NCCC sponsor survey will be administered to the project sponsor for any NCCC service project. These sponsors apply to receive a 10-person NCCC team for a period of six-eight weeks to implement local service projects. There are approximately 156 projects in each of four project rounds per year. The project sponsors are uniquely able to provide the information sought in the NCCC Sponsor Survey.

Total Respondents: 625.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 104 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: April 29, 2014.

Gina Cross,

Acting Director, AmeriCorps National Civilian Community Corps.

[FR Doc. 2014–10350 Filed 5–5–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0069]

Agency Information Collection Activities; Comment Request; E-Complaint Form

AGENCY: Office of Management (OM), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 7, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://*

www.regulations.gov by selecting Docket ID number ED–2014–ICCD–0069 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Regina Miles, 202–260–3887.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: E-Complaint Form.

OMB Control Number: 1880–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 500.

Total Estimated Number of Annual Burden Hours: 500.

Abstract: The Family Policy Compliance Office (FPCO) is the office responsible for administering the Family Educational Rights and Privacy Act (FERPA). The E-Complaint Form is used by parents and students to submit complaints requesting an investigation of alleged violations under FERPA. The department will use the information to provide technical assistance to educational agencies and institutions to improve their understanding of and ensure their compliance with requirements concerning student education records.

Dated: April 30, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–10276 Filed 5–5–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Full-Service Community Schools Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information:

Full-Service Community Schools Program.

Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215J.

DATES:

Applications Available: May 6, 2014.

Deadline for Notice of Intent to Apply: May 21, 2014.

Date of Pre-Application Webinar: Wednesday, May 21, 2014.

Deadline for Transmittal of Applications: June 20, 2014.

Deadline for Intergovernmental Review: July 7, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fund for the Improvement of Education (FIE), which is authorized by section 5411 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), supports nationally significant programs to improve the quality of elementary and secondary education at the State and local levels and to help all children meet challenging academic content and academic achievement standards. The Full-Service Community Schools (FSCS) program, which is funded under FIE, encourages coordination of academic, social, and health services through partnerships between (1) public elementary and secondary schools; (2) the schools' local educational agencies (LEAs); and (3) community-based organizations, nonprofit organizations, and other public or private entities. The purpose of this collaboration is to provide comprehensive academic, social, and health services for students, students' family members, and community members that will result in improved educational outcomes for children. The FSCS program is a ''place-based'' program (see *http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_fy2009/m09-28.pdf*) that can leverage investments by focusing resources and drawing on the compounding effects of well-coordinated actions. Place-based approaches can also streamline otherwise redundant and disconnected programs.

Priorities: This notice contains one absolute priority and one competitive preference priority. The absolute priority is from the notice of final priorities, requirements, definitions, and selection criteria for this program (FSCS NFP), published in the **Federal Register** on June 8, 2010 (75 FR 32440). The competitive preference priority is from the notice of final priority for Promise Zones (Promise Zones NFP), published in the **Federal Register** on March 27, 2014 (79 FR 17035).

Absolute Priority: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Projects that Establish or Expand Full-Service Community Schools.

Background:

In order for children to be ready and able to learn, they need academic, social, and health supports. The Harvard Family Research Project has cited compelling evidence that, when schools partner with families and community-based organizations, these partnerships improve children's development and school success.[1] Community schools provide a base of support for students and their families by attending to their academic, social,

[1] Harris, E & Wilkes, S (2013). *Partnerships for Learning: Community Support for Youth Success.* Cambridge: Harvard Family Research Project.

and health needs through a school setting.

A full-service community school (as defined in this notice) is a public elementary or secondary school that works with its LEA and community-based organizations, nonprofit organizations, and other public or private entities to provide a coordinated and integrated set of comprehensive academic, social, and health services that respond to the needs of its students, students' family members, and community members. This coordination leads to results-focused partnerships (as defined in this notice) that are based on identified student needs and organized around a set of mutually defined results and outcomes.

Full-service community schools recognize that schools do not operate in isolation from the communities in which they are located. Community challenges such as poverty, violence, poor physical health, and family instability can have consequences for education when left unaddressed. When schools and community partners collaborate to address these issues and align their resources to achieve common results, children are more likely to succeed academically, socially, and physically. Full-service community schools seek to address the myriad challenges that affect students by connecting students, students' family members, and community members with available services and opportunities, creating the conditions for students to achieve in school and beyond.

Children, particularly those living in poverty, need a variety of family and community resources, including intellectual, social, physical, and emotional supports, to have the opportunity to attain academic success. Many children live in communities that lack not only high-performing schools, but also the supports needed to be ready and able to learn when they start school. School-community partnerships can be key strategies for providing resources to these individual students. A variety of organizations can help provide the missing resources for children living in poverty and, therefore, begin to transform struggling schools and communities. These organizations can be public or private, community-based or faith-based, governmental or non-governmental, or a combination thereof, but they must work together with clearly articulated and mutually agreed upon goals, target populations, roles, and desired results and outcomes. Partnerships between schools and organizations may take many forms and should be based on overlapping vital interests and student needs. For example, a telecommunications firm might provide internships to high school students to foster real-world connections to the school's science curriculum. Or, a local police department might provide mentors for troubled youth in order to keep students in school. Such results-focused partnerships (as defined in this notice) can transform the capacity of both the school and its partners to better serve students' and families' diverse needs and improve their outcomes.

A full-service community school coordinator (as defined in this notice) is often central to the effective facilitation of these partnerships, as well as the coordination and integration of services, programs, supports, and available opportunities. The full-service community school coordinator's main responsibility is to work closely and plan jointly with the school's principal to drive, develop, and implement the community school effort. The full-service community school coordinator by, for example, convening a cross-section of school staff, parents, and community organizations, can facilitate the development of systems with which to coordinate new and existing programs that respond to the needs of the school and community through ongoing needs assessments. The full-service community school coordinator adds capacity to the principal's leadership of the school and is essential to ensuring that all programs, supports, services, opportunities, and the mutually defined results and outcomes are fully aligned.

The Department of Education (the Department) recognizes that in order for students and the members of the communities in which they reside to thrive, their schools must be effective. Effective schools create learning environments that support student academic success and foster student engagement. When characterized by stable leadership and a strong instructional program, full-service community schools have been associated with improved attendance and student achievement,[2] increased family and community engagement,[3] and improved student behavior and youth development.[4] In addition, system-wide support should be present for developing, implementing, and sustaining effective full-service community schools. There is greater potential impact when full-service community schools have strong infrastructures in place to support sustaining the overall effort and expanding the number of FSCS sites throughout an LEA.

Priority:

This absolute priority supports projects that propose to establish or expand (through collaborative efforts among LEAs, community-based organizations, nonprofit organizations, and other public and private entities) full-service community schools, as defined in this notice, offering a range of services. To meet this priority, an applicant must propose a project that is based on scientifically based research—as defined in section 9101(37) of the ESEA—and that establishes or expands a full-service community school. Each applicant must propose to provide at least three of the following eligible services at each participating full-service community school included in its proposed project:

1. High-quality early learning programs or services.
2. Remedial education, aligned with academic supports and other enrichment activities, providing students with a comprehensive academic program.
3. Family engagement, including parental involvement, parent leadership, family literacy, and parent education programs.
4. Mentoring and other youth development programs.
5. Community service and service learning opportunities.
6. Programs that provide assistance to students who have been chronically absent, truant, suspended, or expelled.
7. Job training and career counseling services.
8. Nutrition services and physical activities.
9. Primary health and dental care.
10. Activities that improve access to and use of social service programs and programs that promote family financial stability.
11. Mental health services.
12. Adult education and literacy services including instruction of adults in English as a second language.

Competitive Preference Priority: For FY 2014 and any subsequent year in which we make awards from the list of

[2] Krenichyn, K., Clark, H. & Benitez, L. (2008). *Children's Aid Society 21st Century Community Learning Centers After-School Programs at Six Middle Schools: Final Report of a Three-Year Evaluation, 2004–2007.* New York: ActKnowledge.

[3] Quinn, J., & Dryfoos, J. (2009). *Freeing teachers to teach: Students in full-service community schools are ready to learn. American Educator,* Summer 2009:16–21.

[4] Whalen, S. (2007). *Three Years Into Chicago's Community Schools Initiative (CSI): Progress, Challenges, and Emerging Lessons.* Chicago: University of Illinois at Chicago. Retrieved April 9, 2010. from *http://www.aypf.org/documents/CSI_ThreeYearStudy.pdf.*

unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional three points to an application, depending on whether the application meets this priority.

This priority is:

Promise Zones (0 or 3 points).

Background:

We give competitive preference to applicants working with communities that have been awarded a Promise Zone designation. Promise Zone designees have committed to establishing comprehensive, coordinated approaches in order to ensure that America's most vulnerable children succeed from cradle to career. In January 2014, President Obama announced the first five Promise Zones: The Choctaw Nation of Oklahoma, Los Angeles, Philadelphia, San Antonio, and Kentucky Highlands. This designation is designed to assist local leaders in creating jobs, increasing economic activity, improving educational opportunities, leveraging private investment, and reducing violent crime in high-poverty urban, rural, and tribal communities. By partnering with Promise Zone designees, the Federal government will help communities access the resources and expertise they need—including the resources from various neighborhood revitalization initiatives—to ensure that Federal programs and resources support the efforts to transform these communities.

Priority:

Projects that are designed to serve and coordinate with a federally designated Promise Zone.

Note: Applicants should submit a letter of support from the lead organization of a designated Promise Zone attesting to the contribution of the applicant's proposed activities. A list of designated Promise Zones and lead organizations can be found at *http://hud.gov/promisezones*.

Definitions: The following definitions are from the FSCS NFP and from 34 CFR 77.1(c).

Community member means an individual who is not a student or a student's family member, as defined in this notice, but who lives in the community served by the FSCS grant.

Full-service community school means a public elementary or secondary school that works with its local educational agency and community-based organizations, nonprofit organizations, and other public or private entities to provide a coordinated and integrated set of comprehensive academic, social, and health services that respond to the needs of its students, students' family members, and community members. In addition, a full-service community school promotes family engagement by bringing together many partners in order to offer a range of supports and opportunities for students, students' family members, and community members.

Full-service community school coordinator means an individual who works closely and plans jointly with the school's principal to drive the development and implementation of the FSCS effort and who, in that capacity, facilitates the partnerships and coordination and integration of service delivery.

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program.

Results-focused partnership means a partnership between a full-service community school and one or more nonprofit organizations (including community-based organizations) that is based on identified needs and organized around a set of mutually defined results and outcomes for increasing student success and improving access to family and community services.

Student means a child enrolled in a public elementary or secondary school served by the FSCS grant.

Student's family member means the student's parents/guardians, siblings, and any other related individuals living in the same household as the student and not enrolled in the school served by the FSCS grant.

Program Authority: 20 U.S.C. 7243–7243b.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The notice of final priorities, requirements, definitions, and selection criteria (NFP) for this program, published in the **Federal Register** on June 8, 2010 (75 FR 32440). (d) The notice of final priority for Promise Zones, published in the **Federal Register** on March 27, 2014 (79 FR 17035).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Application Requirements:

The following requirements are from the FSCS NFP.

In order to receive funding, an applicant must include the following in its application:

1. A description of the needs of the students, students' family members, and community members to be served, including information about (a) the basic demographic characteristics of the students, students' family members, and community members; (b) the magnitude or severity of the needs to be addressed by the project; and (c) the extent to which specific gaps or weaknesses in services, infrastructures, or opportunities have been identified and will be addressed by the proposed project.

2. A list of entities that will partner with the applicant to coordinate existing services or to provide additional services that promote successful student, family, and community results and outcomes. The applicant must describe how existing resources and services will be coordinated and integrated with new resources and services.

3. A memorandum of understanding between the applicant and all partner entities, describing the role each partner will assume, the services or resources each one will provide, and the desired results and outcomes.

4. A description of the organizational capacity of the applicant to provide and coordinate eligible services at a full-service community school that will support increased student achievement. The description must include the applicant's experience partnering with the target school(s) and other partner entities; examples of how the applicant has responded to challenges working with these schools and entities; lessons learned from similar work or previous community-school efforts, and a description of the existing or proposed infrastructure to support the implementation and sustainability of the full-service community school. Applicants must also describe their past experience (a) building relationships and community support to achieve results; and (b) collecting and using data for decision-making and continuous improvement.

5. A comprehensive plan based on results-focused partnerships (as defined in this notice) that includes a description of well-aligned goals, services, activities, objectives, performance measures, and project results and outcomes. In addition, the plan must include the estimated total number of individuals to be served, disaggregated by the number of students, students' family members, and community members, and the type and

frequency of services to be provided to each group.

Note: Applicants are also encouraged to articulate in the comprehensive plan how the proposed FSCS strategy is aligned with other school improvement strategies and Federal funding streams.

6. A list and description of the eligible services to be provided or coordinated by the applicant and the partner entities; a description of the applicant's approach to integrating new and existing programs and services with the school's (or schools') core instructional program; and identification of the intended results and outcomes.

7. A description of how the applicant will use data to drive decision-making and measure success. This includes a description of the applicant's plans to monitor and assess outcomes of the eligible services provided and coordinated by the FSCS project, as well as the number of individuals served, while complying with Federal, State, and other privacy laws and requirements.

8. A description of the roles and responsibilities of a full-time full-service community school coordinator and the proposed approach to ensuring that the full-service community school coordinator engages in joint planning with the principal and key community stakeholders to guide the proposed full-service community school.

Applications that do not meet these requirements will not be read and will not be considered for funding.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,570,250.

Estimated Range of Awards: $275,000—$500,000.

Estimated Average Size of Awards: $457,025.

Maximum Award: $500,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* To be eligible for a grant under this competition, an applicant must be a consortium consisting of an LEA and one or more community-based organizations, nonprofit organizations, or other public or private entities. Consortia must comply with the provisions governing group applications in 34 CFR 75.127 through 75.129 of EDGAR.

2. *Cost Sharing or Matching:* To be eligible for an award, a portion of the services provided by the applicant must be supported through non-Federal contributions, either in cash or in-kind donations. The applicant must propose the amount of cash or in-kind resources to be contributed for each year of the grant.

Note: An applicant is encouraged to provide a minimum match of 20 percent through non-Federal contributions, either in cash or in-kind donations.

3. *Planning:* Interagency collaborative efforts are highly complex undertakings that require extensive planning and communication among partners and key stakeholders. Partnerships should be based on identified needs and organized around a set of mutually-defined results and outcomes. Applicants under this program may devote funds received during the first year of the project period to comprehensive program planning, establishing results-focused partnerships, and capacity building. Funding received by grantees during the remainder of the project period must be devoted to program implementation.

IV. Application and Submission Information

1. *Address To Request Application Package:*

You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www2.ed.gov/programs/communityschools/applicant.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.215J.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent To Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, each potential applicant is strongly encouraged to notify the Department by sending a short email message indicating the applicant's intent to submit an application for funding. The email need not include information regarding the content of the proposed application, only the applicant's intent to submit it. This email notification should be sent to *FSCS@ed.gov* with ''INTENT TO APPLY'' in the subject line by May 21, 2014. Applicants that do not notify us of their intent to apply may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application.

You are strongly encouraged to limit the application narrative [Part III] to the equivalent of no more than 35 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

3. *Submission Dates and Times:*

Applications Available: May 6, 2014.

Deadline for Notice of Intent to Apply: May 21, 2014.

Date of Pre-Application Webinar: The Department will hold a pre-application webinar for prospective applicants on Wednesday, May 21, 2014, from 2:00 p.m. to 4:00 p.m. Washington, DC time. The webinar will discuss the purpose of the FSCS program, absolute and

competitive preference priorities, application requirements, definitions, selection criteria, application content, submission requirements, and reporting requirements.

Interested parties may obtain information about this webinar from the program Web site at *http://www2.ed.gov/programs/communityschools/index.html*. A recording of this webinar will be available on this Web site following the session.

Deadline for Transmittal of Applications: June 20, 2014.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.

4. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 7, 2014.

5. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

7. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov*. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html*.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *http://www.grants.gov/web/grants/register.html*.

7. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the FSCS Program, CFDA Number 84.215J, must be submitted electronically using the Government wide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the FSCS Program at *www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.215, not 84.215J).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your

application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov*.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Adrienne Hawkins, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W256, Washington, DC 20202–5950. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.215J)
LBJ Basement Level 1,
400 Maryland Avenue SW.,
Washington, DC 20202–4260.

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 the U.S. Department of Education.

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.

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.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.215J)
550 12th Street SW.,
Room 7039, Potomac Center Plaza,
Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from the NFP for this program, published in the **Federal Register** on June 8, 2010 (75 FR 13781) and from 34 CFR 75.210. These selection criteria are listed in the application package as well as this notice. We may apply one or more of these criteria in any year in which this program is in effect. The maximum score for each criterion is indicated in parentheses with the criterion, and the total maximum score for all selection criteria is 100 points.

The selection criteria are as follows:

(a) *Quality of the Project Design* (up to 25 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project consists of a comprehensive plan that includes a description of—

(i) The students, students' family members, and community to be served, including information about the demographic characteristics and needs of the students, students' family members, and other community members and the estimated number of individuals to be served;

(ii) The eligible services (as listed in the Absolute Priority described elsewhere in this notice) to be provided or coordinated by the applicant and its partner entities, how those services will meet the needs of students, students' family members, and other community members, and the frequency with which those services will be provided to students, students' family members, and community members;

(iii) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the applicant beyond the end of the grant; and

(iv) The extent to which the proposed project will integrate with or build on similar or related efforts to improve relevant outcomes (as defined in this notice), using existing funding streams from other programs or policies supported by community, State, and Federal resources.

(b) *Adequacy of Resources* (up to 20 points).

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors—

(i) The adequacy of support, including facilities, equipment, supplies, and other resources to be provided by the applicant and consortium partners;

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and

(iii) The extent to which costs are reasonable in relation to the number of persons to be served and services to be provided.

(c) *Quality of the Management Plan* (up to 25 points).

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors—

(i) The extent to which the proposed project consists of a comprehensive plan that includes a description of planning, coordination, management, and oversight of the eligible services (as listed in the Absolute Priority described elsewhere in this notice) to be provided at each school to be served, including the role of the school principal, the FSCS coordinator, partner entities, parents, and community members; and

(ii) The qualifications, including relevant training and experience, of the full-service community school coordinator and other key project personnel including prior performance of the applicant on similar or related efforts.

(d) *Quality of Project Services* (up to 20 points).

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the project services, the Secretary considers the following—

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice; and

(ii) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(e) *Quality of the Project Evaluation* (up to 10 points).

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the extent to which the proposed evaluation—

(i) Will provide timely and valid information on the management, implementation, or efficiency of the project; and

(ii) Will provide guidance on or strategies for replicating or testing the project intervention in multiple settings.

(3) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

Factors Applicants May Wish to Consider in Developing an Evaluation Plan: The quality of the evaluation plan is one of the selection criteria by which applications in this competition will be judged. A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the project period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual or organization that has agreed to serve as evaluator for the

project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* The Secretary has established one performance indicator for this program: The percentage of individuals targeted for services who receive services during each year of the project period. All grantees will be required to submit an annual performance report documenting their contribution in assisting the Department in measuring the performance of the program against this indicator, as well as performance on project-specific indicators.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application'' and the performance measures established for this program. This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Adrienne Hawkins, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W256, Washington, DC 20202. Telephone: (202) 401–2091 or by email: *FSCS@ed.gov*.

If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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 article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 1, 2014.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2014–10361 Filed 5–5–14; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request; Election Assistance Commission's Voting System Testing and Certification Program Manual, Version 1.0

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice; comment request.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, the U.S. Election Assistance Commission (EAC) invites the general public and other Federal agencies to take this opportunity to comment on EAC's request to renew an existing information collection, EAC's Voting System Testing and Certification Program Manual, Version 1.0. 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and included in the request for approval of this information collection by the Office of Management and Budget; they also will become a matter of public record. This notice requests comments solely on the four criteria above. Note: This notice solicits comments on the currently-used Manual, Version 1.0 *only.* Due to lack of a quorum, EAC will postpone making changes to Version 1.0 of the Manual until such a time as a quorum is re-established. See Supplementary Information, below.

DATES: Written comments must be submitted on or before 11:59 p.m. EDT on June 5, 2014.

ADDRESSES: Comments and recommendations on the proposed information collection must be submitted in writing: (1) Electronically to *jmyers@eac.gov;* via mail to Mr. Brian Hancock, Director of Voting System Testing and Certification, U.S. Election Assistance Commission, 1335 East West Highway, Suite 4300, Silver Spring, MD 20910; or via fax to (202) 566–1392. An electronic copy of the manual, version 1.0, may be found on EAC's Web site at *www.eac.gov/open/comment.aspx.*

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please contact Mr. Brian Hancock, Director, Voting System Testing and Certification, Washington, DC, (202) 566–3100, Fax: (202) 566–1392.

SUPPLEMENTARY INFORMATION:

Background

In this notice, EAC seeks comments on the paperwork burdens contained in the current version of the Voting System Testing and Certification Program Manual, Version 1.0 OMB Control Number 3265–0004 *only.* Version 1.0 is the original version of the Manual without changes or updates.

Current Information Collection Request, Version 1.0

Title: Voting System Testing and Certification Program, Version 1.0.

OMB Number: 3265–0004.

Type of Review: Renewal.

Needs and Uses: Section 231(a) of the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15371(a), requires EAC to ''provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.'' To fulfill this mandate, EAC has developed and implemented the Voting System Testing and Certification Program Manual, Version 1.0. This version is currently in use under OMB Control Number 3265–0004. EAC had hoped to finalize a revised Manual prior to the expiration of the current manual's control number. However, due to lack of a quorum, EAC will continue using the existing manual, version 1.0, necessitating this action. Although participation in the program in voluntary, adherence to the program's procedural requirements is mandatory for participants.

Affected Public: Voting system manufacturers.

Estimated Number of Respondents: 8.

Total Annual Responses: 8.

Estimated Total Annual Burden Hours: 200 hours.

Alice Miller,

Acting Executive Director, U.S. Election Assistance Commission.

[FR Doc. 2014–10344 Filed 5–5–14; 8:45 am]

BILLING CODE 6820–KF–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request; Election Assistance Commission's Voting System Test Laboratory Program Manual, Version 1.0

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice; comment request.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, the U.S. Election Assistance Commission (EAC) invites the general public and other Federal agencies to take this opportunity to comment on EAC's request to renew an existing information collection, EAC's Voting System Test Laboratory Program Manual, Version 1.0. 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and included in the request for approval of this information collection by the Office of Management and Budget; they also will become a matter of public record. This notice requests comments solely on the four criteria above. Note: This notice solicits comments on the currently-used Manual, Version 1.0 only. Due to lack of a quorum, EAC will postpone making changes to Version 1.0 of the Manual until such a time as a quorum is re-established. See Supplementary Information, below.

DATES: Written comments must be submitted on or before 11:59 p.m. EDT on June 5, 2014.

ADDRESSES: Comments and recommendations on the proposed information collection must be submitted in writing: (1) Electronically to *jmyers@eac.gov;* via mail to Mr. Brian Hancock, Director of Voting System Testing and Certification, U.S. Election Assistance Commission, 1335 East West Highway, Suite 4300, Silver Spring, MD 20910; or via fax to (202) 566–1392. An electronic copy of the manual, version

1.0, may be found on EAC's Web site at *www.eac.gov/open/comment.aspx.*

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please contact Mr. Brian Hancock, Director, Voting System Testing and Certification, Washington, DC, (202) 566–3100, Fax: (202) 566–1392.

SUPPLEMENTARY INFORMATION:

Background

In this notice, EAC seeks comments on the paperwork burdens contained in the current version of the Voting System Test Laboratory Manual, Version 1.0 OMB Control Number 3265–0004 only. Version 1.0 is the original version of the Manual without changes or updates.

Current Information Collection Request, Version 1.0

Title: Voting System Test Laboratory Manual, Version 1.0.

OMB Number: 3265–0013.

Type of Review: Renewal.

Needs and Uses: Section 231(a) of the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15371(a), requires EAC to ''provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.'' To fulfill this mandate, EAC has developed and implemented the Voting System Test Laboratory Program Manual, Version 1.0. This version is currently in use under OMB Control Number 3265–0013. Although participation in the program in voluntary, adherence to the program's procedural requirements is mandatory for participants.

Affected Public: Voting system manufacturers.

Estimated Number of Respondents: 8.

Total Annual Responses: 8.

Estimated Total Annual Burden Hours: 200 hours.

Alice Miller,

Acting Executive Director, U.S. Election Assistance Commission.

[FR Doc. 2014–10345 Filed 5–5–14; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–357–A]

Application to Export Electric Energy; Hunt Electric Power Marketing, L.L.C.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Hunt Electric Power Marketing, L.L.C. (HEPM) has applied to renew its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before June 5, 2014.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov*, or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On August 31, 2009, DOE issued Order No. EA–357, which authorized HEPM to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. That authority expires on August 31, 2014. On April 14, 2014, HEPM filed an application with DOE for renewal of the export authority contained in Order No. EA–357 for an additional five-year term.

In its application, HEPM states that it does not own any electric generating or transmission facilities, and it does not have a franchised service area. The electric energy that HEPM proposes to export to Mexico would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by HEPM have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the HEPM application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–357–A. An additional copy is to be provided directly to Geoffrey Street, Hunt Electric Power Marketing, L.L.C., 1900 North Akard Street, Dallas, TX 75201 and to James M. Bushee, Sutherland Asbill & Brennan LLP, One American Center, 600 Congress Avenue, Suite 2000, Austin, TX 78701. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available by request to the addresses provided above or by accessing the program Web site at *http://energy.gov/node/11845*.

Issued in Washington, DC, on April 30, 2014.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2014–10346 Filed 5–5–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy.

ACTION: Agency Information Collection Activities: Information Collection Extension; Notice and Request for Comments.

SUMMARY: EIA intends to revise and extend for three years, Form EIA–914 ''Monthly Natural Gas Production Report,'' with the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

The revisions include increasing the number of states for which natural gas production will be collected. Gas production has increased dramatically in a few of the states outside the current

EIA–914 states—for example, Pennsylvania and Colorado, both of which now out-produce two of the original EIA–914 areas, New Mexico and the Gulf of Mexico. Much of Colorado's new production is coalbed methane, while Pennsylvania's production is largely from the Marcellus shale formation. While production from unconventional sources has risen, production from more traditional formations has declined, particularly in the Gulf of Mexico and New Mexico, as the emphasis on oil production has increased. Pennsylvania and Colorado are representative of quite a few states that have demonstrated recent, large production increases. Thus, EIA considers it important to expand the number of states for which natural gas production data are collected.

Additionally, EIA also proposes to add the collection of crude oil and lease condensate production data at the state level. Oil production in the United States has grown recently and, in some cases, dramatically after a long, gradual decline. However, tight formations have fueled a recent reversal of this trend. As recently as April 2005 North Dakota was the tenth-largest producer of crude oil in the United States with less than 2 percent of U.S. production, but due to developments in the Bakken formation, is now the third-largest producer and accounted for slightly more than 12 percent of U.S. production in November 2013. Similarly, Texas production, which declined for many years, dramatically increased over the last two years as the projects in the Eagle Ford formation came on-line and ramped up. Increased production from tight formations have more than offset natural declines in the Gulf of Mexico, California, Alaska, and elsewhere so that exporting U.S. oil production has become a seriously discussed topic.

Further, EIA proposes to collect state-level crude oil and lease condensate production by API gravity category. We think that it's important to collect oil production by API gravity to inform the growing discussion about exporting crude oil. Proponents of exporting argue that there are large amounts of light crude oil presently produced in the United States, too much for U.S. refineries to process. Opponents of exporting argue that there is far less light crude oil being produced. Thus, collecting crude oil production by API gravity categories will inform the debate. The categories have not been determined yet. We expect that the final set of categories will include ''unknown,'' but we don't expect much production reported for this category.

Lastly, EIA plans to explore the possibility of collecting sulfur content of U.S. crude oil and lease condensate production (either at the state level, or national level). Categories of sulfur content will be determined once the availability of these data becomes known.

Comments are invited on the following issues: (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) whether the proposed collection of crude oil and lease condensate by API gravity category is consistent with industry record-keeping practices, as well as general comments on potential respondents' ability to provide such information, (c) whether the potential respondents are able to provide a measure of the sulfur content by state, (d) ways to enhance the quality, utility, and clarity of the information to be collected; and (e) 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.

DATES: Comments regarding this proposed information collection must be received on or before July 7, 2014. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Send comments to Neal Davis. The mailing address is U.S. Department of Energy, U.S. Energy Information Administration, Attn: Neal Davis, EI–24, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. To ensure receipt of the comments by the due date, submission by email (*neal.davis@eia.gov*) is recommended. Alternatively, Neal Davis may be contacted by telephone at 202–586–6581 or by fax at 202–287–1938.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Neal Davis at the contact information given above. Forms and instructions are also available on the Internet at: *http://www.eia.gov/survey/notice/ngforms2015.cfm.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* 1905–0160;

(2) *Information Collection Request Title:* Monthly Natural Gas Production Report;

(3) *Type of Request:* Extension, with changes, of a currently approved collection

(4) *Purpose:* Form EIA–914, ''Monthly Natural Gas Production Report,'' collects monthly data on the production of natural gas in seven geographical areas (Texas (including State offshore), Louisiana (including State offshore), Oklahoma, New Mexico, Wyoming, Federal Gulf of Mexico offshore and Other States (defined as all remaining states, except Alaska, in which the operator produced natural gas during the report month)). The data appear in the ''Monthly Natural Gas Gross Production Report'' on EIA's Web site and in the EIA publications, *Monthly Energy Review, Natural Gas Annual,* and *Natural Gas Monthly.*

(4a) Proposed Changes to Information Collection:

The proposed changes include:

- Changing the title from ''Monthly Natural Gas Production Report'' to ''Monthly Crude Oil, Lease Condensate, and Natural Gas Production Report.''
- In Part 2, EIA is proposing to remove several states from the ''Other States'' category—Alabama, Arkansas, California, Colorado, Kansas, Michigan, Mississippi, Montana, North Dakota, New York, Ohio, Pennsylvania, Utah, and West Virginia—and collect both gross withdrawals of natural gas and natural gas lease production volumes for a total of 21 states/areas including ''Other States.'' The ''Other States'' category will be retained, but only include the states Arizona, Federal California offshore, Florida, Illinois, Indiana, Kentucky, Maryland, Missouri, Nebraska, Nevada, Oregon, Tennessee, South Dakota, and Virginia. EIA will continue to collect Alaska natural gas production directly from the state.
- EIA is proposing to add Part 3 to Form EIA–914. Part 3 will collect total monthly crude oil and lease condensate production volumes for the 21 states/areas discussed above, including API gravity. Further, the production will be collected for several categories based on API gravity across each state. EIA plans to include a measure of the sulfur content (by state and API gravity) and is interested in assessing the availability of these data to respondents. The proposed categories are shown below.

API GRAVITY RANGES

≤20.0	20.1 to 30.0	30.1 to 35.0	35.1 to 40.0	40.1 to 45.0	45.1 to 50.0	50.1 to 55.0	≥55.0	unknown

Note that it is expected that the ''unknown'' category will be rarely used by the respondent companies, typically under exceptional and temporary circumstances.

(5) *Estimated Number of Survey Respondents:* 600 respondents.

(6) *Annual Estimated Number of Total Responses:* The annual number of total responses is 7200. Annual Estimated Number of Burden Hours: The annual estimated burden is 21,600 hours.

(7) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Additional costs to respondents are not anticipated beyond costs associated with response burden hours.

(8) Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC on April 30, 2014.

Stephen J. Harvey,

Assistant Administrator for Energy Statistics, U.S. Energy Information Administration.

[FR Doc. 2014–10352 Filed 5–5–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12496–002]

Rugraw, LLC: Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major original license

b. *Project No.:* 12496–002

c. *Date filed:* April 21, 2014

d. *Applicant:* Rugraw, LLC

e. *Name of Project:* Lassen Lodge Hydroelectric Project

f. *Location:* On the South Fork Battle Creek, nearby the Town of Mineral, Tehama County, California. No federal lands or Indian reservations are located within the proposed project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r)

h. *Applicant Contact:* Charlie Kuffner, 70 Paseo Mirasol, Tiburon, CA 94920; (415) 652–8553

i. *FERC Contact:* Adam Beeco at (202) 502–8655; email—*adam.beeco@ferc.gov*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* June 20, 2014

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–12496–002.

m. The application is not ready for environmental analysis at this time.

n. The proposed Lassen Lodge Project consists of: (1) A 6-foot-high and 94-foot-long diversion dam; (2) an impoundment of approximately 0.5 acre; (3) a 20 by 10 foot enclosed concrete intake structure; (4) a 7,258-foot-long pipeline and a 5,230-foot-long penstock with a net head of 791 feet; (5) a 50 by 50 foot powerhouse containing one generating unit with a 5,000-kilowatt capacity; (6) a 50 by 50 foot substation area; (7) a 40 by 35 foot switchyard; (8) 100 by 100 foot multipurpose area; and (9) a new 12-mile-long, 60-kilovolt transmission line. The project is estimated to produce approximately 25,000,000 kilowatt-hours annually.

o. 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.

You may also 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.

p. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter.	June 2014
Request Additional Information.	June 2014
Issue Acceptance Letter	September 2014
Issue Scoping Document 1 for Comments.	October 2014
Request Additional Information (if necessary).	December 2014
Issue Scoping Document 2 (if necessary).	January 2015
Notice that application is ready for environmental analysis.	January 2015
Notice of the availability of the draft EA.	July 2015
Notice of the availability of the final EA.	October 2015

Dated: April 29, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10338 Filed 5–5–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG14–45–000.
Applicants: Grandview Wind Farm, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Grandview Wind Farm, LLC.
Filed Date: 4/28/14.
Accession Number: 20140428–5273.
Comments Due: 5 p.m. ET 5/19/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1910–005*; ER10–1908–005; ER10–1909–005; ER10–1911–005; ER10–1533–006; ER12–674–003; ER12–670–003*.
Applicants: Duquesne Conemaugh LLC, Duquesne Keystone LLC, Duquesne Light Company, Duquesne Power, LLC, Macquarie Energy LLC, Rhode Island Engine Genco, LLC, Rhode Island LFG Genco, LLC.
Description: Amendment to December 31, 2013 Triennial Market Power Update for Northeast Region of Duquesne Light Company, et al.
Filed Date: 4/25/14.
Accession Number: 20140425–5211.
Comments Due: 5 p.m. ET 5/16/14.

Docket Numbers: ER14–1378–002.
Applicants: PJM Interconnection, L.L.C.
Description: Errata to Resubmit Original Service Agreement No. 3746 to be effective 4/1/2014.
Filed Date: 4/28/14.
Accession Number: 20140428–5227.
Comments Due: 5 p.m. ET 5/19/14.

Docket Numbers: ER14–1777–000.
Applicants: Wheelabrator Falls Inc.
Description: MBR Application to be effective 5/25/2014.
Filed Date: 4/25/14.
Accession Number: 20140425–5241.
Comments Due: 5 p.m. ET 5/16/14

Docket Numbers: ER14–1778–000.
Applicants: SunPower Corporation, Systems.
Description: SunPower Corporation, Systems Notice of Cancellation to be effective 4/26/2014.
Filed Date: 4/25/14.
Accession Number: 20140425–5311.
Comments Due: 5 p.m. ET 5/16/14.

Docket Numbers: ER14–1779–000.
Applicants: Southwest Power Pool, Inc.
Description: 2824R1 KMEA & Sunflower Meter Agent Agreement to be effective 4/1/2014.
Filed Date: 4/28/14.
Accession Number: 20140428–5079.
Comments Due: 5 p.m. ET 5/19/14.

Docket Numbers: ER14–1780–000.
Applicants: Southwest Power Pool, Inc.
Description: 2825R1 KMEA and Westar Energy Meter Agent Agreement to be effective 4/1/2014.
Filed Date: 4/28/14.
Accession Number: 20140428–5138.
Comments Due: 5 p.m. ET 5/19/14.

Docket Numbers: ER14–1781–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3808; Queue No. NQ89 to be effective 5/6/2017.
Filed Date: 4/28/14.
Accession Number: 20140428–5199.
Comments Due: 5 p.m. ET 5/19/14.

Docket Numbers: ER14–1783–000.
Applicants: Southwestern Public Service Company.
Description: 2014–4–28_SPS–TCEC–GSEC-Aggie-CA—665–0.0.0 to be effective 4/29/2014.
Filed Date: 4/28/14.
Accession Number: 20140428–5208.
Comments Due: 5 p.m. ET 5/19/14.

Docket Numbers: ER14–1784–000.
Applicants: Southwest Power Pool, Inc.
Description: Notice of cancellation of Designee Qualification and Novation Agreement (SA 1873) of Southwest Power Pool, Inc.
Filed Date: 4/28/14.
Accession Number: 20140428–5211.
Comments Due: 5 p.m. ET 5/19/14.

Docket Numbers: ER14–1785–000.
Applicants: PJM Interconnection, L.L.C.
Description: Second Revised Service Agreement No. 2442; Queue No. Y1–066 to be effective 3/28/2014.
Filed Date: 4/28/14.
Accession Number: 20140428–5236.
Comments Due: 5 p.m. ET 5/19/14.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–39–000.
Applicants: MidAmerican Energy Company.
Description: Application of MidAmerican Energy Company under Section 204 of the Federal Power Act for Authorization to Issue and Sell Debt Securities.
Filed Date: 4/25/14.
Accession Number: 20140425–5323.
Comments Due: 5 p.m. ET 5/16/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 28, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–10266 Filed 5–5–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP14–773–000]

City of Las Cruces, New Mexico, City of Mesa, Arizona, ConocoPhillips Company, Freeport-McMoRan Corporation, Navajo Tribal Utility Authority, New Mexico Gas Company, Inc., Southwest Gas Corporation, Complainants v. El Paso Natural Gas Company, L.L.C., Respondent; Notice of Complaint

Take notice that on April 25, 2014, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, City of Las Cruces, New Mexico, City of Mesa, Arizona, ConocoPhillips Company, Freeport-McMoRan Corporation, Navajo Tribal Utility Authority, New Mexico Gas Company, Inc., and Southwest Gas Corporation (Complainants) jointly and severally filed a formal complaint against El Paso Natural Gas Company, L.L.C. (Respondent) alleging that, Respondent has illegally terminated Complainant's respective Transportation Service Agreements (TSA), which are subject to Article 11.2(a) of the 1996 Settlement Agreement.[1]

[1] El Paso Natural Gas Co., Docket No. RP96–363–000, *et al.* Offer of Settlement and Request for Approval of Stipulation and Agreement. (submitted March 15, 1996); *El Paso Natural Gas Co.,* 79 FERC ¶ 61, 028, *reh'g denied* 80 FERC ¶ 61, 084 (1997).

The Complainant certifies that copies of the complaint were served on the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for 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: 5:00 p.m. Eastern Time on May 15, 2014.

Dated: April 29, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10318 Filed 5–5–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–104–000]

Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Uniontown to Gas City Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Uniontown to Gas City Project (Project) involving construction and operation of facilities by Texas Eastern Transmission, LP (Texas Eastern) in Pennsylvania, Ohio and Indiana. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on May 29, 2014.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Texas Eastern provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

The purpose of the Project is to make new firm pipeline capacity available to transport production of five shippers that have executed precedent agreements with Texas Eastern. It would allow additional natural gas from the Appalachian production area to be transported to markets in the Midwest. This would be accomplished by modifying 23 existing aboveground facilities along Texas Eastern's system. These facilities include:

- In Greene County, Pennsylvania, modifications at the Waynesburg Compressor Station would include new sample lines at the 70009 meter and regulator (M&R) station and 70037 M&R station, a new gas chromatograph/electronic gas measurement (GC/EGM) building, removal of a deanalyzer building, and a new GC sample line at the Waynesburg Suction; new GC/EGM buildings at the 70020 and 73152 M&R station, and gas turbine modifications at the existing Holbrook Compressor Station;
- in Monroe County, Ohio, a new GC and Remote Terminal Units (RTU) at the 70983 and 70471 M&R Stations, and a new launcher/receiver and filter separator at the Berne Compressor Station;
- in Noble County, Ohio, a new launcher/receiver at the Summerfield Compressor Station, and new receiver on Somerset Line 65;
- in Perry County, Ohio, new launcher/receiver at the Coserset Compressor Station;
- in Fairfield County, Ohio, a new GC building at the 73715 and 70077 M&R Stations;
- in Pickaway County, Ohio, a new crossover and receiver at the Five Points Line 1, and gas turbine modifications at the Five Points Compressor Station;
- in Fayette County, Ohio, new receiver at the Lebanon Discharge Line 1 and new GC at the 70081 M&R Station;
- in Clinton County, Ohio, a new GC at the 73105 M&R Station;
- in Warren County, Ohio, gas turbine modifications at the Lebanon Compressor Station, a new GC building at 70041 M&R Station, reversal modifications at the 72945 M&R Station, a new GC/RTU building at 72908 M&R Station, and a new GC at 71353 M&R Station;

• in Darke County, Ohio, new RTU building at the 72902 M&R Station, and reverse compressor modifications at the Glen Karn Compressor Station; and

• in Grant County, Indiana, a new delivery meter station, and reverse compressor modifications at the Gas City Compressor Station.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

With the exception of the proposed 20-inch-diameter crossover pipeline located at the Five Points Line 1 in Pickaway County, Ohio, all of the proposed activities associated with the Project would take place within Texas Eastern's existing right-of-way. About 4.8 acres would be disturbed during construction at all the modified facilities combined within the existing right-of-way. The crossover at the Five Points Line 1 would disturb an additional 0.07 acre outside of the existing right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

• Geology and soils;
• land use;
• water resources, fisheries, and wetlands;
• cultural resources;
• vegetation and wildlife;
• air quality and noise;
• endangered and threatened species;
• reliability; and
• public safety.

We will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendation to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section of this notice.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[3] We will define the Project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project develops. On natural gas projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this Project will document our findings on the impacts on historic properties and summarize the status on consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before May 29, 2014.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the Project docket number (CP14–104–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to *Documents and Filings.* An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to *Documents and Filings.* With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; interested Indian tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the compact disc version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits, in the Docket Number field (i.e., CP14–104). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: April 29, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10316 Filed 5–5–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–1777–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Wheelabrator Falls Inc.

This is a supplemental notice in the above-referenced proceeding of Wheelabrator Falls Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 19, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for 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.

Dated: April 29, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10317 Filed 5–5–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2280–018]

Seneca Generation, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2280–018.

c. *Date filed:* December 2, 2013.

d. *Applicant:* Seneca Generation, LLC.

e. *Name of Project:* Kinzua Pumped Storage Hydroelectric Project.

f. *Location:* The existing project is located on the Allegheny River in Warren, Pennsylvania. The project is located on 226.7 acres of federal lands; 212.1 acres of which is administered by the U.S. Forest Service and 14.6 acres administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Kathy French, P.E., Assistant VP, Environmental, Health and Safety, Seneca Generation, LLC, 1700 Broadway, 35th Floor, New York, NY 10019; Telephone (212) 547–4381.

i. *FERC Contact:* Gaylord Hoisington, Telephone (202) 502–6032, and email *gaylord.hoisington@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2280–018.

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 existing Kinzua Pumped Storage Project utilizes the existing U.S. Army Corps of Engineers' Kinzua Dam and Reservoir (known as the Allegheny Reservoir), and consists of the following existing facilities: (1) The Allegheny Reservoir intake structure at the Kinzua Dam; (2) the upper reservoir, located on the plateau adjacent to the dam, which includes an emergency spillway and has a useable storage of 5,697 acre-feet at elevation 2,072,0 feet National Geodetic Vertical Datum 1929 (NGVD29); (3) a powerhouse, located immediately downstream of the southern (left facing downstream) abutment of the dam, that houses two reversible pump-turbines and one conventional hydro unit having a total installed capacity of 451,800 kilowatts; (4) water conveyance tunnels and penstocks between the Allegheny Reservoir and the powerhouse, between the powerhouse and the upper reservoir, and between the powerhouse and the Allegheny River downstream of the dam; (5) a transmission line between the powerhouse and the Glade substation (non-project structure); and (6) appurtenant equipment necessary for the operation of the project. The average annual generation is estimated to be 559.059 gigawatt-hours.

The licensee proposes to: (1) Increase the useable storage of the upper reservoir by increasing the maximum normal storage elevation by 1 foot equating to 110 acre-feet of storage; (2) automate the existing Allegheny intake bulkhead gates, Unit 2 discharge butterfly valve, and Corps' sluice gates in the dam; (3) refurbish the Unit 2 discharge valve; (4) utilize Unit 2 to discharge to the Allegheny River downstream of the dam more frequently than in the past; (5) construct an Americans with Disabilities-accessible (ADA) fishing platform at the existing Corps' boat launch downstream of the dam; and (7) install an educational kiosk near the upper reservoir.

The licensee proposes to modify the project boundary by adding some lands and removing other lands. Specifically, the licensee proposes to: (1) Add a small area for the proposed ADA-fishing access near the existing Corps' boat ramp; (2) remove several areas including: (a) The public road providing access to the project powerhouse; (b) a portion of State Road 59 and adjacent land that currently overlap the project; and (c) two areas near the upper reservoir, one of which had previously contained a weir that no longer exists, and the other of which underlies non-project-related communication equipment. The proposed project boundary would include 220.1 acres of federal lands; 209.8 acres of U.S. Forest Service lands and 10.3 acres of U.S. Army Corps of Engineers' lands.

m. 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.

n. 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,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY 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.

o. Procedural Schedule:

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	June 28, 2014.
Commission issues EA	October 26, 2014.

Milestone	Target date
Comments on EA	November 25, 2014.
Modified terms and conditions	January 24, 2015.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: April 29, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10312 Filed 5–5–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14583–000]

ECOsponsible, Inc.: Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 3, 2014, ECOsponsible, Inc filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Caughdenoy Lock Hydro Project (Caughdenoy Project or project) to be located on the Oneida River, near the Town of Clay, in Onondaga County, New York. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An existing abandoned steam ship canal at the Caughdenoy dam; (2) three turbines for a total installed capacity of 3,000-kilowatts; (3) a new 50-foot-long transmission line from the powerhouse to an existing 15-kilovolt grid connection point located adjacent to county Highway #33; and (4) appurtenant facilities. The estimated annual generation of the Caughdenoy Project would be 13,446 megawatt-hours.

Applicant Contact: Mr. Dennis Ryan, Executive Director, ECOsponsible, Inc., 120 Mitchell Road, Ease Aurora, New York 14052; phone: (716) 655–3524.

FERC Contact: Woohee Choi; phone: (202) 502–6336.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14583–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14583) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 29, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10339 Filed 5–5–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14595–000]

FFP Project 10, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 3, 2014, FFP Project 10, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Allegheny Lock and Dam #4 Hydroelectric Project (Allegheny #4 Project or project) to be located at the U.S. Army Corps of Engineers' (Corps) Allegheny Lock and Dam #4 on the Allegheny River in Allegheny County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new 150-foot-wide by 200-foot-long intake; (2) a new 150-foot-wide by 200-foot-long powerhouse; (3) a new 150-foot-wide by 300-foot-long tailrace; (4) new 250-foot-long and 150-foot-long concrete retaining walls upstream of the new intake and downstream of the new powerhouse, respectively; (5) three horizontal Kaplan turbine-generators each rated at 5 megawatts; (6) a 20-megavolt-ampere, 4.16-kilovolt (kV)/69-kV three-phase step-up transformer; (7) a new 40-foot-wide by 40-foot-long substation; and (8) a new 69-kV transmission line approximately 1,630 feet long from the new substation to an existing substation. The estimated annual generation of the Allegheny #4 Project would be 89 gigawatt-hours.

Applicant Contact: Mr. Daniel Lissner, FFP Project 10, LLC, 239 Causeway Street, Suite 300, Boston, MA 02114; phone: (978) 283–2822.

FERC Contact: Woohee Choi; phone: (202) 502–6336.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of

intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14595–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14595) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 29, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10314 Filed 5–5–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000; RM95–3–000]

Electronic Tariff Filings; Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs; Notice of Updated and Combined Instruction Manuals

Take notice that today the Commission's *Instruction Manual for Electronic Filing of Rate Filings* (*Instruction Manual*) applicable to rate filings made pursuant to Part 154 of the Commission's regulations [1] has been updated. The updates reflect the changes in electronic filing requirements, data elements and acceptable file types instituted by Order No. 714 for tariff filings,[2] and updated contact information. In addition, the *Instruction Manual* has been combined with and made an Appendix to the *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings*.[3] Other than the addition of the Appendix, there are no other changes to the *Implementation Guide.*

For more information, contact Keith Pierce, Office of Energy Market Regulation at (202) 502–8525, or send an email to *FERConline@ferc.gov*.

Dated: April 29, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10315 Filed 5–5–14; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR part 154 (2013). The *Instruction Manual for Electronic Filing of Rate Filings* was issued pursuant to *Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs,* Order No. 582, FERC Statutes and Regulations, Regulations Preambles January 1991–June 1996 ¶ 31,025 (1995).

[2] *Electronic Tariff Filings,* Order No. 714, *FERC Statutes and Regulations* ¶ 31,276 (2008).

[3] *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings available at http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf* (*Implementation Guide*).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Submission for OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final Notice of Submission for OMB Review—Extension Without Change: Elementary-Secondary Staff Information Report (EEO–5).

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Equal Employment Opportunity Commission (EEOC or Commission) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for a three-year extension without change of the Elementary-Secondary Staff Information Report (EEO–5).

DATES: Written comments on this notice must be submitted on or before June 5, 2014.

ADDRESSES: A copy of this ICR and applicable supporting documentation submitted to OMB for this review may be obtained from: Ronald Edwards, Equal Employment Opportunity Commission, Director, Program Research and Surveys Division, 131 M Street NE., Room 4SW30F, Washington, DC 20507. Comments on this final notice must be submitted to Chad A. Lallemand, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to *Chad_A._Lallemand@omb.eop.gov*. Copies of comments should be sent to Bernadette Wilson, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''FAX'') machine. This limitation is necessary to assure access to the equipment. The telephone number of the fax receiver is (202) 663–4114. (This is not a toll-free number). Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTD). (These are not toll-free telephone numbers.) Instead of sending written comments to EEOC, you may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. All comments received through this portal will be posted without change, including any personal information you provide. Copies of comments submitted by the public to EEOC directly or through the Federal eRulemaking Portal will be available for review, by advance appointment only, at the Commission's library between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time or can be reviewed at *http://www.regulations.gov*. To schedule an appointment to inspect the comments at EEOC's library, contact the library staff at (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Equal Employment Opportunity Commission, Director, Program Research and Surveys Division, 131 M Street NE., Room 4SW30F, Washington, DC 20507; (202) 663–4949 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: A notice that EEOC would be submitting this request was published in the **Federal Register** on January 28, 2014 allowing for a 60-day public comment period. There were no comments received from the public.

Overview of Information Collection

Type of Review: Extension—No change.

OMB Control No.: 3046–0003.

Collection Title: Elementary-Secondary Staff Information Report (EEO–5).

Frequency of Report: Biennial.

Type of Respondent: Certain public elementary and secondary school districts.

Description of Affected Public: Certain public elementary and secondary school districts.

Number of Responses: 6,190.

Reporting Hours: 15,475.

Cost to the Respondents: 0.

Federal Cost: $190,000.

Number of Forms: 1.

Form Number: EEOC Form 168A.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations, Title 29, Chapter XIV, Subpart F, § 1602.39–45, prescribing the reporting requirements for elementary and secondary public school districts. The EEOC uses EEO–5 data to investigate charges of employment discrimination against elementary and secondary public school districts. The data also are used for research. The data are shared with the Department of Education (Office for Civil Rights) and the Department of Justice. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–5 data also are shared with state and local Fair Employment Practices Agencies (FEPAs).

Revisions to the form that amended the race and ethnicity categories were approved by OMB in 2012. The previously used categories (White, Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaska Native) were replaced with the following: Hispanic or Latino; White; Black or African American; Asian; Native Hawaiian or Other Pacific Islander; American Indian or Alaska Native; and Two or More Races. EEOC is seeking a three year extension without change of the form approved by OMB in 2012.

Burden Statement: The estimated number of respondents included in the biennial EEO–5 survey is 6,190 public elementary and secondary school districts. The form is estimated to impose 15,475 burden hours biennially.

Dated: April 30, 2014.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2014–10354 Filed 5–5–14; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: April 28, 2014.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10497	Allendale County Bank	Fairfax	SC	4/25/2014

[FR Doc. 2014–10236 Filed 5–5–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 21, 2014.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Bruce Gabrielse, Barbara L. Gabrielse, both of Fitchburg, Wisconsin; Brian Gabrielse, Jennifer Gabrielse, Bradley Gabrielse, Brenton Gabrielse, Katelyn Gabrielse, Kimberly Gabrielse, Matthew Gabrielse, all of Madison, Wisconsin; Jack L. Gabrielse, Denise Gabrielse, both of Oregon, Wisconsin; the Diane L. Gabrielse Declaration of Trust dated September 2, 1999, Diane L. Gabrielse, individually and as trustee of the Diane L. Gabrielse Declaration of Trust dated September 2, 1999, the Thomas H. Gabrielse Declaration of Trust dated September 2, 1999, Thomas H. Gabrielse as trustee of the Thomas H. Gabrielse Declaration of Trust dated September 2, 1999, all of Orland Park, Illinois; Mark Oostdyk, Heidi DeBruin, Kaye Oostdyk, all of Stoughton, Wisconsin; Stephanie Clark, St. Johns, Florida; David Gabrielse, Palos Heights, Illinois; Jeffrey Gabrielse, Jonathan*

Oostdyk, both of Plymouth, Minnesota; Justin Gabrielse, Maple Grove, Minnesota; Jayne Locascio, Palos Park, Illinois; William Oostdyk, South Elgin, Illinois; Valerie Therrien, Minneapolis, Minnesota; Katie Nelson, Frostburg, Maryland; and Keith Gabrielse, Cottage Grove, Wisconsin; together as a group acting in concert, to retain voting shares of Oak Financial, Inc., and thereby indirectly retain voting shares of Oak Bank, both in Fitchburg, Wisconsin.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Tommy D. Craighead,* Norman, Oklahoma, as trustee of the TCC & BJC Trusts No. 1 through 7, Ardmore, Oklahoma; to acquire voting shares of Citizens Commerce Corporation, and thereby indirectly acquire voting shares of Citizens Bank & Trust Company of Ardmore, both in Ardmore, Oklahoma.

Board of Governors of the Federal Reserve System, May 1, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–10323 Filed 5–5–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10 (a) (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Special Emphasis Panel (SEP) meeting on *''AHRQ RFA–HS14–005, Patient Safety Learning Laboratories; Applying Design Innovation and Systems Engineering (P30)''.* Each SEP meeting will commence in open session before closing to the public for the duration of the meeting.

DATES: May 29, 2014 (*Open on May 29 from 8:00 a.m. to 8:30 a.m. and closed for the remainder of the meeting*).

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact: Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone: (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Each SEP meeting will commence in open session before closing to the public for the duration of the meeting. The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for the ''AHRQ RFA–HS14–005, Patient Safety Learning Laboratories: Applying Design Innovation and Systems Engineering (P30)'' are to be reviewed and discussed at this meeting. 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.

Dated: April 25, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–10277 Filed 5–5–14; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From Medical Peer Review Resource, LLC

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of Delisting.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b-26, (Patient Safety Act) and the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008, 73 FR 70732–70814, provide for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of healthcare delivery. The Patient Safety Rule authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ has accepted a notification of voluntary relinquishment from Medical Peer Review Resource, LLC of its status as a PSO, and has delisted the PSO accordingly. Medical Peer Review Resource, LLC submitted this request for voluntary relinquishment during revocation proceedings for cause.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on April 2, 2014.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an

entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from Medical Peer Review Resource, LLC, PSO number P0026, to voluntarily relinquish its status as a PSO. Accordingly, Medical Peer Review Resource, LLC was delisted effective at 12:00 Midnight ET (2400) on April 2, 2014. Medical Peer Review Resource, LLC, submitted this request for voluntary relinquishment during revocation proceedings for cause.

Medical Peer Review Resource, LLC has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO. In addition, according to sections 3.108(c)(2)(ii) and 3.108(b)(3) of the Patient Safety Rule regarding disposition of PSWP, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: April 25, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–10279 Filed 5–5–14; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 79 FR 21760–21763, dated April 17, 2014) is amended to establish the World Trade Center Health Program, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the title and functional statement for the Division of Compensation Analysis and Support (CCN), National Institute for Occupational Safety and Health (CC), insert the following:

World Trade Center Health Program (CCP). (1) Provides the leadership and management to comply with the responsibilities under the James Zadroga 9/11 Act of 2010; Title) (XXIII of the Public Health Service Act; (2) administers the World Trade Center Health Program (WTCHP); (3) develops, implements, and maintains a WTCHP quality assurance program; (4) provides annual reports to Congress; (5) consults with stakeholders in carrying out the WTCHP mission; (6) establishes and administers a WTCHP Scientific Technical Advisory Committee; (7) develops and implements an education and outreach program; (8) provides for uniform data collection and for data integration; (9) provides for collaboration between Data Centers and World Trade Center (WTC) Health Registry; (10) enters into and oversees contracts for Clinical Centers of Excellence, Data Centers, and Nationwide Provider Networks; (11) enters into agreement with New York City for purposes of collecting 10% of the specified funds stated in the Zadroga 9/11 Act of 2010; (12) ensures continuity of care; (13) reimburses Clinical Centers of Excellence for infrastructure costs; (14) establishes a process for enrollment of WTC responders, and Pentagon and Shanksville responders; (15) conducts reviews to determine if cancer/types of cancer should be added to list of WTC-related health conditions; (16) issues regulations for medical necessity; (17) reimburses costs for initial health evaluation, monitoring, and treatment; (18) establishes a process to determine and certify screening-eligible WTC survivors as certified-eligible survivors; (19) administers/collects recoupments from private insurance and workers compensation; (20) conducts and/or supports research; (21) ensures that a Registry of 9/11 victims is maintained; (22) enters into agreement(s) with the Centers for Medicare and Medicaid Services for provider reimbursements; and (23) ensures compliance with all Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104–191, statutory and regulatory provisions that govern the WTCHP as a covered entity, as well as any HHS HIPAA policies through the establishment of a WTCHP HIPAA Compliance Program.

Dated: April 28, 2014.

Sherri A. Berger,

MSPH, Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2014–10179 Filed 5–5–14; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 79 FR 21760–21763, dated April 17, 2014) is amended to reflect the reorganization of the Human Capital and Resource Management Office, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the title and the mission and function statements for the Human Capital and Resource Management Office (CAJQ) and insert the following:

Human Resources Office (CAJQ). (1) Provides leadership, policy formation, oversight, guidance, service, and advisory support and assistance to the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR); (2) collaborates as appropriate, with the CDC Office of the Director (OD), Centers/Institute/Offices (CIOs), domestic and international agencies and organizations; and provides a focus for short-and long-term planning within the Human Resource Office (HRO); (3) develops and administers human capital and human resource management policies; (4) serves as the business steward for all CDC developed human capital and human resources management systems and applications; (5) develops, maintains, and human resources management systems and applications; (5) develops, maintains, and supports information systems to conduct

personnel activities and provide timely information and analyses of personnel and staffing to management and employees; (6) conducts and coordinates human resources management for civil service and Commissioned Corps personnel; (7) manages the administration of fellowship programs; (8) conducts recruitment, special emphasis, staffing, position classification, position management, pay and leave administration, work-life programs, performance management, employee training and development, and employee and labor relations programs; (9) maintains personnel records and reports, and processes personnel actions and documents; (10) administers the federal life and health insurance programs; (11) administers employee recognition, suggestion, and incentive awards programs; (12) furnishes advice and assistance in the processing of workers compensation claims; (13) interprets standards of conduct regulations, reviewing financial disclosure reports, and offer ethics training and counseling services to CDC/ATSDR employees; (14) maintains liaison with the Department of Health and Human Services (HHS) and the Office of Personnel Management (OPM) on human resources management, policy, compliance and execution of the Human Capital Assessment and Accountability Framework; (15) conducts organizational assessments to determine compliance with human capital policies, guidance, regulatory and statutory requirements of federal human capital and resource management programs and initiatives; (16) plans, directs, and manages CDC-wide training programs, monitors compliance with mandatory training requirements, and maximizes economies of scale through systematic planning and evaluation of agency-wide training initiatives to assist employees in achieving required competencies; (17) assists in the definition and analysis of training needs and develops and evaluates instructional products designed to meet those needs; (18) develops, designs, and implements a comprehensive leadership and career management program for all occupational series throughout CDC/ATSDR; (19) provides technical assistance in organizational development, career management, employee development, and training; (20) collaborates and works with partners, internally and externally, to develop workforce goals and a strategic vision for the public health workforce; and (21) provides support for succession planning, forecasting services, and environmental scanning to ascertain both current and future public health workforce needs.

Office of the Director (CAJQ1). (1) Provides leadership and overall direction for HR; (2) develops goals and objectives, and provides leadership, policy formation, oversight, and guidance in program planning and development; (3) plans, coordinates, and develops strategic plans for.HR; (4) develops and administers human capital and human resource management policies and procedures; (5) coordinates all program reviews; (6)provides technical assistance and consultation in the development of proposed legislation, Congressional testimony, and briefing materials; (7) establishes performance metrics and coordinates quarterly reviews to ascertain status on meeting of the metrics; (8) coordinates budget formulation, negotiation, and execution of financial resources; (9) identifies relevant scanning/benchmarking on workforce and career development processes, services and products; (10) provides leadership and guidance on new developments and national trends for the public health workforce; (11) establishes and oversees policies governing human capital and human resources management, and works collaboratively within CDC/ATSDR and other components in planning, developing and implementing policies; (12) develops strategic plans for information technology and information systems required to support human capital and human resources management information requirements; (13) serves as the business steward for CDC/ATSDR-wide human capital and human resources administrative systems and advocates and supports the commitment of resources to application development; (14) coordinates HR information resource management activities with the Management Information Systems Office and the related governance groups; (15) coordinates management information systems and analyses of data for improved utilization of resources; (16) serves as a liaison with HHS on the utilization and deployment of centralized HHS human capital and human resource management systems and applications; (17) applies standards of conduct regulations, reviews financial disclosure reports, and offers ethics training and counseling services to CDC/ATSDR employees; and (18) conducts demographic analysis of the CDC/ATSDR work force and publishes results in management reports.

Ethics and Compliance Activity (CAJQ12). (1) Oversees the CDC/ATSDR ethics and compliance program to ensure that processes and procedures are in place to ensure compliance with government-wide ethics statutes, regulations, and standards; (2) identifies and corrects weaknesses in policy, training, and monitoring to prevent CDC/ATSDR noncompliance of HHS supplemental ethics regulations; (3) serves as a liaison between the Office of Government Ethics and HHS on ethics matters; (4) applies standards of conduct regulations; (5) reviews financial disclosure reports for potential conflicts of interest; (6) provides continuing ethics training and counseling services; and (7) reviews and approve ethics-related requests for employees.

Commissioned Corps Activity (CAJQ14). (1) Serves as the primary contact for CDC/ATSDR management and employees in obtaining the full range of personnel assistance and management services for Commissioned Corps personnel; (2) provides leadership, technical assistance, guidance, and consultation in benefits, entitlements, and obligations of the Commissioned Corps to commissioned officers; (3) plans, directs, and manages the Department of Defense's Defense Eligibility Enrollment Report System identification card program for all active duty officers, retirees, and eligible dependents; (4) implements and evaluates Commissioned Corps policies and systems such as salary/benefits, performance management, assignments, health benefits, training, travel, relocation, and retirement; (5) manages the CDC/ATSDR's Commissioned Corps promotion and awards programs; (6) maintains liaison and coordinates personnel services for Commissioned Corps personnel with the Office of Commissioned Corps Operations and the Office of Surgeon General; (7) coordinates the agency deployment status of commissioned officers assigned to CDC and manages the Emergency Operation Center (EOC) Commissioned Corps deployment desk during activation of the CDC EOC; and (8) establishes and maintains personnel and payroll records and files.

Policy and Communications Activity (CAJQ15). (1) Provides leadership, oversight, guidance and support for policy and communication activities supporting HR; (2) develops, administers and monitors the implementation of human capital and human resources management policies and operational procedures as directed by OPM, HHS, CDC/ATSDR or other pertinent federal agencies to ensure consistent application across CDC/ATSDR; (3) serves as the focal point for the analysis, development, technical

review and clearance of controlled correspondence and non-scientific policy documents that require approval/signature from the HR Director or other senior CDC/ATSDR leadership; (4) responds to and coordinates requests from the OD for issues management information to ensure efficient responses to the Director's priority issues; (5) provides and manages a wide range of communication services in support of HR; (6) facilitates open and transparent employee communication; (7) develops and implements internal and external public relations strategies to communicate upward and outward to customers, partners, and other stakeholders; and (8) utilizes multiple channels and methods to communicate and disseminate HR policies, announcements, procedures, information, and other relevant messages.

Operations Management Activity (CAJQ17). (1) Provides leadership, oversight, and guidance in the management and operations of HR programs; (2) provides and oversees the delivery of HR-wide administrative management and support services in the areas of fiscal management, personnel, travel, records management, internal controls, and other administrative services; (3) prepares annual budget formulation and budget justifications; (4) coordinates HR requirements relating to contracts, grants, cooperative agreements, and reimbursable agreements; (5) develops and implements administrative policies, procedures, and operations, as appropriate, for HR, and prepares special reports and studies, as required, in the administrative management areas; and (6) maintains liaison with related staff offices and other officials of CDC/ATSDR.

Strategic Programs Office (CAJQB). (1) Provides a broad array of strategic programs, workforce support, and development services; (2) develops and implements methodologies to measure, evaluate, and improve human capital results to ensure mission alignment; (3) assesses and evaluates the overall effectiveness and compliance of human resources programs and policies related to merit-based decision-making and compliance with laws and regulations; (4) works with the OPM, HHS, and CDC Governance Boards and agency managers to carry out human capital management planning and development activities; and (5) establishes, coordinates, develops, and monitors implementation of human capital initiatives and the agency Strategic Human Capital Management Plan.

Human Capital Effectiveness and Accountability Activity (CAJQB2). (1) Operates as an internal audit function to maintain the operational integrity of human resources and human capital areas and safeguards legal and regulatory requirements; (2) ensures that human capital goals and programs are aligned with and support the CDC/ATSDR missions; (3) ensures that human capital planning is guided by a data driven, results-oriented process toward goal achievement; (4) ensures that managers and HR practitioners are held accountable for their human capital decisions; (5) assesses the effectiveness and efficiency of the HR function; (6) ensures human capital programs and policies adhere to merit system principles and other pertinent laws and regulations; (7) conducts recurring delegated examining audits and periodic human capital management reviews to verify and validate the level of compliance and performance; and (8) implements a plan for addressing issues or problems identified during accountability audits and related activities.

Workforce Planning Activity (CAJQB3). (1) Advises and facilitates strategic workforce planning and development for CDC/ATSDR; (2) supports HR and CIO program officials in the development, implementation and evaluation of workforce plans, policies, and initiatives; (3) serves as a liaison with HHS and entities within and outside the Agency to develop CDC/ATSDR's human capital management direction and strategies; (4) coordinates the development and implementation of an agency-wide strategic human capital plan; (5) identifies mission-critical occupations and associated competencies to assess potential gaps in occupations and competencies that are essential to CDC/ATSDR achieving its strategic goals; (6) reports on CDC/ATSDR's progress in meeting human capital management improvement objectives associated with HHS-wide and government-wide human capital management improvement; (7) develops and executes a strategic hiring plan to facilitate the recruitment and retention of members of underrepresented groups and for closing occupational series and/or competency gaps in the workforce; (8) provides recruitment, retention, consultation and support to customers; and (9) supports CIO-specific, mission-critical work by managing various training programs designed to provide students, postgraduates, and university faculty with opportunities to participate in projects and assignments in support of CDC/ATSDR's missions.

Business Strategy and Data Analytics Activity (CAJQB4). (1) Oversees all human resources information technology CDC/ATSDR systems and serves as the liaison to HHS in the development, maintenance, and support of Department-wide human resource information systems and applications; (2) manages capital planning and investment control activities related to all CDC/ATSDR developed human capital and human resources management systems and applications; (3) serves as liaison and provides support in the development and maintenance of HHS enterprise human resources systems; (4) facilitates the administration, analysis and reporting of, and provides recommendations for, business process improvements in regards to survey data or other business process reengineering efforts; (5) supports periodic reporting requirements from CDC/ATSDR, HHS, OPM, and Office of Management and Budget (OMB); (6) provides business strategy, data analytics, and reporting services; (7) performs analysis, forecasting, and modeling to interpret quantitative and qualitative data; (8) reports and evaluates organizational performance outcomes on key measures and metrics; and (9) oversees the human resources governance structure and change control board activities.

CDC University Office (CAJQC). (1) Provides agency-wide leadership and guidance in all functional areas related to training and career development; (2) designs, develops, implements and evaluates a comprehensive strategic human resource leadership and career training and development program for all occupational series throughout CDC/ATSDR; (3) develops and implements training strategies and activities that contribute to the agency's mission, goals and objectives; (4) maximizes economies of scale through systematic planning, administration, delivery, and evaluation of agency-wide training initiatives to assist CDC/ATSDR employees in achieving required competencies; (5) develops retraining activities for CDC/ATSDR managers/employees affected by organizational changes (e.g. major reorganizations, outsourcing initiatives, etc.); (6) maintains employee training records; (7) develops and validates occupational and functional competencies and develops related training plans and career maps; (8) develops and administers professional development programs; (9) administers and monitors the Training and Learning Management System for compliance with the Government Employees Training Act;

(10) conducts training needs assessment of employees and provides analysis and data to correlate individual training with strategic plans; (11) develops and maintains assessment tools to identify core competency requirements for each occupational series throughout the agency; (12) provides consultation, guidance, and technical assistance to managers and employees in organizational development, career management, employee development, and training; (13) develops and delivers education and training programs to meet the identified needs of the workforce; (14) promotes, develops, and implements training needs assessment methodology to establish priorities for training interventions; (15) collaborates, as appropriate, with the CDC/ATSDR/OD, CIOs, HHS, OPM and other domestic and international agencies and organizations; and (16) develops and implements policies related to employee training.

Career Development Activity (CAJQC2). (1) Designs, develops, implements and evaluates training activities to increase competency in the area of career development strategies; (2) maximizes economies of scale through systematic planning, administration, delivery, and evaluation of agency-wide training initiatives to assist CDC/ATSDR employees in achieving required competencies; (3) development of retraining activities for CDC/ATSDR managers/employees affected by organizational changes (e.g. major reorganizations, outsourcing initiatives, etc.); (4) maintains employee training records; (5) develops and validates occupational and functional competencies and develops related training plans and career maps; (6) develops and administers professional development programs to include mentoring and coaching for enhanced performance; (7) conducts training needs assessment of employees, provides analysis and data to correlate individual training with strategic plans; (8) develops and maintains assessment tools to identify core competency requirements for each occupational series throughout the agency; (9) provides consultation, guidance, and technical assistance to managers and employees in organizational development, career management, employee development, and training; (10) promotes, develops, and implements training needs assessment methodology to establish priorities for training interventions; (11) collaborates, as appropriate, with the CDC/ATSDR/OD, CIOs, I–IHS, OPM and other domestic and international agencies and organizations; and (12) implements procedural components in compliance to the long term education training policy.

Leadership Development Activity (CAJQC3). (1) Designs, develops, implements and evaluates a comprehensive leadership development curriculum for leaders at all levels throughout CDC/ATSDR; (2) develops and implements leadership training strategies and activities that contribute to the agency's mission, goals and objectives; (3) maximizes economies of scale through systematic planning, administration, delivery, and evaluation of agency-wide training initiatives to assist CDC/ATSDR employees in achieving required competencies; (4) maintains employee training records; (5) develops and administers professional development programs such as executive coaching; (6) provides consultation, guidance, and technical assistance to managers and employees around leadership training and development activities; (7) develops and delivers education and training programs to meet the identified needs of the workforce; (8) collaborates, as appropriate, with the CDC/ATSDR/OD, CIOs, HHS, OPM and other domestic and international agencies and organizations; and (9) implements procedural components in compliance to the mandatory supervisory training requirements policy.

Public Health Training Activity (CAJQC4). (1) Designs, develops, implements and evaluates a comprehensive public health training curriculum for employees engaged in public health activities throughout CDC/ATSDR; (2) develops and implements public health, science, research and medicine and preparedness and emergency response training strategies and activities that contribute to the agency's mission, goals and objectives; (3) maximizes economies of scale through systematic planning, administration, delivery, and evaluation of agency-wide training initiatives to assist CDC employees in achieving required competencies; (4) maintains employee training records; (5) provides consultation, guidance, and technical assistance to managers and employees associated within curriculum scope; (6) develops and delivers education and training programs to meet the identified needs of the workforce; and (7) collaborates, as appropriate, with the CDC/ATSDR/OD, CIOs, HHS, OPM and other domestic and international agencies and organizations.

Business and Technology Training Activity (CAJQC5). (1) Designs, develops, implements and evaluates a comprehensive business and technology training curriculum for employees throughout CDC/ATSDR; (2) develops and implements financial, acquisition and project management, communication and office skills and information technology training strategies and activities that contribute to the agency's mission, goals and objectives; (3) maximizes economies of scale through systematic planning, administration, delivery, and evaluation of agency-wide training initiatives to assist CDC/ATSDR employees in achieving required competencies; (4) maintains employee training records; (5) provides consultation, guidance, and technical assistance to managers and employees associated within curriculum scope; (6) develops and delivers education and training programs to meet the identified needs of the workforce; and (7) collaborates, as appropriate, with the CDC/ATSDR/OD, CIOs, HHS, OPM and other domestic and international agencies and organizations.

Workforce Relations Office (CAJQD). (1) Provides leadership, technical assistance, guidance, and consultation on employee and labor relations, employee services and assistance, work-life programs, performance management, incentive awards, pay, leave and benefits administration, on-the-job injuries and exposures to infectious diseases, debt complaints and other job-related issues; (2) develops and administers labor-management and employee relations program including: disciplinary actions, grievances and appeals, labor negotiations, collective bargaining, management representation before third parties, and partnership activities; (3) serves as liaison with the Office of Safety, Security and Asset Management (OSSAM) and other CDC/ATSDR staff for personnel matters relating to substance abuse and other employee assistance programs; (4) coordinates and processes garnishment, child support, and other collection actions for CDC/ATSDR employees; (5) plans, directs, coordinates, and conducts contract negotiations on behalf of agency management with labor organizations holding exclusive recognition; (6) represents management in third party proceedings involving labor and employee relations issues; (7) serves as the authority to ensure validity, consistency, and legality of employee relations matters concerning grievances (both negotiated and agency procedures), disciplinary actions, adverse actions, and resultant third party hearings; (8) plans and coordinates all programmatic activities

to include preparation of disciplinary and adverse action letters and all final agency decisions in grievances and appeals; (9) provides technical advice, consultation, and training on matters of employee conduct and performance; (10) provides consultation, guidance, and technical advice to human resources specialists, managers, and employees on the development, coordination and implementation of all work-life program initiatives; (11) provides personnel services relating to on-the-job injuries and exposures to infectious diseases; (12) facilitates the development and implementation of an Agency-wide strategic approach to monitoring, evaluating, aligning, and improving performance management policies and practices for all CDC performance management systems (Title 5, Title 42, Senior Executive Service (SES), Senior Biomedical Research Service (SBRS), and the Commissioned Officer Effectiveness Report (COER); (13) coordinates performance management, strategic rewards and recognition programs and systems; (14) provides human resources services and assistance on domestic and international employee benefits and leave administration; (15) serves as liaison between CDC/ATSDR and the HHS payroll office resolving discrepancies with pay and leave; (16) administers the leave donor program and processes time and attendance amendments; (17) administers the federal life and health insurance programs; (18) provides policy guidance and technical advice and assistance on retirement, the Thrift Savings Plan, health/life insurance, and savings bonds; (19) furnishes advice and assistance in the processing of Office of Workers' Compensation Program claims and the Voluntary Leave Donation Program; and (20) administers and maintains the customer service help desk.

Employee and Labor Relations Activity (CAJQD2). (1) Provides leadership, technical assistance, guidance, and consultation on employee and labor relations, employee services; (2) develops and administers labor-management and employee relations program including: disciplinary actions, grievances and appeals, labor negotiations, collective bargaining, management representation before third parties, and partnership activities; (3) serves as liaison with the OSSAM and other CDC/ATSDR staff for personnel matters relating to substance abuse and other employee assistance programs; (4) coordinates and processes garnishment, child support, and other collection actions for CDC/ATSDR employees; (5) plans, directs, coordinates, and conducts contract negotiations on behalf of agency management with labor organizations holding exclusive recognition; (6) represents management in third party proceedings involving labor and employee relations issues; (7) serves as the authority to ensure validity, consistency, and legality of employee relations matters concerning grievances (both negotiated and agency procedures), disciplinary actions, adverse actions, and resultant third party hearings; (8) plans and coordinates all programmatic activities to include preparation of disciplinary and adverse action letters and all final agency decisions in grievances and appeals; (9) provides technical advice, consultation, and training on matters of employee conduct and performance; and (10) provides consultation, guidance, and technical advice to human resources specialists, managers, and employees on the development.

Employee Benefits, Worklife Programs and Payroll Activity (CAJQD3). (1) Provides consultation, guidance, and technical advice to human resources specialists, managers, and employees on the development, coordination and implementation of all Work-Life program initiatives; (2) provides personnel services relating to on-the-job injuries and exposures to infectious diseases; (3) provides human resources services and assistance on domestic and international employee benefits and leave administration; (4) serves as liaison between CDC/ATSDR and the HHS payroll office resolving discrepancies with pay and leave; (5) administers the leave donor program and processes time and attendance amendments; (6) administers the federal life and health insurance programs; (7) provides policy guidance and technical advice and assistance on retirement, the Thrift Savings Plan, health/life insurance, and savings bonds; and (8) furnishes advice and assistance in the processing of Office of Workers' Compensation Program claims and the Voluntary Leave Donation Program.

Performance Management, Strategic Rewards and Recognitions Activity (CAJQD4). (1) Facilitates the development and implementation of an Agency-wide strategic approach to monitoring, evaluating, aligning, and improving performance management policies and practices for all CDC/ATSDR performance management systems (Title 5, Title 42, SES, SBRS, and the COER); and (2) coordinates performance management, strategic rewards and recognition programs and systems.

Customer Service Help Desk Activity (CAJQD5). (1) Provides technical assistance, guidance, and consultation on employee and labor relations, employee services, pay, leave and benefits administration, staffing and recruitment, position classification; and (2) administers and maintains the customer service help desk.

Client Services Office (CAJQE). (1) Serves as the primary contact for CDC/ATSDR management and employees in obtaining the full range of personnel assistance and management services for civil service personnel; (2) provides leadership, technical assistance, guidance, and consultation in human resource utilization, position management, classification and pay administration, recruitment, staffing, placement, reorganizations, program evaluation, and personnel records and files management; (3) maintains liaison with HHS and OPM in the area of human resources management; (4) provides leadership in identifying the CIOs recruiting needs, and assesses, analyzes, and assists CDC/ATSDR programs in developing and executing short- and long-range hiring plans to meet these needs; (5) provides guidance to CDC/ATSDR organizations in the development of staffing plans and job analyses, evaluating/classifying position descriptions, conducting position management studies, and responding to desk audit requests; (6) processes personnel actions by determining position classification, issuing vacancy announcements, assisting in development of selection criteria, conducting examining under delegated examining authority, conducting candidate rating and ranking under CDC Merit Promotion Plan, making qualification determinations, determining pay, conducting reductions-in-force, effecting appointments and processing other actions; (7) codes and finalizes all personnel actions in the automated personnel data system, personnel action processing, data quality control/assessment, and files/records management; (8) conducts new employee orientation; (9) plans, develops, implements, and evaluates systems to ensure consistently high quality human resources services; (10) establishes objectives, standards, and internal controls; (11) evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; (12) manages various staffing programs such as the CDC summer program, Priority Placement Program, Priority Consideration

Program, the Interagency Career Transition Assistance Program, and the Career Transition Assistance Program and other special emphasis programs; (13) provides consultation, guidance, and technical advice on recruitment and special emphasis policies, practices, and procedures, including search committees, strategizes on the best approach to recruitment at specific events, and designs and develops recruitment materials for events; (14) establishes and maintains personnel records, files, and controls; (15) establishes and maintains the official personnel files system and administers personnel records storage and disposal program; (16) collaborates with Personnel Security in initiating suitability background checks and fingerprints for all CDC/ATSDR personnel; (17) responds to employment verification inquiries; and (18) administers the Special Emphasis Programs and Student Intern/Fellowship Programs.

Customer Staffing Activity 1 (CAJQE2). (1) Supports the CDC, OD, Business Services Offices, Staff Offices, Office of Public Health Preparedness and Response, Office of Public Health Scientific Services, Office of State, Tribal, Local and Territorial Support; (2) provides leadership in identifying CIOs recruiting needs, and assesses, analyzes, and assists CDC programs in developing and executing short- and long-range hiring plans to meet these needs; (3) provides guidance to CDC organizations in the development of staffing plans and job analyses; (4) processes personnel actions by issuing vacancy announcements, assisting in development of selection criteria, conducting examinations under delegated examining authority, conducting candidate rating and ranking under CDC Merit Promotion Plan, making qualification determinations, determining pay, conducting reductions-in-force, effecting appointments and processing other actions; (5) plans, develops, implements, and evaluates systems to ensure consistently high quality human resources services; (6) establishes objectives, standards, and internal controls; (7) evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; (8) provides consultation, guidance, and technical advice on recruitment and special emphasis policies, practices, and procedures, including search committees, strategizes on the best approach to recruitment at specific events, and designs and develops recruitment materials for events; (9) provides leadership, technical assistance, guidance, and consultation in human resource utilization, position management, classification and pay administration; (10) provides leadership in identifying CIOs classification and position management needs; (11) provides guidance to CDC organizations in the development, evaluation/classification of position descriptions; (12) conducts position management studies and responds to desk audit requests; (13) codes and finalizes all personnel actions in the automated personnel data system; data quality control/assessment, and files/records management; and (14) reviews all CDC reorganization proposals and provides advice on proposed staffing plans and organizational structures.

Customer Staffing Activity 2 (CAJQE3). (1) Supports the Office of Non-communicable Diseases, Injury and Environmental Health and subordinate Centers, ATSDR and the National Institute for Occupational Safety and Health; (2) provides leadership in identifying CIOs recruiting needs, and assesses, analyzes, and assists CDC/ATSDR programs in developing and executing short- and long-range hiring plans to meet these needs; (3) provides guidance to CDC/ATSDR organizations in the development of staffing plans and job analyses; (4) processes personnel actions by issuing vacancy announcements, assisting in development of selection criteria, conducting examinations under delegated examining authority, conducting candidate rating and ranking under CDC Merit Promotion Plan, making qualification determinations, determining pay, conducting reductions-in-force, effecting appointments and processing other actions; (5) plans, develops, implements, and evaluates systems to ensure consistently high quality human resources services; (6) establishes objectives, standards, and internal controls; (7) evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; (8) provides consultation, guidance, and technical advice on recruitment and special emphasis policies, practices, and procedures, including search committees; strategizes on the best approach to recruitment at specific events, and designs and develops recruitment materials for events; (9) provides leadership, technical assistance, guidance, and consultation in human resource utilization, position management, classification and pay administration; (10) provides leadership in identifying CIOs classification and position management needs; (11) provides guidance to CDC/ATSDR organizations in the development, evaluation/classification of position descriptions; (12) conducts position management studies and responds to desk audit requests; (13) codes and finalizes all personnel actions in the automated personnel data system and ensures data quality control/assessment, and files/records management; and (14) reviews all CDC/ATSDR reorganization proposals and provides advice on proposed staffing plans and organizational structures.

Customer Staffing Activity 3 (CAJQE4). (1) Supports the Center for Global Health, Office of Infectious Diseases and subordinate Centers; (2) provides leadership in identifying CIOs recruiting needs, and assesses, analyzes, and assists CDC programs in developing and executing short- and long-range hiring plans to meet these needs; (3) provides guidance to CDC organizations in the development of staffing plans and job analyses; (4) processes personnel actions by issuing vacancy announcements, assisting in development of selection criteria, conducting examinations under delegated examining authority, conducting candidate rating and ranking under CDC Merit Promotion Plan, making qualification determinations, determining pay, conducting reductions-in-force, effecting appointments and processing other actions; (5) plans, develops, implements, and evaluates systems to ensure consistently high quality human resources services; (6) establishes objectives, standards, and internal controls; (7) evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; (8) provides consultation, guidance, and technical advice on recruitment and special emphasis policies, practices, and procedures, including search committees; strategizes on the best approach to recruitment at specific events, and designs and develops recruitment materials for events; (9) provides leadership, technical assistance, guidance, and consultation in human resource utilization, position management, classification and pay administration; (10) provides leadership in identifying CIOs classification and position management needs; (11) provides guidance to CDC organizations in the development, evaluation/classification of position descriptions; (12) conducts position management

studies and responds to desk audit requests; (13) codes and finalizes all personnel actions in the automated personnel data system and ensures data quality control/assessment, and files/records management; and (14) reviews all CDC reorganization proposals and provides advice on proposed staffing plans and organizational structures.

Technical Services Activity (CAJQE6). (1) Processes personnel actions by determining pay, conducting reductions-in-force, effecting appointments and processing other actions; (2) codes and finalizes all personnel actions in the automated personnel data system, personnel action processing, data quality control/assessment, and files/records management; (3) conducts new employee orientation; (4) establishes objectives, standards, and internal controls; (5) evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; (6) establishes and maintains personnel records, files, and controls; (7) establishes and maintains the official personnel files system and administers personnel records storage and disposal program; (8) collaborates with Personnel Security in initiating suitability background checks and fingerprints for all CDC/ATSDR personnel; and (9) responds to employment verification inquiries.

Customer Staffing Activity 4 (CAJQE7). (1) Supports the recruitment and staffing services for CDC/ATSDR's international workforce; (2) provides leadership in identifying the CDC/ATSDR international workforce recruiting needs, and assesses, analyzes, and assists programs in developing and executing short- and long-range hiring plans to meet these needs; (3) provides guidance to CDC/ATSDR in the development of staffing plans and job analyses; (4) processes personnel actions by issuing vacancy announcements, assisting in development of selection criteria, conducting examinations under delegated examining authority, conducting candidate rating and ranking under CDC Merit Promotion Plan, making qualification determinations, determining pay, conducting reductions-in-force, effecting appointments and processing other actions; (5) plans, develops, implements, and evaluates systems to ensure consistently high quality human resources services; (6) establishes objectives, standards, and internal controls; (7) evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; (8) provides consultation, guidance, and technical advice on recruitment and special emphasis policies, practices, and procedures, including search committees; strategizes on the best approach to recruitment at specific events, and designs and develops recruitment materials for events; (9) coordinates the provision of benefits, allowances, special pay requirements, labor and employee relations support services; (10) consults with the Department of State on utilization of State Department authorities to hire locally employed staff and coordination of records management requirements; (11) provides leadership in identifying CIO's classification and position management needs; (12) provides guidance to CDC/ATSDR organizations in the development, evaluation/classification of position descriptions; (13) conducts position management studies and responds to desk audit requests; (14) codes and finalizes all personnel actions in the automated personnel data system and ensures data quality control/assessment, and files/records management; and (15) reviews all reorganization proposals and provides advice on proposed staffing plans and organizational structures.

Executive and Scientific Resources Office (CAJQG). (1) Provides leadership, technical assistance, guidance, and consultation in the administration of policies and procedures for appointment of individuals through the SBRS, SES, distinguished consultants, experts, consultants, and fellows under Title 42 appointment authorities; (2) provides advisory services and technical assistance on pay and compensation guidelines in accordance with OPM rules and regulations, HHS and CDC/ATSDR established pay and compensation recommendation policies, and procedures; (3) provides expert human resources advisory services and technical assistance support to the CDC/ATSDR performance review boards and compensation committees; (4) reviews actions for statutory and regulatory compliance; (5) manages strategic recruitment, relocation, and retention incentives to facilitate attraction of a quality, diverse workforce to ensure accomplishment of the CDC/ATSDR missions; (6) provides performance management training for all SES and Title 42 executives with emphasis on performance systems, timelines, supervisory and employee responsibilities; (7) provides guidance on establishing performance plans, conducting mid-year reviews, and conducting final performance rating discussions and closing performance plans; (8) develops and maintains a standard Department-wide performance management system and forms for executives; (9) conducts reviews of SES performance plans and appraisals and provide feedback; (10) prepares and submits SES performance system certification request to OPM and OMB; (11) processes performance awards and performance-based pay adjustments; (12) provides advice, assistance, templates and training workshops on performance award and Presidential Rank Award requirements; (13) manages the HHS Executive Development Program, including developmental activities, rotational assignments, and the Candidate Development Program; (14) advises on development of executive succession planning activities; and (15) provides program guidance, administration, and oversight of CDC/ATSDR immigration and visa programs.

Senior Executive Compensation and Performance Activity (CAJQG2). (1) Provides advisory services, and technical assistance on pay and compensation guidelines in accordance with OPM rules and regulations, HHS and CDC/ATSDR established pay and compensation recommendation policies, and procedures; (2) provides expert human resources advisory services and technical assistance support to the CDC performance review boards and compensation committees; (3) reviews actions for statutory and regulatory compliance; (4) manages strategic recruitment, relocation, and retention incentives to facilitate attraction of a quality, diverse workforce to ensure accomplishment of the CDC/ATSDR missions; (5) provides performance management training for all SES and Title 42 executives with emphasis on performance systems, timelines, supervisory and employee responsibilities; (6) provides guidance on establishing performance plans, conducting mid-year reviews, and conducting final performance rating discussions and closing performance plans; (7) develops and maintains a standard Department-wide performance management system and forms for executives; (8) conducts reviews of SES performance plans and appraisals and provides feedback; (9) prepares and submits SES performance system certification request to OPM and OMB; (10) processes performance awards and performance-based pay adjustments; (11) provides advice, assistance, templates and training workshops on performance award and Presidential Rank Award requirements; (12) manages

the HHS Executive Development Program, including developmental activities, rotational assignments, and the Candidate Development Program; and (13) advises on development of executive succession planning activities.

Title 42 and Immigration Activity (CAJQG3). (1) Provides leadership, technical assistance, guidance, and consultation in the administration of policies and procedures for appointment of individuals through the distinguished consultants, experts, consultants, and fellows under Title 42 appointment authorities; (2) provides technical guidance and visa-assistance for employment based, CDC-sponsored visas; (3) administers and manages the Exchange Visitor Program; (4) works closely with the US Office of Exchange and Cultural Affairs, US Citizenship and Immigration Services, US Department of Homeland Security, US Department of State, Office of the Secretary/DHHS, and US Department of Labor) to facilitate immigration procedures; (5) reviews, processes and files H–1B, 0–1, and Green Card (I–140) Petitions with the U.S. Citizenship and Immigration Services; (6) provides advisory services and guidance on employment based green card petitions in the Alien of Extraordinary Ability category; (7) issues DS–2019s (Certificate of Eligibility for J–1 Exchange Visitor Status) through the Student and Exchange Visitor Information System to non US citizens seeking CDC J–1 visa sponsorship; (8) coordinates and provides consultations and guidance on Interested Government Agency Waivers; (9) provides Immigration Training Workshops to CDC/ATSDR Administrative Staff; (10) determines the appointment mechanism, legal status, and work authorizations for 5,000+ non US citizens through the Visitors and Management System; and (11) administers and manages the Guest Researcher and Oak Ridge Institute for Science and Education Program.

Dated: April 22, 2014.

Sherri A. Berger,

MSPH, Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2014–10178 Filed 5–5–14; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Request for Assistance for Child Victims of Human Trafficking.

OMB No.: 0970–0362.

Description: The William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, Public Law 110–457, directs the U.S. Secretary of Health and Human Services (HHS), upon receipt of credible information that an alien child may have been subjected to a severe form of trafficking in persons and is seeking Federal assistance available to victims of trafficking, to promptly determine if the child is eligible for interim assistance. The law further directs the Secretary of HHS to determine if a child receiving interim assistance is eligible for assistance as a victim of a severe form of trafficking in persons after consultation with the Attorney General, the Secretary of Homeland Security, and nongovernmental organizations with expertise on victims of severe form of trafficking.

In developing procedures for collecting the necessary information from potential child victims of trafficking, their case managers, attorneys, or other representatives to allow HHS to grant interim eligibility, HHS devised a form. HHS has determined that the use of a standard form to collect information is the best way to ensure requestors are notified of their option to request assistance for child victims of trafficking and to make prompt and consistent determinations about the child's eligibility for assistance.

Specifically, the form asks the requestor for his/her identifying information, for information on the child, information describing the type of trafficking and circumstances surrounding the situation, and the strengths and needs of the child. The form also asks the requestor to verify the information contained in the form because the information could be the basis for a determination of an alien child's eligibility for federally funded benefits. Finally, the form takes into consideration the need to compile information regarding a child's circumstances and experiences in a non-directive, child-friendly way, and assists the requestor in assessing whether the child may have been subjected to trafficking in persons.

The information provided through the completion of a Request for Assistance for Child Victims of Human Trafficking form will enable HHS to make prompt determinations regarding the eligibility of an alien child for interim assistance, inform HHS' determination regarding the child's eligibility for assistance as a victim of a severe form of trafficking in persons, facilitate the required consultation process, and enable HHS to assess potential child protection issues. HHS proposes to make several small, technical changes to the form, including the elimination of an unnecessary paragraph and updated references to the Trafficking Victims Protection Act of 2000, as amended, to reflect changes to that law.

Respondents: Representatives of governmental and nongovernmental entities providing social, legal, or protective services to alien persons under the age of 18 (children) in the United States who are neither U.S. citizens nor Lawful Permanent Residents and who may have been subjected to severe forms of trafficking in persons.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Request for Assistance for Child Victims of Human Trafficking	40	1	1	40

Estimated Total Annual Burden Hours: 40.

Additional Information: Copies of the proposed collection may be obtained 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. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this

document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–10307 Filed 5–5–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0530]

Center for Devices and Radiological Health Guidance Development and Prioritization; Public Workshop; Requests for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Center for Devices and Radiological Health Guidance Development and Prioritization Public Workshop.'' The topics to be discussed include the FDA's Center for Devices and Radiological Health's (CDRH) guidance development process, guidance development best practices for FDA, CDRH, and CDRH stakeholders, and CDRH guidance priorities and priority development.

Date and Time: The public workshop will be held on June 5, 2014, from 9 a.m. to 3 p.m.

Location: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503A), Silver Spring, MD 20993–0002. Entrance for public workshop participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Contact Person: Cathy Norcio, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5448, Silver Spring, MD 20993–0002, 301–796–5446, email: *Catherine.norcio@fda.hhs.gov.*

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 5 p.m., EDT, May 29, 2014. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the workshop will be provided beginning at 8 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan (301–796–5661 or email: *susan.monahan@fda.hhs.gov*) no later than May 22, 2014.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone number. Those without Internet access should contact Susan Monahan to register (see *Registration* contact for special accommodations). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by 5 p.m., EDT, May 29, 2014. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information no later than June 2, 2014. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Comments: FDA is holding this public workshop to obtain feedback on CDRH's guidance development and guidance prioritization processes. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop topics. The deadline for submitting comments related to this public workshop is July 7, 2014.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Please identify comments with the docket number found in brackets in the heading of this document. Received comments may be viewed in person 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.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.)

SUPPLEMENTARY INFORMATION:

I. Background

Guidance documents are documents issued by FDA and prepared for FDA staff and/or FDA stakeholders. They describe the Agency's interpretation of, or policy on, a regulatory issue (see § 10.115(b) (21 CFR 10.115(b))). Unlike statutes and regulations, guidances themselves do not create legally binding requirements (see § 10.115(d)). Nevertheless, guidance documents are important because they assist both staff and industry in understanding FDA's current thinking on certain topics. FDA's Good Guidance Practices regulation (§ 10.115) governs the development and issuance of guidance, and it gives interested parties a number

of opportunities to provide input into the guidance development process. Interested parties may provide input by:

(1) Submitting Comments on Guidance Topics Listed in CDRH's Proposed Guidance Development lists: FDA announces annually in the **Federal Register** the Web site location where the Agency posts lists of prioritized medical device guidance documents that CDRH intends to publish in the fiscal year. This information for fiscal year 2014 may be found in the **Federal Register** at 78 FR 66746 (November 6, 2013) and on the Internet at *http://www.gpo.gov/fdsys/pkg/FR-2013-11-06/pdf/2013-26547.pdf* and at *http://www.fda.gov/medicaldevices/deviceregulationandguidance/overview/mdufaiii/ucm321367.htm.* In addition, FDA establishes a docket where CDRH invites interested persons to submit comments on any or all of the guidance documents identified in the annual Proposed Guidance Development lists. Comments may include draft language on the proposed topics, suggestions for new or different guidance documents, and/or the relative priority of guidance documents.

(2) Submitting Proposed Draft Guidance to FDA for Consideration: Submitting proposed draft guidance, rather than a guidance topic, enables FDA to review and consider a fully developed approach to an issue of interest to a stakeholder. FDA may then adopt that approach, in full or in part, in a draft guidance that would be issued for public comment. This process holds the potential to shorten the total time for guidance development and facilitate consensus on novel, complex, or controversial issues. FDA solicits proposed draft guidances at a variety of different venues, such as trade association meetings and on the FDA Web site. Interested parties may submit proposed draft guidances on unsolicited topics, as well. While some stakeholders have developed proposed draft guidances for FDA's consideration, few have used this approach.

(3) Commenting on Draft Level 1 Guidance: Generally, FDA solicits public input on Level 1 guidances prior to implementation. The Agency posts draft Level 1 guidances on its Web site, and it publicizes the draft guidance by issuing a notice of availability (NOA) in the **Federal Register**. Generally, the Agency requests that public comments on the guidance be provided within 60 days of publication of the draft guidance. Once the comment period has closed, the Agency reviews the comments and considers them as it finalizes the policy at issue and publishes the final guidance. The Agency posts the final Level 1 guidance on its Web site and publicizes the final guidance by publishing an NOA in the **Federal Register**. In some instances, FDA may hold public meetings or workshops prior to issuing a draft Level 1 guidance or after issuing the draft but prior to finalizing the guidance to solicit additional comments or perspectives on the policy at issue.

(4) Commenting on Level 2 Guidance and Level 1 Immediately in Effect Guidance: Generally, FDA does not solicit public input on Level 2 guidance or on Level 1 Immediately in Effect guidance prior to implementing the guidance. Level 2 guidance documents are guidance documents that set forth existing practices or minor changes in interpretation or policy (§ 10.115(c)(2)) Level 1 Immediately in Effect guidances are issued when prior public participation is not feasible or appropriate (§ 10.115(g)(2)). However, FDA posts both types of guidance on its Web site, and interested parties may comment on them at any time after they have been issued. FDA will review the comments and revise the guidances, as appropriate. These streamlined options permit FDA to issue guidance more expeditiously than standard Level 1 guidance, while still providing stakeholders with an opportunity to comment. The additional administrative steps required for standard Level 1 guidance (i.e., issuing draft guidance, providing a comment period, and issuing final guidance) generally make the issuance of standard Level 1 guidance a longer process.

(5) Suggesting that FDA Revise or Withdraw an Existing Guidance Document: The Agency accepts and considers suggestions for revising or withdrawing existing guidance documents at any time. FDA is committed to updating its Web site in a timely manner to reflect the Agency's review of previously issued guidance documents, including the deletion of guidance documents that no longer represent the Agency's interpretation of, or policy on, a regulatory issue. CDRH encourages stakeholders to provide information concerning why a guidance should be revised or withdrawn, and, if applicable, provide comments about how a guidance should be revised.

This public workshop and the opening of a docket requesting comments and suggestions provide stakeholders with an additional opportunity to actively engage with CDRH regarding the level of public participation and other best practices in guidance development as well as how CDRH should develop its guidance priorities. To facilitate transparency, the workshop will also include information about the development and practical implementation of CDRH's internal guidance development process. CDRH encourages collaborative efforts with the public in the development of guidance documents and believes this workshop will help advance these efforts. CDRH is committed to exploring ways to facilitate stakeholder participation in guidance development within the confines of applicable statutes and regulations, considering the need to provide all interested parties access to the process, issuing documents in a timely manner, and balancing internal resources effectively to accomplish its public health mission.

II. Topics for Discussion at the Public Workshop

The topics to be discussed include CDRH's guidance development process, guidance development best practices for FDA, CDRH, and CDRH stakeholders, and CDRH guidance priorities and priority development.

Dated: April 30, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–10262 Filed 5–5–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-Up Exclusive Evaluation Option License Agreement: Activators of Human Pyruvate Kinase To Treat Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209 and 37 CFR Part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a Start-up Exclusive Evaluation Option License Agreement to TeamedOn International, LLC., a company having a place of business in Rockville, MD, to practice the inventions embodied in the following applications:

1. U.S. Provisional Patent Application No. 61/104,091, filed October 9, 2008
   HHS Ref. No.: E–326–2008/0–US–01
   Titled: Activators of Human Pyruvate Kinase
   Inventors: Craig J. Thomas, Douglas S. Auld, James Inglese, Amanda P. Skoumbourdis, Jian-Kang Jiang, and Matthew Boxer (NCATS)
2. PCT Application No. PCT/US2009/60237, filed October 9, 2009

HHS Ref. No.: E–326–2008/0–PCT–02
Titled: Activators of Pyruvate Kinase
Inventors: Craig J. Thomas, Douglas S. Auld, James Inglese, Amanda P. Skoumbourdis, Jian-Kang Jiang, and Matthew Boxer (NCATS)

3. Australian Patent Application No. 2009303335, filed October 9, 2009
HHS Ref. No.: E–326–2008/0–AU–03
Titled: Activators of Pyruvate Kinase
Inventors: Craig J. Thomas, Douglas S. Auld, James Inglese, Amanda P. Skoumbourdis, Jian-Kang Jiang, and Matthew Boxer (NCATS)

4. Canadian Patent Application No. 2,740,148, filed October 9, 2009
HHS Ref. No.: E–326–2008/0–CA–04
Titled: Activators of Pyruvate Kinase
Inventors: Craig J. Thomas, Douglas S. Auld, James Inglese, Amanda P. Skoumbourdis, Jian-Kang Jiang, and Matthew Boxer (NCATS)

5. European Patent Application No. 09740795.1, filed October 9, 2009
HHS Ref. No.: E–326–2008/0–EP–05
Titled: Activators of Pyruvate Kinase
Inventors: Craig J. Thomas, Douglas S. Auld, James Inglese, Amanda P. Skoumbourdis, Jian-Kang Jiang, and Matthew Boxer (NCATS)

6. Japanese Patent Application No. 531221–2011, filed October 9, 2009
HHS Ref. No.: E–326–2008/0–JP–06
Titled: Activators of Pyruvate Kinase
Inventors: Craig J. Thomas, Douglas S. Auld, James Inglese, Amanda P. Skoumbourdis, Jian-Kang Jiang, and Matthew Boxer (NCATS)

7. U.S. Patent Application No. 13/123,297, filed October 9, 2009
HHS Ref. No.: E–326–2008/0–US–07
Titled: Activators of Pyruvate Kinase
Inventors: Craig J. Thomas, Douglas S. Auld, James Inglese, Amanda P. Skoumbourdis, Jian-Kang Jiang, and Matthew Boxer (NCATS)

8. U.S. Patent Application No. 13/433,656, filed March 29, 2012
HHS Ref. No.: E–326–2008/0–US–08
Titled: Activators of Pyruvate Kinase
Inventors: Craig J. Thomas, Douglas S. Auld, James Inglese, Amanda P. Skoumbourdis, Jian- Kang Jiang, and Matthew Boxer (NCATS)

The patent rights in these inventions have been assigned to the Government of the United States of America. The territory of the prospective Start-up Exclusive Evaluation Option License Agreement may be worldwide, and the field of use may be limited to ''Use of PK–M2 activators for treatment of cancer in humans.''

Upon the expiration or termination of the Start-up Exclusive Evaluation Option License Agreement, TeamedOn International will have the exclusive right to execute a Start-up Exclusive Patent License Agreement which will supersede and replace the Start-up Exclusive Evaluation Option License Agreement, with no greater field of use and territory than granted in the Start-up Exclusive Evaluation Option License Agreement.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before May 21, 2014 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated Start-up Exclusive Evaluation Option License Agreement should be directed to: Suryanarayana Vepa, Ph.D., J.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5020; Facsimile: (301) 402–0220; Email: *vepas@mail.nih.gov*. A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published or issued by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: The fetal form of Pyruvate Kinase, called PK–M2, is expressed in all cancer cells but is normally inactive. The products and methods sought in the prospective evaluation option license agreement activate PK–M2 and result in inhibition of tumor development. This invention relates to products and methods of administering PK–M2 activators of various types and methods of treating cancer and diseases susceptible to PK–M2 activators. The prospective Start-up Exclusive Evaluation Option License Agreement is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The prospective Start-up Exclusive Evaluation Option License Agreement and a subsequent Start-up Exclusive Patent License Agreement may be granted unless the NIH receives written evidence and argument, within fifteen (15) days from the date of this published notice, that establishes that the grant of the contemplated Start-up Exclusive Evaluation Option License Agreement would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR Part 404.

Complete applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Start-up Exclusive Evaluation Option License Agreement. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 2, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–10309 Filed 5–5–14; 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 & Human Development (NICHD); Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. A portion of this 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 for the review and discussion of grant applications. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: June 5, 2014.

Open: June 5, 2014, 8 a.m. to 12:30 p.m.

Agenda: The agenda will include: Report of the Director, NICHD; Report of the Director, DER, NICHD; Statement of Understanding; Assistive Devices for Children Update; and the Human Placenta Project Update.

Closed: June 5, 2014, 1:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Center Drive, C-Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Cathy Y. Spong, M.D., Director, Division of Extramural Research, *Eunice Kenney Shriver* National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 4A05, MSC 7510, Bethesda, MD 20892, (301) 435–6894.

Any interested person may file written comments with the committee by forwarding the statement to the contact person listed on

this notice. The statement should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

In order to facilitate public attendance at the open session of Council in the main meeting room, Conference Room 10, please contact Ms. Lisa Kaeser, Program and Public Liaison Office, NICHD, at 301–496–0536 to make your reservation, additional seating will be available in the meeting overflow rooms, Conference Rooms 7 and 8. Individuals will also be able to view the meeting via NIH Videocast. Please go to the following link for Videocast access instructions at: *http://www.nichd.nih.gov/about/advisory/nachhd/Pages/virtual-meeting.aspx.*

(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: April 30, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10299 Filed 5–5–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (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: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity Applications.

Date: May 28, 2014.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR12–265 NIDDK Ancillary Studies to Major Ongoing Clinical Research (RO1): Pharmacogenomics and Metformin.

Date: June 11, 2014.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–7682, *campd@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Digestive Diseases and Nutrition.

Date: June 12, 2014.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009.

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DDK–C Conflicts.

Date: June 12, 2014.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009.

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 30, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10302 Filed 5–5–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (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: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DEM Fellowship Review.

Date: June 2–3, 2014.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009

Contact Person: Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK–KUH–Fellowship Review.

Date: June 3, 2014.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK–DDK–D Member Conflict SEP.

Date: June 3, 2014.

Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–14–065: Research Using Biosamples from Selected Type 1 Diabetes Clinical Studies (DP3).
Date: July 1, 2014.
Time: 12 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, DEA, Niddk, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–5947682, *campd@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Artificial Pancreas (SBIR).
Date: July 30, 2014.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 30, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10303 Filed 5–5–14; 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: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.
Date: June 2–3, 2014.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.
Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensorimotor Integration Study Section.
Date: June 3, 2014.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.
Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Molecular and Integrative Signal Transduction Study Section.
Date: June 3, 2014.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin AvenueBethesda, MD 20814.
Contact Person: Raya Mandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genetic Mutation Effects.
Date: June 3, 2014.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard Panniers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Tissue Engineering Study Section.
Date: June 4, 2014.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Baljit S Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Xenobiotic and Nutrient Disposition and Action Study Section.
Date: June 4, 2014.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Martha Garcia, Ph.D., Scientific Reviewer Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, Bethesda, MD 20892, 301–435–1243, *garciamc@nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Surgery, Anesthesiology and Trauma Study Section.
Date: June 4–5, 2014.
Time: 8 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: Torrance Marriott South Bay, 3635 Fashion Way, Torrance, CA 90503.
Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Immunopathology and Immunotherapy Study Section.
Date: June 4, 2014.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Avenue Crowne Plaza, 180 East Huron Street, Chicago, IL 60611.
Contact Person: Denise R Shaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@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: April 30, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10301 Filed 5–5–14; 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 Neurodegeneration, Neuroinflammation and the CNS.

Date: May 12, 2014.

Time: 2 p.m. to 4 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: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@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, Chronic Dysfunction and Integrative Neurodegeneration Study Section.

Date: May 29, 2014.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Motivated Behavior Study Section.

Date: June 2, 2014.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892–7844, 301–435–1033, *gaianonr@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group Skeletal Biology Development and Disease Study Section.

Date: June 3–4, 2014.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Aruna K. Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group Instrumentation and Systems Development Study Section.

Date: June 3–4, 2014.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Kathryn Kalasinsky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158 MSC 7806, Bethesda, MD 20892, 301–402–1074, *kalasinskyks@mail.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: June 3, 2014.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Olga A. Tjurmina, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@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: April 29, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10298 Filed 5–5–14; 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 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 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; EUREKA.

Date: June 5, 2014.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Arlington Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Rm 320–, MSC 9529, Bethesda, MD 20892, 301–402–0288, *natalia.strunnikova@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review; Group Neurological Sciences and Disorders B.

Date: June 26, 2014.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3203, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *neuhuber@ninds.nih.gov*.

(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: April 30, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10297 Filed 5–5–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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: National Institute of Nursing Research Initial Review Group.

Date: June 2–3, 2014.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. Suite 703, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov*.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Enhancing Sustainability and Building the Science of Palliative Care.

Date: June 4, 2014.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Tamizchelvi Thyagarajan, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Suite 703, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: April 30, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10300 Filed 5–5–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0014]

Notice of Intent To Prepare an Environmental Impact Statement for the Southern Flow Corridor Flood Reduction and Habitat Restoration Project, Tillamook County, Oregon

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Emergency Management Agency (FEMA), in cooperation with other Federal agencies, intends to prepare an environmental impact statement (EIS) evaluating the environmental impacts associated with funding activities to reduce flood impacts and to restore habitat for fish and wildlife within Tillamook County, Oregon. FEMA intends to provide funding for the project, known as the Southern Flow Corridor project, to the Port of Tillamook Bay (Applicant) through FEMA's Public Assistance (PA) grant program. Other funding for the project comes from the National Oceanic and Atmospheric Administration (NOAA) Restoration Center, State of Oregon lottery funds, U.S. Fish and Wildlife Service, Oregon Watershed Enhancement Board, and Tillamook County. Other public and private entities may also provide funding to support the Project.

FOR FURTHER INFORMATION CONTACT: Mark Eberlein, Regional Environmental Officer, FEMA Region X, 130 228th Street SW., Bothell, WA 98021, phone: 425–487–4735, email: *mark.eberlein@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA), in cooperation with other Federal agencies, intends to prepare an environmental impact statement (EIS) evaluating the environmental impacts associated with funding activities to reduce flood impacts and to restore habitat for fish and wildlife within Tillamook County, Oregon. FEMA intends to provide funding for the project, known as the Southern Flow Corridor project, to the Port of Tillamook Bay (Applicant) through FEMA's Public Assistance (PA) grant program. Other funding for the project comes from the National Oceanic and Atmospheric Administration (NOAA) Restoration Center, State of Oregon lottery funds, U.S. Fish and Wildlife Service, Oregon Watershed Enhancement Board, and Tillamook County. Other public and private entities may also provide funding to support the Project.

Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA, and FEMA's Environmental Considerations regulations require the preparation of an EIS for major Federal actions that would have significant impacts on the quality of the human environment. The CEQ regulations at 40 CFR 1501.7 require the issuance of a notice of intent to prepare an EIS prior to initiating the scoping process. Scoping is an early and open process that assists the Federal action agency in determining the scope of issues to be addressed and in identifying significant issues related to a proposed action.

FEMA received a Public Assistance application from the Port of Tillamook Bay for the Southern Flow Corridor (Project) as an alternate project to the repairs of its rail line that was damaged during flooding and severe storms in December, 2007. FEMA's proposed action is to provide funding for the Project; this funding is authorized under Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended.

The development of the Project by the Applicant originated through an initiative of the Oregon Solutions Program, which is a program launched by the Governor's office after passage of the Oregon Sustainability Act in 2001. This initiative brought together Federal, State, and local government agencies to identify strategies for implementing flood control measures and ecosystem restoration actions within the Tillamook Bay watershed. The Oregon Solutions team identified, evaluated, and prioritized projects. Multiple alternatives were considered along with multiple funding sources. The proposed Project is the outcome of this effort. More information can be found at: *http://www.co.tillamook.or.us/Documents/Misc/White%20Paper.pdf*. This report includes a graphical depiction of constructed elements, alternatives considered by the Applicant prior to the development of the

Southern Flow Corridor project, previous public outreach and involvement efforts, and a history of efforts since the late 1990s to address flooding and restore habitat in the Tillamook Bay watershed.

The Applicant's goal for the Project is to restore flood flow pathways from the Wilson River to Tillamook Bay. Implementation of the Project will result in flood level reductions across the lower Wilson River floodplain and to a lesser degree on the lower Trask and Tillamook Rivers. The Project is intended to reduce the flood levels to more natural levels over a wide range of flood magnitudes, but it will not reduce the frequency of flooding, which is controlled by flows and bank elevations upstream. Another goal of the Project is to restore ecological function and habitat for salmon listed under the Endangered Species Act and for other fish and wildlife.

The Project proposes to accomplish these goals by removing existing levees and fills to restore tidal marsh, and creating new setback tidal dikes to protect adjacent private lands. Key preliminary project elements include: (1) Levee, Fill, and Structure Removal: Remove approximately 6.9 miles of existing levee, 2.1 miles of road, 4 structures, and lower 2.1 miles of levee within the flow corridor to provide increased flood conveyance and allow the natural processes to restore ecosystem functions and habitat in the project area (total fill removal is estimated at 85,000 cubic yards); (2) New Tidal Setback and Upgraded Levees: Approximately 1.4 miles of new tidal setback levee will be constructed and up to 2.3 miles of existing levee adjusted to design grade (lowered or raised), and strengthened in order to improve flood conveyance and protect adjacent agricultural lands from tidal influence in the project area; (3) New Floodgates: A series of floodgates will be incorporated in the new levee in order to replace the existing gates slated for removal. Some of the existing floodgates may be recycled and re-used in the new levee system; (4) Hall Slough Elements: Additional flood reduction elements include improving the hydraulic connectivity between Hall and Blind Sloughs through removal of the Fuhrman Road berm and constructing an approximate 1,000-foot-long Hall Slough—Blind Slough connector channel; (5) Drainage Network Improvements: Improvements to the existing drainage ditches inside the new levee will be made as necessary to connect them to the new floodgates and ensure that equal or better drainage is maintained once the project is implemented. In addition, over 3 miles of drainage ditches will be filled to restore a natural drainage regime and improve habitat conditions; (6) Habitat Restoration Elements: The project elements described above are anticipated to result in full tidal inundation of 521 acres of restored marsh and wetland fringe habitat. In addition, the project would include extensive placement of large wood habitat features and reconnection of high-quality tidal channel habitat by constructing new channels, which are expected to naturally expand in total length to approximately 14 miles; and (7) Property Acquisition: The majority of the project area is already held in public ownership (398 acres), but acquisition of additional acres in private ownership is required. In addition, permanent flood easements and temporary construction easements may be required to maintain post-project floodplain functions and for proposed modifications of existing levees and removal of some dredge spoils on lands not required for acquisition.

The EIS scoping process will utilize and build upon the previous efforts of the Oregon Solutions team. To further scope the Project, FEMA will be soliciting public input to help identify and refine Project alternatives and significant issues for evaluation in the EIS. Outreach for the scoping process will include a public notice in local and regional media, direct mailing to interested parties, and a public scoping meeting. Federal, State and local agencies, Indian tribes, interested organizations and individuals will be asked to comment on the scope of issues, alternatives and their potential impacts. This outreach effort is planned for the spring of 2014 in Tillamook County. The specific date, time, and location for the public meeting will be provided with the public notice. A similar approach is planned for release of the Draft EIS.

Authority: 42 U.S.C. 4331 *et seq.;* 40 CFR part 1500; 44 CFR part 10.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–10331 Filed 5–5–14; 8:45 am]

BILLING CODE 9111–A6–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2014–N074: FXES11120400000–145–FF04EF2000]

Endangered and Threatened Wildlife and Plants; Receipt of Application for Incidental Take Permit; Availability of Proposed Low-Effect Habitat Conservation Plan and Associated Documents; Charlotte County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) application and Habitat Conservation Plan (HCP). Troy Powell (applicant) requests an ITP under the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking about 1.0 acre of foraging, breeding, and sheltering habitat used by the Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) incidental to land preparation and for the construction of a single-family residence, barn, and associated infrastructure in Charlotte County, Florida. The applicant's HCP describes the minimization and mitigation measures proposed to address the effects of the project on the scrub-jay.

DATES: Written comments on the ITP application and HCP should be sent to the South Florida Ecological Services Office (see **ADDRESSES**) and should be received on or before June 5, 2014.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section below for information on how to submit your comments on the ITP application and HCP. You may obtain a copy of the ITP application and HCP by writing the South Florida Ecological Services Office, Attn: Permit number TE31192B–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559. In addition, we will make the ITP application and HCP available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Powell, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES**); telephone: 772–469 –4315.

SUPPLEMENTARY INFORMATION:

Submitting Comments

If you wish to comment on the ITP application and HCP, you may submit

comments by any one of the following methods:

E-Mail: Brian _Powell@fws.gov. Use Attn: Permit number ''TE31192B–0'' as your message subject line.

Fax: Brian Powell, 772–562–4288, Attn.: Permit number ''TE31192B–0''.

U. S. Mail: Brian Powell, South Florida Ecological Services Field Office, Attn: Permit number ''TE31192B–0,'' U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.

In-person drop-off: You may drop off comments or request information during regular business hours at the above office address.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, 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.

Applicant's Proposed Project

We received an application for an incidental take permit, along with a proposed habitat conservation plan. The applicant requests a 5-year permit under section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*). If we approve the permit, the applicant anticipates taking 1.0 acre of Florida scrub-jay breeding, feeding, and sheltering habitat for construction of a single family residence, barn, and associated infrastructure. The project is located on parcel 402413201002 at latitude 27.003182, longitude -81.865925, Charlotte County, Florida.

The applicant proposes to mitigate for the loss of 1.0 acres of occupied scrub-jay habitat by onsite establishment of a 2.51 acre conservation easement to be managed by Charlotte Harbor Environmental Center, along with a fee of $7,500 for perpetual maintenance of the donated land, within 30 days of permit issuance.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including the proposed mitigation and minimization measures, will individually and cumulatively, have a minor or negligible effect on the species covered in the HCP. Therefore, issuance of the ITP is a ''low-effect'' action and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA) (40 CFR 1506.6), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1), and as defined in our Habitat Conservation Planning Handbook (November 1996).

We base our determination that issuance of the ITP qualifies as a low-effect action on the following three criteria: (1) Implementation of the project would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the project would result in minor or negligible effects on other environmental values or resources; and (3) Impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. As more fully explained in our environmental action statement and associated Low-Effect Screening Form, the applicant's proposed project qualifies as a ''low-effect'' project. This preliminary determination may be revised based on our review of public comments that we receive in response to this notice.

Next Steps

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP. If it is determined that the requirements of the Act are met, the ITP will be issued for the incidental take of the Florida scrub-jay.

Authority

We provide this notice under Section 10 of the Endangered Species Act (16 U.S.C. 1531 et seq.) and NEPA regulations (40 CFR 1506.6).

Dated: April 29, 2014.

Craig Aubrey,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2014–10334 Filed 5–5–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2014–N053; FXES11130600000–145–FF01E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of Nine Species in the Mountain-Prairie Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (Act), of 4 animal and 5 plant species. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last review of the species.

DATES: To ensure consideration in our reviews, we are requesting submission of new information no later than July 7, 2014. However, we will continue to accept new information about any listed species at any time.

FOR FURTHER INFORMATION CONTACT: For information on a particular species, contact the appropriate person or office listed in the table in the **SUPPLEMENTARY INFORMATION** section. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Why do we conduct 5-year reviews?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, go to *http://www.fws.gov/endangered/what-we-do/recovery-overview.html*, scroll down to ''Learn More about 5-Year Reviews,'' and click on our factsheet.

What information do we consider in our review?

A 5-year review considers all new information available at the time of the

review. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status review, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the Act); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year review and will also be useful in evaluating the ongoing recovery programs for the species.

Which species are under review?

This notice announces our active review of the nine species listed in the table below.

ANIMALS

Common name	Scientific name	Listing status	Historical range	Final listing rule (**Federal Register** citation and publication date)	Contact person, phone, email	Contact person's U.S. mail address
Black-footed ferret ..	*Mustela nigripes*	Endangered	Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Texas, Utah, Wyoming, U.S.A., Canada, and Mexico.	32 FR 4001; 03/11/1967 ...	Julie Lyke, Deputy Black-footed Ferret Recovery Coordinator, 970–897–2730; *Julie_lyke@fws.gov*.	National Black-footed Ferret Conservation Center, P.O. Box 190, Wellington, CO 80459.
Pallid sturgeon	*Scaphirhynchus albus*.	Endangered	Arkansas, Illinois, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, South Dakota, Tennessee, U.S.A.	55 FR 36641; 09/06/1990 ...	Wayne Nelson-Stastny, MRNRC Coordinator, 402–667–2884; *wayne_nelsonstastny@fws.gov*.	Ecological Services, MRNRC Coordinator, 55245 NE Hwy 121, Crofton, NE 68730.
Virgin River chub	*Gila seminuda (=robusta)*.	Endangered	Arizona, Nevada, Utah, U.S.A.	54 FR 35305; 08/24/1989 ...	Larry Crist, Project Leader, 801–975–3330; *larry_crist@fws.gov*.	Ecological Services, 2369 West Orton Circle, STE 50, West Valley City, UT 84119.
Woundfin	*Plagopterus argentissimus*.	Endangered	Arizona, Nevada, New Mexico, Utah, U.S.A.	35 FR 16047; 10/13/1970 ...	Larry Crist (above)	

PLANTS

Scientific name	Common name	Listing status	Historical range	Final listing rule (**Federal Register** citation and publication date)	Contact person, phone, email	Contactperson's U.S. mail address
Heliotrope milkvetch.	*Astragalus montii*	Threatened ...	Utah, U.S.A	52 FR 42652; 11/06/1987	Larry Crist (above)	
Jones cycladenia ..	*Cycladenia humilis var. jonesii*.	Threatened ...	Arizona, Utah, U.S.A.	51 FR 16526; 05/05/1986	Larry Crist (above)	
Kodachrome bladderpod.	*Lesquerella tumulosa*.	Endangered	Utah, U.S.A	58 FR 52027; 10/06/1993	Larry Crist (above)	
Osterhout milkvetch.	*Astragalus osterhoutii*.	Endangered	Colorado, U.S.A ...	54 FR 29658; 07/13/1989	Gina Glenne, Acting Project Leader, 970–628–7183 *gina_glenne@fws.gov*.	Ecological Services, Western Colorado Office, 445 W. Gunnison Ave., #240, Grand Junction, CO 81501–5720.
Penland beardtongue.	*Penstemon penlandii*.	Endangered	Colorado, U.S.A ...	54 FR 29658; 07/13/1989	Gina Glenne (above)	

Request for New Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See ''What Information Do We Consider in Our Review?'' for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

How do I ask questions or provide information?

If you wish to provide information for any species listed above, please submit your comments and materials to the appropriate contact in the table above. You may also direct questions to those contacts. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

Public Availability of Submissions

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.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

Completed and Active Reviews

A list of all completed and currently active 5-year reviews addressing species for which the Mountain-Prairie Region of the U.S. Fish and Wildlife Service has lead responsibility is available at *http://www.fws.gov/endangered/.*

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 22, 2014.

Matt Hogan,

Deputy Regional Director, Mountain-Prairie Region, U.S. Fish and Wildlife Service.

[FR Doc. 2014–10337 Filed 5–5–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2014–N079; FXES11130100000–145–FF01E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for recovery permits to conduct activities with the purpose of enhancing the survival of endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by June 5, 2014.

ADDRESSES: Program Manager for Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 et seq.) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number for the application when submitting comments.

Documents and other information submitted with these applications are available for review by request from the Program Manager for Restoration and Endangered Species Classification at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–98468A

Applicant: Amnis Opes Institute, LLC, Bend, Oregon.

The applicant requests a permit renewal, with amendments, to take (capture, handle, and release) the shortnose sucker (*Delistes luxatus*) and Lost River sucker (*Chasmistes brevirostris*) in conjunction with surveys and population monitoring activities in the States of Oregon and Washington for the purpose of enhancing the species' survival.

Permit Number: TE–018078

Applicant: Hawaii Volcanoes National Park, Hawaii National Park, Hawaii.

The applicant requests a permit amendment to remove/reduce to possession *Cyanea tritomantha* (aku), *Pittosporum hawaiiense* (hoawa, haawa), *Phyllostegia floribunda* (no common name), *Schiedea diffusa* ssp. *macraei* (no common name), and *Pritchardia lanigera* (loulu), in conjunction with propagation and outplanting on the island of Hawaii in the State of Hawaii, for the purpose of enhancing the species' survival.

Permit Number: TE–799558

Applicant: Idaho Power Company, Boise, Idaho.

The applicant requests a permit renewal to take (harass by survey, capture, collect, captively propagate, and release) the Banbury Springs limpet (*Lanx* sp) and the Snake River physa snail (*Haitia* (*Physa*) *natricina*), in conjunction with distribution surveys, life history studies, and ecological community relationship studies throughout the range of the each species in Idaho and Wyoming, for the purpose of enhancing the species' survival.

Permit Number: TE–003483

Applicant: U.S. Geological Survey, Pacific Island Ecosystem Research Center, Honolulu, Hawaii.

The applicant requests a permit renewal and amendment to add additional geographic areas (Kure Island, Lisianski Island, and Midway Atoll) for the Laysan duck (*Anas laysanensis*) translocation activities in the State of Hawaii, for the purpose of enhancing the species' survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: April 29, 2014.

Jason Holm,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2014–10310 Filed 5–5–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2014–0019; FXIA16710900000–134–FF09A30000]

Advisory Council on Wildlife Trafficking; Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a public meeting of the Advisory Council on Wildlife Trafficking (Council). The Council's purpose is to provide expertise and support to the Presidential Task Force on Wildlife Trafficking. You may attend the meeting in person, or you may participate via telephone. At this time, we are inviting submissions of questions and information for consideration during the meeting.

DATES: *Meeting:* The meeting will be held on Monday, June 9, 2014, from 1 p.m. to 5 p.m. Eastern Time.

Registering to Attend the On-Site Meeting: In order to attend the meeting on site, you must register by close of business on June 2, 2014. (You do not need to register in order to participate via phone.) Please submit your name, email address, and phone number to Mr. Cade London to complete the registration process (see **FOR FURTHER INFORMATION CONTACT**). Because there is limited seating available, registrations will be taken on a first-come, first-served basis. Members of the public requesting reasonable accommodations, such as hearing interpreters, must contact Mr. London, in writing (preferably by email), no later than May 24, 2014.

Submitting Questions or Information: If you wish to provide us with questions and information to be considered during the meeting, your material must be received or postmarked on or before June 2, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section) must be received by 11:59 p.m. Eastern Time on June 2, 2014.

Making An Oral Presentation at the Meeting: If you wish to make an oral presentation at the meeting (in person or by phone), contact Mr. London no later than June 2, 2014 (see **FOR FURTHER INFORMATION CONTACT**). For more information, see Making An Oral Presentation under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: *Meeting Location:* The meeting will be held in the U.S. General Services Administration Building at 1800 F Street NW., Room 1153; Washington, DC 20405.

Meeting Call-In Numbers: Members of the public unable to attend the meeting in person may call in at 888–790–3559 (toll free) or 1–210–234–0087 (toll). Please provide the passcode ''TRAFFIC'' to the operator.

Submitting Questions or Information: You may submit questions or information for consideration during the meeting by one of the following methods:

1. *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–HQ–IA–2014–0019. Then click on the ''Search'' button. You may submit questions or information by clicking on ''Comment Now!''

2. *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–IA–2014–0019; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept email or faxes. We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Submitting Public Comments section below for more information).

Reviewing Comments Received by the Service: See Reviewing Public Comments in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Cade London, Special Assistant, International Affairs, U.S. Fish and Wildlife Service, by email at *cade_london@fws.gov* (preferable method of contact); by U.S. mail at 4401 North Fairfax Drive, Room 110, Arlington, VA 22203; by telephone at (703) 358–2584; or by fax at (703) 358–2276.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act (5 U.S.C. App.), we announce that the Advisory Council on Wildlife Trafficking (Council) will hold a meeting to discuss the implementation of the National Strategy for Combating Wildlife Trafficking, and other Council business as appropriate. The Council's purpose is to provide expertise and support to the Presidential Task Force on Wildlife Trafficking.

You may attend the meeting in person, or you may participate via telephone. At this time, we are inviting submissions of questions and information for consideration during the meeting.

Background

Pursuant to Executive Order 13648, the Advisory Council on Wildlife Trafficking was formed on August 30, 2013, to advise the Presidential Task Force on Wildlife Trafficking, through the Secretary of the Interior, on national strategies to combat wildlife trafficking, including but not limited to:

1. Effective support for anti-poaching activities;
2. Coordinating regional law enforcement efforts;
3. Developing and supporting effective legal enforcement mechanisms; and
4. Developing strategies to reduce illicit trade and consumer demand for illegally traded wildlife, including protected species.

The eight-member Council, appointed by the Secretary of the Interior, includes former senior leadership within the U.S.

Government, as well as chief executive officers and board members from conservation organizations and the private sector. For more information on the Council and its members, visit *http://www.fws.gov/international/advisory-council-wildlife-trafficking/.*

Meeting Agenda

The Council will consider:

1. Recommendations for the Presidential Task Force on Wildlife Trafficking, including but not limited to legal frameworks, communication, enforcement, and public/private partnerships;
2. Administrative topics; and
3. Public comment and response.

The final agenda will be posted on the Internet at *http://www.fws.gov/international/advisory-council-wildlife-trafficking/*, as well as at *http://www.regulations.gov.*

Making an Oral Presentation

Members of the public who want to make an oral presentation in person or by telephone will be prompted during the public comment section of the meeting to provide their presentation and/or questions. Such presentations may be limited to a total of 30 minutes, to be distributed among all speakers. However, where time permits and if deemed appropriate by the Council Chair and the Designated Federal Official, additional time for public comment may be allotted. If you want to make an oral presentation in person or by phone, contact Mr. Cade London (**FOR FURTHER INFORMATION CONTACT**) no later than the date given in the **DATES** section for *Making An Oral Presentation at the Meeting.*

Registered speakers who wish to expand on their oral statements, or those who wanted to speak but could not be accommodated on the agenda, are invited to submit subsequent written statements to the Council after the meeting. Such written statements must be received by Mr. London, in writing (preferably via email), no later than June 16, 2014.

Submitting Public Comments

You may submit your questions and information by one of the methods listed in **ADDRESSES**. We request that you send comments only by one of the methods described in **ADDRESSES**.

If you submit information via the Federal eRulemaking Portal (*http://www.regulations.gov*), your entire submission—including any personal identifying information—will be posted on the Web site.

If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Reviewing Public Comments

Comments and materials we receive will be available for public inspection on *http://www.regulations.gov.* Alternatively, you may view them by appointment during normal business hours at 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203. Please contact Mr. London (see **FOR FURTHER INFORMATION CONTACT**).

Obtaining Meeting Minutes

Summary minutes of the meeting will be available on the Council Web site at *http://www.fws.gov/international/advisory-council-wildlife-trafficking/*, as well as at *http://www.regulations.gov.* Alternatively, you may view them by appointment during normal business hours at 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203. Please contact Mr. London (see **FOR FURTHER INFORMATION CONTACT**).

Dated: April 30, 2014.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2014–10295 Filed 5–5–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14XL1109AF LLUT925000–L14200000–BJ0000–24–1A]

Notice of Filing of Plat of Survey; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: The Bureau of Land Management (BLM) will file a plat of survey of the lands described below in the BLM—Utah State Office, Salt Lake City, Utah, June 5, 2014.

FOR FURTHER INFORMATION CONTACT: Daniel W. Webb, Chief Cadastral Surveyor, Bureau of Land Management, Branch of Geographic Sciences, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101–1345, telephone 801–539–4135, or *dwebb@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, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of Wayne A. Wetzel, Field Office Manager, BLM—Richfield Field Office. The lands surveyed are:

Salt Lake Meridian, Utah

T. 22 S., R. 1 W., a corrective resurvey of a portion of the west boundary, the line between sections 6 and 7, and a portion of the subdivision of section 6, accepted April 25, 2014, Group No. 718, Utah.

A copy of the plat and related field notes will be placed in the open files. They will be available for public review in the BLM—Utah State Office as a matter of information.

Authority: 43 U.S.C. Chap. 3.

Juan Palma,

State Director.

[FR Doc. 2014–10332 Filed 5–5–14; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF020000 L14300000.EU0000; COC–76406]

Notice of Realty Action: Segregation of Land for a Non-Competitive (Direct) Sale of Public Land in Gilpin County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell four parcels of public land totaling 6.72 acres in Gilpin County, Colorado, to the City of Black Hawk (Black Hawk) under the direct sale provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), for not less than the fair market value.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by June 20, 2014.

ADDRESSES: Send written comments concerning this notice to Field Manager, BLM Royal Gorge Field Office, 3028 East Main Street, Canon City, CO 81212. Comments can be emailed to *RGFO_Comments@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Jan Lownes, Realty Specialist, BLM, Royal Gorge Field Office, at the above address or by phone, 719–269–8546. 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 following described public lands have been examined and found suitable for direct sale under the authority of Sections 203 and 209 of FLPMA, as amended (43 U.S.C. 1713 and 1719).

Sixth Principal Meridian, Colorado

T. 3 S., R. 73 W., sec. 12, lots 20, 21, 23, and 24.

The areas described aggregate 6.72 acres.

On April 6, 2012, the Cadastral Supplemental Plat for the subject lands were approved and accepted.

The above-described lands are segregated from all forms of appropriation under the public land laws, including the mining laws. The BLM is no longer accepting land use applications affecting the identified public lands, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregated effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or May 6, 2016, unless extended by the BLM Colorado State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. These public lands were identified as suitable for disposal in the 1986 Northeast Resource Management Plan and are not needed for any other Federal purpose. The purpose of the sale is to dispose of public lands that are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal department or agency. The lands are considered difficult and uneconomic to manage because they consist of irregularly shaped, isolated and very small remnants left over after the issuance of intermingled mining claim patents. A direct sale is appropriate in this case as the lands are proposed for sale to a local government to meet its needs for future water storage infrastructure. Black Hawk is in the process of completing the purchase of surrounding private parcels involved in the water project.

Black Hawk has initiated an environmental assessment to support a Section 404 permit application to the U.S. Army Corps of Engineers for water diversion, storage structures and infrastructure to meet forecasted needs. Analysis of the disposal of these lands for possible inclusion in the proposed Quartz Valley Reservoir will be included within this environmental assessment.

Conveyance of the identified public lands will be subject to valid existing rights and encumbrances of record, including, but not limited to, rights-of-way for roads and public utilities. Conveyance of any mineral interests pursuant to Section 209 of the FLPMA will be analyzed during processing of the proposed sale.

In addition to this Notice of Realty Action (NORA), notice of this sale will also be published once a week for 3 weeks in the *Mountain Ear* and the *Weekly Register-Call.*

The public lands will not be offered for sale until after July 7, 2014. The patent, if issued, will be subject to all valid existing rights documented on the official public land records at the time of patent issuance. The availability of the appraisal report, mineral report and other documents pertinent to the proposed sale will be announced in a second NORA and made available to the public by the BLM at the Royal Gorge Field Office at above address prior to the sale.

For a period until June 20, 2014 interested parties and the public may submit written comments to the BLM Royal Gorge Field Manager (see **ADDRESSES** section). Comments, including names and street addresses of respondents, will be available for public review at the BLM Royal Gorge Field Office during regular business hours. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice.

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

The Colorado State Director, who may sustain, vacate, or modify this realty action and issue a final determination, will review any comments. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2.

Ruth Welch,

Acting State Director.

[FR Doc. 2014–10482 Filed 5–5–14; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–DEWA–15382; PPNEDEWAS0/PROIESUC1.380000]

Boundary Adjustment at Delaware Water Gap National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary adjustment.

SUMMARY: The boundary of Delaware Water Gap National Recreation Area is adjusted to include four parcels of land totaling 287.99 acres of land, more or less. Fee simple interest in the land will be donated to the United States. The properties are located in Sussex County, New Jersey, and Pike and Monroe Counties, Pennsylvania, adjacent to the current boundary of Delaware Water Gap National Recreation Area.

DATES: The effective date of this boundary revision is May 6, 2014.

ADDRESSES: The map depicting this boundary revision is available for inspection at the following locations: National Park Service, Land Resources Program Center, Northeast Region, 200 Chestnut Street, Philadelphia, Pennsylvania, and National Park Service, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Superintendent John J. Donahue, Delaware Water Gap National Recreation Area, 1978 River Road (Off US209), Bushkill, PA 18324, telephone (570) 426–2418.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 16 U.S.C. 460o–2(b), the boundary of Delaware Water Gap National Recreation Area is adjusted to include 287.99 acres of land, more or less, comprising four parcels of land: 68.03 acres (Block 903, Lot 40) in Sandyston Township, Sussex County, New Jersey; 41.56 acres (Section 112.00, Block 03, Lots 66, 67, and 68) in Dingman Township, Pike County, Pennsylvania; and 33.07 acres (Tax Parcel 09/3G/1/35) and 145.33 acres (Tax Parcels 09/3G/1/33 and 09/3G/1/2) in Middle Smithfield Township, Monroe County, Pennsylvania. This boundary adjustment is depicted on Map No. 620 123650 dated February 6, 2014.

16 U.S.C. 460o–2(b) states that the Secretary of the Interior may make adjustments in the boundary of Delaware Water Gap National Recreation Area by publication of the amended description thereof in the **Federal Register**: provided, that the area encompassed by such revised boundary shall not exceed the acreage included within the detailed boundary first described in the **Federal Register** on June 7, 1977 (Vol. 42, No. 109, pp 29071–29103). This boundary adjustment does not exceed the acreage of the detailed boundary so described. The Conservation Fund owns or holds an option for these properties and will convey their fee interests to the United States without cost to help mitigate the effects of the upgrade and expansion of the existing Susquehanna-Roseland electric transmission line across approximately 4.3 miles of the National Recreation Area.

Dated: March 28, 2014.

Michael Caldwell,

Acting Regional Director, Northeast Region.

[FR Doc. 2014–10370 Filed 5–5–14; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–15430; PX.P0131800B.00.1]

Notice of Availability of Record of Decision for Merced River Comprehensive Management Plan, Yosemite National Park, California

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service (NPS), has prepared and approved a Record of Decision for the Final Environmental Impact Statement (Final EIS) for the Merced River Comprehensive Management Plan. Approval of the Merced River Comprehensive Management Plan culminates an extensive conservation planning and environmental impact analysis effort which began over 15 years ago. The requisite no-action ''wait period'' was initiated on February 18, 2014, with the Environmental Protection Agency's Federal Register notice of the filing of the Final EIS.

Decision: The NPS has selected Alternative 5 (identified as both ''agency preferred'' and ''environmentally preferred'' in the Final EIS) for implementation as the approved Merced River Comprehensive Management Plan. Under the selected alternative, peak visitation could reach levels experienced in recent years—approximately 20,100 people per day in East Yosemite Valley. West Yosemite Valley will retain its overall natural character, with limited facilities and visitor services provided. Improvements to river access in the Valley, coupled with meadow enhancements and extensive riverbank restoration (189 acres of meadow and riparian habitat will be restored), will result in substantially improved visitor experiences. Visitors to Wawona will continue to enjoy the historic hotel and facilities; recreational options in this area will include tennis and golf, hiking, picnicking, horseback riding, and boating on the South Fork of the Merced River. The El Portal Administrative Site will continue to serve as a hub for park operations, and remote parking to reduce summer traffic congestion will be provided.

Selected key components of the approved plan are as follows: (1) Provide for 72 campsites at Upper and Lower River Campgrounds and 482 lodging units at Curry Village; (2) increase parking at El Portal Remote Parking Area to 300 spaces and reduce parking at Yosemite Village Day-use Parking Area to 750 spaces; (3) provide for raft and bicycle rentals at locations outside the river corridor; (4) retain Sugar Pine Bridge and remove Residence One (the Superintendent's House) through relocation or demolition; (5) adverse effects to cultural resources will be ameliorated according to a Programmatic Agreement executed with the State Historic Preservation Officer; and (6) undertake a rigorous adaptive management program of ecological restoration and monitoring actions in order to improve hydrologic flows, water infiltration, and reduce erosion.

Five other alternatives were evaluated, the full range of foreseeable environmental consequences was assessed, and appropriate mitigation measures were identified.

Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Attn: Division of Project Management, Yosemite National Park, P.O. Box 700–W, 5083 Foresta Road, El Portal, CA 95318 or via telephone request at (209) 379–1202.

Dated: March 31, 2014.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2014–10367 Filed 5–5–14; 8:45 am]

BILLING CODE 4310–FF–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,057]

Hyosung USA, Inc, Utica Plant, a Subsidiary of Hyosung Holdings USA, Inc., Utica, New York; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 26, 2014, a State of New York workforce official requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of Hyosung USA, Inc., Utica Plant, a subsidiary of Hyosung Holdings USA, Inc., Utica, New York (subject firm). The negative determination was signed on February 26, 2014.

The petition stated: ''Richard Guzda . . . will be laid off on 3/31/2014. He has been the maintenance man and watchman for the vacant building. Hyosung has an Agreement . . . to keep someone on site until the end of the lease on 3/31/14.''

The determination was based on the Department's finding that there was not a worker group as defined by 29 CFR 90 at the subject firm during the one-year period prior to the date of the petition (February 6, 2014).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

In the request for reconsideration, the state workforce official stated that ''Mr. Guzda has been fully connected with 81 other workers certified under petition 80085. I believe that TAA petition 80085 should be re-opened and the expiration date should be changed from May 5th, 2013 to at least April 1st, 2014

to ensure that Mr. Guzda is eligible for TAA benefits.''

19 U.S.C. 2291 establishes that the certification period ends at ''the 2-year period beginning on the date on which the determination under section 223 was made.''

29 CFR 90.11(b) states ''Every petition filed with the Department shall clearly state the group of workers on whose behalf the petition is filed.''

29 CFR 90.2 states ''Group means three or more workers in a firm or appropriate subdivision therof.''

29 CFR 90.16(e) states ''A certification of eligibility to apply for adjustment assistance shall not apply to any worker: (1) whose last total or partial separation from the firm or appropriate subdivision occurred more than one (1) year before the date of the petition.''

Because there was one worker at the subject firm on/after February 6, 2013, the worker group criteria have not been met.

Because the petitioner did not supply facts not previously considered and did not provide additional documentation indicating that there was either a mistake in the determination of facts not previously considered or a misinterpretation of facts, or of the law justifying reconsideration of the initial determination, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After careful review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 24th day of April, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–10256 Filed 5–5–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 16, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 16, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 24th day of April 2014.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

24 TAA PETITIONS INSTITUTED BETWEEN 4/14/14 AND 4/18/14

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
85223	International Paper Company-Courtland (Company)	Courtland, AL	04/15/14	03/31/14
85224	Catholic Health Initiatives (State/One-Stop)	Englewood, CO	04/15/14	04/04/14
85225	Cycling Sports Group, Inc. (Company)	Bedford, PA	04/15/14	04/11/14
85226	Plycem USA—Elementia (Workers)	Terre Haute, IN	04/15/14	04/10/14
85227	Fenton Art Glass Company (Workers)	Williamstown, WV	04/15/14	04/11/14
85228	Nilfisk—Advance Incorporated (State/One-Stop)	Plymouth, MN	04/15/14	04/11/14
85229	Trane Ingersoll Rand (Union)	La Crosse, WI	04/15/14	04/11/14
85230	ITT Corporation (State/One-Stop)	Santa Ana, CA	04/15/14	04/14/14
85231	Convergys Corporation (Workers)	Denver, CO	04/15/14	04/14/14
85232	Supermedia (State/One-Stop)	Erie, PA	04/15/14	04/15/14
85233	Littelfuse, Inc. (Company)	Chicago, IL	04/15/14	04/11/14
85234	Nordyne (Company)	Poplar Bluff, MO	04/15/14	04/14/14
85235	Victaulic (Company)	Leland, NC	04/15/14	04/15/14
85236	Stanley Furniture Young America (Company)	Robbinsville, NC	04/15/14	04/11/14
85237	Hyundia Regional Customer Service Center (Workers)	Charlotte, NC	04/15/14	03/31/14
85238	Manitowoc Ice Inc. (Workers)	Manitowoc, WI	04/16/14	04/11/14
85239	Robert Bosch Tool (State/One-Stop)	Mt. Prospect, IL	04/16/14	04/15/14
85240	3D Systems Corporation (Workers)	Lawrenceburg, TN	04/16/14	04/15/14
85241	Institute Career Development (Union)	Merrillville, IN	04/17/14	04/16/14
85242	MFI CORP. (Company)	Everett, MA	04/17/14	04/10/14
85243	Riverside Manufacturing Company (Company)	Moultrie, GA	04/17/14	04/16/14
85244	Cardolite Corporation (State/One-Stop)	Newark, NJ	04/18/14	04/17/14
85245	Detroit Tool & Engineering (Workers)	Lebanon, MO	04/18/14	04/16/14
85246	Kennametal Inc. (State/One-Stop)	Lyndonville, VT	04/18/14	04/17/14

[FR Doc. 2014–10257 Filed 5–5–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–83,294]

Benteler Automotive, Including On-Site Leased Workers From Lacosta Family Support Services and Manpower, Grand Rapids, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 6, 2014, applicable to workers of Benteler Automotive, Grand Rapids, Michigan, including on-site leased workers from Manpower. The Department's Notice of determination was published in the **Federal Register** on January 10, 2014.

At the request of a state workforce official, the Department reviewed the certification for workers of the subject firm.

The company reports that workers leased from Lacosta Family Support Services were employed on-site at the subject firm. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Lacosta Family Support Services working on-site at Benteler Automotive, Grand Rapids, Michigan.

The amended notice applicable to TA–W–83,294 is hereby issued as follows:

''All workers of Lacosta Family Support Services reporting to Benteler Automotive, Grand Rapids, Michigan, who became totally or partially separated from employment on or after December 11, 2012, through January 6, 2016, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC this 11th day of April, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–10254 Filed 5–5–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,760; TA–W–81,760A]

EPIC Technologies, LLC; Norwalk, Ohio; EPIC Technologies, LLC; Including On-Site Leased Workers From H.G. Arias & Associates; El Paso, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a certification of eligibility to apply for Trade Adjustment Assistance applicable to workers and former workers of EPIC Technologies, LLC, Norwalk, Ohio. The determination was issued on July 12, 2012. The workers are engaged in activities related to the production of printed circuit boards.

During the investigation for EPIC Technologies, El Paso, Texas (TA–W–85,063), the Department obtained information that the El Paso, Texas facility works in conjunction with the Norwalk, Ohio facility. Specifically, the El Paso, Texas facility provides warehousing, shipping, and receiving services for the Norwalk, Ohio facility.

Based on these findings, the Department is amending this certification to include workers of EPIC Technologies, LLC, including on-site leased workers from H.G. Arias & Associates, El Paso, Texas (TA–W–81,760A).

The amended notice applicable to TA–W–81,760 is hereby issued as follows:

''All workers of EPIC Technologies, LLC, including on-site leased workers of H.G. Arias & Associate, El Paso, Texas (TA–W–81,760A), who became totally or partially separated from employment on or after December 23, 2011 through July 12, 2014, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC this 23rd day of April, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–10253 Filed 5–5–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *April 14, 2014 through April 18, 2014.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation

or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the Federal Register under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) not withstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations For Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
83,365	Harvey Industries Die Casting, LLC, Aiken Division, Harvey Industries LLC, Aiken Staffing Associates, Manpower.	Aiken, SC	December 31, 2012.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
83,257	Cromaglass Corporation	Williamsport, PA.	

I hereby certify that the aforementioned determinations were issued during the period of *April 14, 2014 through April 18, 2014.*

These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC this 24th day of April 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–10259 Filed 5–5–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of April 14, 2014 through April 18, 2014.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,058, Segue Manufacturing Services LLC., Lowell, Massachusetts. January 14, 2014.

85,176, Scott DC Power Products, Alamogordo, New Mexico. March 24, 2013.

85,177, Advanced Motors and Drives, Inc. East Syracuse. New York. March 24, 2013.

85,188, Gentex Optics, Inc. Carbondale, Pennsylvania. March 28, 2013.

85,192, Walter Kidde Portable Equipment, Inc., Pittsfield, Maine. March 31, 2013.

85,212, IMPCO Technologies, Inc., Sterling Heights, Michigan. April 7, 2013.

85,235, Victaulic, Leland, North Carolina. April 15, 2013.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,123, Elsevier, Inc., San Diego, California.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,093, Specialty Foods Group, Inc., Chicago, Illinois.

85,109, Sharp Manufacturing Co. of America (SMCA), Memphis, Tennessee.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,022, Intrepid Potash Inc., Denver, Colorado.

85,119, Hewlett Packard Company, Palo Alto, California.

85,138, ARRIS Group, Inc., State College, Pennsylvania.

85,166, Hartford Fire Insurance Company, Hartford, Connecticut.

85,174, AT&T Corp., Pittsburgh, Pennsylvania.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

85,136, Startek USA, Inc. Jonesboro, Alaska.

85,162, Kuehne & Nagel, Inc., Jersey City, New Jersey.

85,162A, Kuehne & Nagel, Inc., Naugatuck, Connecticut.

85,168, ICON Clinical Research, Sugar Land, Texas.

I hereby certify that the aforementioned determinations were issued during the period of April 14, 2014 through April 18, 2014. These determinations are available on the Department's Web site tradeact/taa/taa_search_form.cfm under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC this 24th day of April 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–10258 Filed 5–5–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0028]

MET Laboratories, Inc.; Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of MET Laboratories, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before May 21, 2014.

ADDRESSES: Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA–2006–0028, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2006–0028). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials may be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before May 21, 2014 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. David W. Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; phone: (202) 693–2110 or email: *johnson.david.w@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that MET Laboratories, Inc. (MET), is applying for expansion of its current recognition as an NRTL. MET requests the addition of one test standard to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in Title 29, Code of Federal Regulations, Section 1910.7 (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes the type of products the NRTL may test, with each type specified by its applicable test standard; and the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition, and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including MET, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

MET currently has one facility (site) recognized by OSHA for product testing and certification, with its headquarters located at: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230. A complete list of MET's scope of recognition is available at *http://www.osha.gov/dts/otpca/nrtl/met.html.*

II. General Background on the Application and Request

MET submitted an application, dated November 13, 2011 (Exhibit 1), to expand its recognition to include one additional test standard. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 below lists appropriate test standards found in MET's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARD FOR INCLUSION IN MET'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 2202	Electric Vehicle (EV) Charging System Equipment.

III. Preliminary Findings on the Application

MET submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file and pertinent documentation indicate that MET can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of this one test standard for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of MET's application and request.

OSHA welcomes public comment as to whether MET meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the publicly available information in MET's application, including pertinent documents (e.g., exhibits) and all submitted comments, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2006–0028.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant MET's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

IV. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on April 30, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–10294 Filed 5–5–14; 8:45 am]

BILLING CODE 4510–26–P

MERIT SYSTEMS PROTECTION BOARD

Notice of Opportunity To Submit Ideas for Merit Systems Studies

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB or Board) is updating its research agenda and seeks suggestions about possible topics of study.

DATES: Submissions are due June 5, 2014.

ADDRESSES: Submit ideas by mail to Research Agenda, U.S. Merit Systems Protection Board, Room 520, 1615 M Street NW., Washington, DC 20419; by fax to (202) 653–7211; or by email to *research.agenda@mspb.gov*.

FOR FURTHER INFORMATION CONTACT: John Ford at (202) 254–4499; or James Tsugawa at (202) 254–4506; or email *research.agenda@mspb.gov*.

SUPPLEMENTARY INFORMATION: MSPB conducts studies of the executive branch to ensure that Federal personnel management continues to be implemented consistent with the Merit System Principles and free from Prohibited Personnel Practices. Most of those studies are drawn from a multi-year research agenda that MSPB develops after reviewing suggested topics from the public. For more information about MSPB studies, see *www.mspb.gov/studies*.

The public is invited to submit ideas to be considered for inclusion in MSPB's research agenda by answering

one or more of the following questions or submitting other pertinent ideas.

1. In your opinion, what is the most important issue affecting the management of the Federal workforce?

2. What is one thing in the Federal workplace that should be done more fairly?

3. What is one thing in the Federal workplace that should be done more efficiently or effectively?

4. There are several agencies and organizations involved in Federal workforce issues and policy, such as the U.S. Office of Personnel Management, the U.S. Government Accountability Office, the National Academy of Public Administration, and the Partnership for Public Service. What research could MSPB's Office of Policy and Evaluation conduct that would be distinct from the work of other agencies and organizations?

William D. Spencer,

Clerk of the Board.

[FR Doc. 2014–10333 Filed 5–5–14; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts International Indemnity Panel. The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after July 1, 2014.

DATES: The meeting will be held on Wednesday, May 28, 2014, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Constitution Center, 400 7th Street SW., Washington, DC 20506, in Room 3068.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 400 7th Street SW., 4th Floor, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified, and the methods of transportation and security measures confidential, the meeting will be closed to the public pursuant to section 552b(c)(4) of Title 5, U.S.S.C. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993.

Dated: April 29, 2014.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2014–10327 Filed 5–5–14; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0087]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of nine amendment requests. The amendment requests are for Brunswick Steam Electric Plant, Units 1 and 2; Crystal River Unit 3 Nuclear Generating Plant; Shearon Harris Nuclear Power Plant, Unit 1; H. B. Robinson Steam Electric Plant, Unit 2; Indian Point Nuclear Generating Units 1, 2, and 3; James A. FitzPatrick Nuclear Power Plant (two separate amendment requests); Oyster Creek Nuclear Generating Station; and Browns Ferry Nuclear Plant, Unit 1. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. In addition, each amendment request contains sensitive unclassified non-safeguards information (SUNSI) and/or safeguards information (SGI).

DATES: Comments must be filed by June 5, 2014. A request for a hearing must be filed by July 7, 2014. Any potential party as defined in § 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI and/or SGI is necessary to respond to this notice must request document access by May 16, 2014.

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–2014–0087. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: Shirley J. Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–5411, email: *Shirley.Rohrer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0087 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0087.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly-available documents online in the ADAMS Public Documents collection at

http://www.nrc.gov/reading-rm/adams.html. To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if the document is available in ADAMS) is provided the first time that the 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–2014–0087 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI and/or SGI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise

statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC's guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is

considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to these amendment requests, see the applications for amendment which are available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly-available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Duke Energy Progress, Inc., Docket Nos. 50–325 and 50–324; Duke Energy Florida, Inc., Docket No. 50–302; Duke Energy Progress, Inc., Docket Nos. 50–400 and 50–261; Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina; Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida; Shearon Harris Nuclear Power Plant, Unit 1, Wake County, North Carolina; and H. B. Robinson Steam Electric Plant, Unit 2, Darlington County, South Carolina

Date of amendment request: December 19, 2013, as supplemented by letter dated March 31, 2014 (publicly-available versions are available in ADAMS under Accession Nos. ML13357A189 and ML14092A293).

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The license amendment request pertains to the Cyber Security Plan (CSP) implementation schedule change in the completion date for Milestone 8. Milestone 8 pertains to the date that full implementation of the CSP for all safety, security, and emergency preparedness functions will be achieved.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan implementation schedule for Milestone 8 does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan implementation schedule for Milestone 8 does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change revises the Cyber Security Plan implementation schedule. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street, Charlotte, North Carolina 28202.

NRC Branch Chief: Jessie F. Quichocho.

Entergy Nuclear Operations, Inc., Docket Nos. 50–003, 50–247, and 50–286, Indian Point Nuclear Generating Units 1, 2, and 3, Westchester County, New York

Date of amendment request: January 30, 2014. A publicly-available version is available in ADAMS under Accession No. ML14043A092.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the Indian Point Energy

Center Cyber Security Plan (CSP) Implementation Schedule Milestone 8 full implementation date and revise the existing operating license Physical Protection license condition. The CSP Milestone 8 full implementation date would be changed from December 15, 2014, to June 30, 2016.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits, specified in the technical specifications. The proposed change to the CSP Implementation Schedule is administrative in nature. In addition, the milestone date delay for full implementation of the CSP has no substantive impact because other measures have been taken which provide adequate protection during this period of time. Because there is no change to established safety margins as a result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeanne Cho, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, New York 10601.

NRC Branch Chief: Benjamin G. Beasley.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: August 30, 2013. A publicly-available version is available in ADAMS under Accession No. ML13248A517.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would modify the operating license, pursuant to Section 161A of the Atomic Energy Act of 1954, as amended, to permit the licensee's security personnel to possess and use weapons, devices, ammunition, or other firearms, notwithstanding state, local, and certain federal firearms laws that may prohibit such use. The NRC refers to this authority as ''stand-alone preemption authority.'' The licensee is seeking stand-alone preemption authority for standard weapons presently in use at the James A. FitzPatrick Nuclear Power Plant (JAFNPP) facility in accordance with the JAFNPP security plans. The weapons that are the subject of this amendment request do not include enhanced weapons.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The LAR [license amendment request] does not require any plant modifications, alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

The proposed change to JAFNPP's license will not result in any actual changes at the facility. JAFNPP security personnel already use the weapons described in Attachment 1 [Attachment 1, which is included in the LAR, is security-related and is not publicly available] and the use of the subject weapons is already covered under the existing JAFNPP security plans.

The proposed change adds a sentence to the JAFNPP license to reflect the Section 161A preemption authority granted by the Commission. The change is administrative and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The LAR does not require any plant modifications, alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

The proposed change to JAFNPP's license will not result in any actual changes at the facility. JAFNPP security personnel already use the weapons described in Attachment 1 and the use of the subject weapons is already covered under the existing JAFNPP security plans.

The proposed change adds a sentence to the JAFNPP license to reflect the Section 161A preemption authority granted by the Commission. The change is administrative and has no impact on the possibility or a new or different kind of accident from any accident previously evaluated.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The LAR does not require any plant modifications, alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

The proposed change to JAFNPP's license will not result in any actual changes at the facility. JAFNPP security personnel already use the weapons described in Attachment 1 and the use of the subject weapons is already covered under the existing JAFNPP security plans. Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety limits specified in the Technical Specifications. Because there is no change to these established safety margins, the proposed change does not involve a significant reduction in a margin of safety.

The proposed change adds a sentence to the JAFNPP license to reflect the Section 161A preemption authority granted by the Commission. The change is administrative and does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeanne Cho, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, New York 10601.

NRC Branch Chief: Benjamin G. Beasley.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. Fitzpatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: January 31, 2014. A publicly-available version is available in ADAMS under Accession No. ML14036A363.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise the James A. FitzPatrick Nuclear Power Plant Cyber Security Plan (CSP) Implementation Schedule Milestone 8 full implementation date and revise the existing operating license Physical Protection license condition. The CSP Milestone 8 full implementation date would be changed from December 15, 2014, to June 30, 2016.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the CSP Implementation Schedule is administrative in nature. Because there is no change to established safety margins as a result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeanne Cho, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, New York 10601.

NRC Branch Chief: Benjamin G. Beasley.

Exelon Generation Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 19, 2013 (Publicly-available portion is available in ADAMS under Accession No. ML13358A245), as supplemented by letter dated January 31, 2014 (ADAMS Accession No. ML14035A264).

Description of amendment request: This amendment request contains safeguards information (SGI). The amendment would revise Renewed Facility Operating License No. DPR–16 for Oyster Creek Nuclear Generating Station (OCNGS). Specifically, the proposed changes involve instituting additional protective measures strategies at OCNGS related to vitalization of certain portions of the Reactor Building. The proposed changes to implement the use of an ''*alternative measure*'' requires prior NRC review and approval under 10 CFR 73.55(r).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not increase the probability or consequences of an accident. The proposed changes do not involve the modification of any plant equipment or affect plant operation. The proposed changes will have no impact on any safety-related Structures, Systems, and Components (SSC).

The proposed amendment incorporates the use of an ''*alternative measure''* for implementing the applicable requirements in 10 CFR 73.55(b). Instituting the ''*alternative measure''* does not involve any modifications to safety-related SSC. Rather, the ''*alternative measure''* describes how the applicable requirements of 10 CFR 73.55(b) are to be implemented in order to ensure a comparable level of safety to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety. In addition, the ''*alternative measure''* describes how the required physical protection program elements will be implemented to protect against the design basis threat of radiological sabotage and shall establish, maintain, and implement an effective insider mitigation program. Instituting the proposed ''*alternate measure''* will not alter previously evaluated Updated Final Safety Analysis Report (UFSAR) design basis accident analysis assumptions, add any accident initiators, or affect the function of the plant safety-related SSCs. The proposed changes do not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. No plant modifications or changes are considered necessary at this time in support of implementation of the proposed ''*alternate measure''* as described in this license amendment request. However, in the event that future modifications or changes are deemed appropriate to ensure effective protective strategies in maintaining vitalization of the [Reactor Building] RB, they would be evaluated per 10 CFR 50.59 to determine if a license amendment is required. Any changes would also be evaluated per 10 CFR 50.54(p) to determine if there is a decrease in the safeguards effectiveness in the site Security Plan. Prior NRC approval would be obtained if required by these evaluations.

Therefore, the proposed changes involving implementation of the described ''*alternative measure''* do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes have no impact on the design, function, or operation of any plant SSC. The proposed changes do not affect plant equipment or accident analyses.

The proposed changes to institute the use of an ''*alternative measure''* for implementing the applicable requirements in 10 CFR 73.55(b) provide assurance that safety-related SSCs are adequately protected. Implementation of the proposed ''*alternative measure''* and inclusion of the associated elements in the Security Plan and in other security-related documentation when approved do not result in the need for any new or different UFSAR design basis accident analysis. The proposed changes do not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes to institute the ''*alternative measure.''*

Therefore, the proposed changes involving implementation of the described ''*alternative measure''* do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. There is no change being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes. Margins of safety are unaffected by the proposed changes involving implementation of the ''*alternative measure.''*

The margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed changes would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The proposed changes continue to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety. In addition, instituting the elements that comprise the ''*alternative measure''* will continue to ensure that the required physical protection program elements will be implemented to protect against the design basis threat of radiological sabotage and shall continue to establish, maintain, and implement an effective insider mitigation program. The proposed changes do not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed changes have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. The proposed changes would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed changes involving implementation of the described ''*alternative measure''* do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Vice President and Deputy General Counsel, Exelon Generation Company LLC, 200 Exelon Way, Kenneth Square, Pennsylvania 19348.

NRC Branch Chief: Meena Khanna.

Tennessee Valley Authority (TVA), Docket No. 50–259, Browns Ferry Nuclear Plant (BFN), Unit 1, Limestone County, Alabama

Date of amendment request: December 18, 2013. A publicly-available version is available in ADAMS under Accession No. ML13358A067.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed license amendment would revise the Technical Specifications (TSs) for Limiting Condition for Operation (LCO) 3.4.9, ''RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits.'' TVA submitted this license amendment request to satisfy a commitment to prepare and submit

revised BFN Unit 1, P/T limits prior to the start of the period of extended operation, as discussed in Section 4.2.5 provided in ''Browns Ferry Nuclear Plant (BFN)—Units 1, 2 and 3—Application for Renewed Operating Licenses,'' dated December 31, 2003 (ADAMS Accession No. ML040060359). Specifically, the proposed change replaces the current sets of TS Figures 3.4.9–1, ''Pressure/Temperature Limits for Mechanical Heatup, Cooldown following Shutdown, and Reactor Critical Operations,'' and 3.4.9–2, ''Pressure/Temperature Limits for Reactor In-Service Leak and Hydrostatic Testing.'' The figures proposed to be replaced consist of two sets of P/T limit curves, one set valid up to 12 effective full-power years (EFPYs) of operation and another set valid from 12 to 16 EFPYs of operation. The proposed change replaces the current curves with a set of figures valid for operation up to 25 EFPYs and another set valid for operation from greater than 25 EFPYs to less than 38 EFPYs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes are to accept operating parameters that have been approved in previous license amendments. The changes to P/T curves were developed based on NRC-approved methodologies. The proposed changes deal exclusively with the reactor vessel P/T curves, which define the permissible regions for operation and testing. Failure of the reactor vessel is not considered as a design basis accident. Through the design conservatisms used to calculate the P/T curves, reactor vessel failure has a low probability of occurrence and is not considered in the safety analyses. The proposed changes adjust the reference temperature for the limiting material to account for irradiation effects and provide the same level of protection as previously evaluated and approved.

The adjusted reference temperature calculations were performed in accordance with the requirements of 10 CFR Part 50, Appendix G using the guidance contained in Regulatory Guide (RG) 1.190, ''Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence (ADAMS Accession No. ML10890301),'' to reflect use of the operating limits to no more than 38 Effective Full Power Years (EFPY). These changes do not alter or prevent the operation of equipment required to mitigate any accident analyzed in the BFN Final Safety Analysis Report. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are to accept operating parameters that have been approved in previous license amendments. The changes to P/T curves were developed based on NRC approved methodologies. The proposed changes to the reactor vessel P/T curves do not involve a modification to plant equipment. No new failure modes are introduced. There is no effect on the function of any plant system, and no new system interactions are introduced by this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are to accept operating parameters that have been approved in previous license amendments. The changes to P/T curves were developed based on NRC approved methodologies. The proposed curves conform to the guidance contained in RG–1.190, and maintain the safety margins specified in 10 CFR Part 50, Appendix G.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, Tennessee 37902.

NRC Branch Chief: Jessie F. Quichocho.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

Duke Energy Progress, Inc., Docket Nos. 50–325 and 50–324; Duke Energy Florida, Inc., Docket No. 50–302; Duke Energy Progress, Inc., Docket Nos. 50–400 and 50–261; Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina; Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida; Shearon Harris Nuclear Power Plant, Unit 1, Wake County, North Carolina; and H. B. Robinson Steam Electric Plant, Unit 2, Darlington County, South Carolina

Entergy Nuclear Operations, Inc., Docket Nos. 50–003, 50–247, and 50–286, Indian Point Nuclear Generating Units 1, 2, and 3, Westchester County, New York

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. Fitzpatrick Nuclear Power Plant, Oswego County, New York

Exelon Generation Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office

of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention; and

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's ''need to know'' the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of ''need to know'' as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;[2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions'' for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, Subpart G and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) Web site, a secure Web site that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301–415–7000.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling 1–630–829–9565, or by email to *Forms.Resource@nrc.gov.* The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check.

(d) A check or money order payable in the amount of $238.00[4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted.

(e) If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address:

U.S. Nuclear Regulatory Commission,
ATTN: Personnel Security Branch,
Mail Stop TWFN–03–B46M,
11555 Rockville Pike,
Rockville, MD 20852.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.[5]

G. For requests for access to SGI, if the NRC staff determines that the requestor

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the Office of Personnel Managements adjustable billing rates.

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [6] by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the NRC staff's or Office of Administration's adverse determination with respect to access to SGI by filing a request for review in accordance with 10 CFR 2.705(c)(3)(iv). Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI or SGI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 28th of April 2014.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).

[6] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

[7] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no ''need,'' no ''need to know,'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). **Note:** Before the Office of Administration makes an adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination either before the presiding officer or another designated officer under 10 CFR 2.705(c)(3)(iv).
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2014–10365 Filed 5–5–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0001]

Sunshine Act Meeting Notice

DATES: Weeks of May 5, 12, 19, 26, June 2, 9, 2014.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of May 5, 2014

Thursday, May 8, 2014

9:00 a.m. Briefing on Subsequent License Renewal (Public Meeting)
(Contact: William (Butch) Burton, 301–415–6332)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

3:00 p.m. Discussion of Security Issues (Closed Ex. 1)

3:30 p.m. Discussion of Management and Personnel Issues (Closed Ex. 2 and 6)

Friday, May 9, 2014

9:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting)
(Contact: Sophie Holiday, 301–415–7865)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

Week of May 12, 2014—Tentative

Monday, May 12, 2014

9:30 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

Week of May 19, 2014—Tentative

There are no meetings scheduled for the week of May 19, 2014.

Week of May 26, 2014—Tentative

Wednesday, May 28, 2014

9:00 a.m. Joint Meeting of the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) on Grid Reliability (Public Meeting)
(Contact: Jacob Zimmerman, 301–415–1220)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

Thursday, May 29, 2014

9:00 a.m. Briefing on Human Reliability Program Activities and Analyses (Public Meeting)
(Contact: Sean Peters, 301–251–7582)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

Week of June 2, 2014—Tentative

Tuesday, June 3, 2014

9:00 a.m. Briefing on Results of the Agency Action Review Meeting (AARM)
(Public Meeting) (Contact: Michael Balazik, 301–415–2856)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

Wednesday, June 4, 2014

9:00 a.m. Briefing on NFPA 805 Fire Protection (Public Meeting)
(Contact: Barry Miller, 301–415–4117)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

Week of June 9, 2014—Tentative

There are no meetings scheduled for the week of June 9, 2014.

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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.

* * * * *

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.

* * * * *

Members of the public may request to receive this information electronically. If you 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: May 1, 2014.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2014–10411 Filed 5–2–14; 11:15 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before June 5, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via email to: *oira_submission@omb.eop.gov* or fax to: 202–395–3086. Attention: Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA/Privacy Act Officer, Peace Corps, 1111 20th Street NW., Washington, DC 20526, (202) 692–1236, or email at *pcfr@peacecorps.gov*.

SUPPLEMENTARY INFORMATION: The Peace Corps Questionnaire for Peace Corps Volunteer Background Investigation Form is used to conduct a formal background check. The information obtained on the form is provided to the Office of Personnel Management or other contract investigator to obtain the necessary information as to an applicant's legal suitability for service.

OMB Control Number: 0420–0001.

Title: Peace Corps Questionnaire for Peace Corps Volunteer Background Investigation Form.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals.

Respondents' Obligation to Reply: Voluntary.

Burden to the Public:

a. Number of Average Applicants: 20,000.

b. Number of Applicants who submit BI form: 4,500.

c. Frequency of response: One time.

d. Completion time: 1–2 minutes.

e. Annual burden hours: 150 hours.

General Description of Collection: The Peace Corps Questionnaire for Peace Corps Volunteer Background Investigation form is used to screen Peace Corps applicants for legal and/or criminal history and other involvement with the judicial system. The information obtained on the form is provided to the Office of Personnel Management or other contract investigator to obtain the necessary information as to an applicant's legal suitability for service. All applicants who complete the initial Peace Corps Application Form are then sent a ''legal kit'' to complete, which includes this form among others related to the applicants' suitability and a postage-paid return envelope. This form is only requested to be filled once and currently is only available in carbon-hard copy format.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice issued in Washington, DC on April 30, 2014.

Dated: April 30, 2014.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2014–10269 Filed 5–5–14; 8:45 am]

BILLING CODE 6051–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before June 5, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via email to: *oira_submission@omb.eop.gov* or fax to: 202–395–3086. Attention: Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA/Privacy Act Officer, Peace Corps, 1111 20th Street NW., Washington, DC 20526, (202) 692–1236, or email at *pcfr@peacecorps.gov*.

SUPPLEMENTARY INFORMATION: Peace Corps uses the confidential reference form in order to learn from someone, who knows a volunteer applicant and his or her background, whether the applicant possesses the necessary characteristics and skills to serve as a Volunteer.

OMB Control Number: 0420–0006.

Title: Peace Corps Confidential Reference Form.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals.

Respondents' Obligation to Reply: Voluntary.

Burden to the Public:

a. *Average Number of Annual Applicants (complete the application process):* 20,000.

b. *Number of reference required per applicant:* 2.

c. *Estimated Number of reference forms received:* 40,000.

d. *Frequency of response:* One time.

e. *Completion time:* 10 minutes.

f. *Annual burden hours:* 6,667.

General Description of Collection: The Peace Corps Confidential Reference Form provides information concerning an applicant's skills and character from people who are familiar with the applicant. Such information exists nowhere else. The Placement team in the Office of Volunteer Recruitment and Selection uses the Peace Corps Confidential Reference Form as an integral part of the selection process to determine whether an applicant is likely to succeed as a Peace Corps volunteer.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice issued in Washington, DC, on April 30, 2014.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2014–10275 Filed 5–5–14; 8:45 am]

BILLING CODE 6051–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72064; File No. SR–NYSEArca–2014–46]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of Fidelity Investment Grade Bond ETF; Fidelity Limited Term Bond ETF; and Fidelity Total Bond ETF Under NYSE Arca Equities Rule 8.600

May 1, 2014.

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 April 16, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') 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. On April 30, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.[3] 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 list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Fidelity Investment Grade Bond ETF; Fidelity Limited Term Bond ETF; and Fidelity Total Bond ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares: [4] Fidelity Investment Grade Bond ETF; Fidelity Limited Term Bond ETF; and Fidelity Total Bond ETF (each, a ''Fund'' and collectively, the ''Funds'').[5] The Funds are funds of Fidelity Merrimack Street Trust (''Trust''), a Massachusetts business trust.[6]

Fidelity Management & Research Company (''FMR'') will be the Funds' manager (''Manager''). Fidelity Investments Money Management, Inc. (''FIMM'') and other investment advisers, as described below, will serve as sub-advisers for the Funds (''Sub-Advisers''). FIMM will have day-to-day

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 7.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has previously approved the listing and trading on the Exchange of other actively managed funds under Rule 8.600. *See e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving Exchange listing and trading of five fixed income funds of the PIMCO ETF Trust); 66321 (February 3, 2012) 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving Exchange listing and trading of PIMCO Total Return ETF); 66670 (March 28, 2012) 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving Exchange listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[6] The Trust is registered under the 1940 Act. On April 17, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act'') and the 1940 Act relating to the Funds (File Nos. 333–186372 and 811–22796) (the ''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30513 (May 10, 2013) (''Exemptive Order'') (File No. 812–14104).

responsibility for choosing investments for the Fidelity Investment Grade Bond ETF and Fidelity Limited Term Bond ETF. FMR Co., Inc. (''FMRC'') will serve as a sub-adviser for the Fidelity Total Bond ETF. FIMM and FMRC will each have day-to-day responsibility for choosing certain types of investments of foreign and domestic issuers for Fidelity Total Bond ETF. FIMM and FMRC are affiliates of FMR. Other investment advisers, which also are affiliates of FMR, will assist FMR with foreign investments, including Fidelity Management & Research (U.K.) Inc., Fidelity Management & Research (Hong Kong) Limited, and Fidelity Management & Research (Japan) Inc. Fidelity Distributors Corporation (''FDC'') will be the distributor for the Funds' Shares.[7]

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser will erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[8] In addition, Commentary .06 further requires that personnel who make decisions on an open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Manager and the Sub-Advisers are not broker-dealers but are affiliated with one or more broker-dealers and have each implemented a fire wall with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the portfolios, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolios. In the event (a) the Manager or any of the Sub-Advisers becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Fidelity Investment Grade Bond ETF

According to the Registration Statement, Fidelity Investment Grade Bond ETF will seek a high level of current income.

FMR will normally[9] invest at least 80% of the Fund's assets in investment-grade debt securities (those of medium and high quality).[10] The debt securities in which the Fund may invest are corporate debt securities;[11] U.S. Government securities;[12] repurchase agreements and reverse repurchase agreements;[13] money market securities; mortgage and other asset-backed securities;[14] loans;[15] loan participations and loan assignments and other evidences of indebtedness, including

[7] This Amendment No. 1 to SR–NYSEArca–2014–46 replaces SR–NYSEArca–2014–46 as originally filed and supersedes such filing in its entirety.

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Manager and the Sub-Advisers, and their related personnel, are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[9] The term ''normally'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. According to the Registration Statement, however, each Fund reserves the right to invest without limitation in investment-grade money market or short-term debt instruments for temporary, defensive purposes.

[10] According to the Registration Statement, investment-grade debt securities include all types of debt instruments that are of medium and high-quality. An investment-grade rating means the security or issuer is rated investment-grade by a credit rating agency registered as a nationally recognized statistical rating organization with the Commission (for example, Moody's Investors Service, Inc.), or is unrated but considered to be of equivalent quality by the relevant Fund's Manager or Sub-Adviser.

[11] According to the Manager, corporate debt securities are bonds and other debt securities issued by corporations and other business structures.

[12] According to the Manager, U.S. Government securities are high-quality securities issued or guaranteed by the U.S. Treasury or by an agency or instrumentality of the U.S. Government. U.S. Government securities may be backed by the full faith and credit of the U.S. Treasury, the right to borrow from the U.S. Treasury, or the agency or instrumentality issuing or guaranteeing the security. Certain issuers of U.S. Government securities, including the Federal National Mortgage Association (''Fannie Mae''), the Federal Home Loan Mortgage Corporation (''Freddie Mac''), and the Federal Home Loan Banks, are sponsored or chartered by Congress but their securities are neither issued nor guaranteed by the U.S. Treasury. U.S. Government securities include mortgage and other asset-backed securities.

[13] According to the Registration Statement, a repurchase agreement is an agreement to buy a security at one price and a simultaneous agreement to sell it back at an agreed-upon price. Investment-grade debt securities include repurchase agreements collateralized by U.S. Government securities as well as repurchase agreements collateralized by equity securities, non-investment-grade debt, and all other instruments in which a Fund can perfect a security interest, provided the repurchase agreement counterparty has an investment-grade rating. In a reverse repurchase agreement, a fund sells a security to another party, such as a bank or broker-dealer, in return for cash and agrees to repurchase that security at an agreed-upon price and time. According to the Registration Statement, the Funds may engage in repurchase agreement transactions and enter into reverse repurchase agreements with parties whose creditworthiness has been reviewed and found satisfactory by the Manager.

[14] According to the Registration Statement, asset-backed securities represent interests in pools of mortgages, loans, receivables, or other assets. Each Fund may invest in privately issued asset-backed securities. According to the Manager, each Fund may invest up to 20% of its total assets in mortgage-backed securities or in other asset-backed securities, although this 20% limitation will not apply to U.S. Government securities. According to the Registration Statement, the Funds may invest in mortgage securities, which are issued by government and non-government entities such as banks, mortgage lenders, or other institutions. A mortgage security is an obligation of the issuer backed by a mortgage or pool of mortgages or a direct interest in an underlying pool of mortgages. Some mortgage securities, such as collateralized mortgage obligations (or ''CMOs''), make payments of both principal and interest at a range of specified intervals; others make semiannual interest payments at a predetermined rate and repay principal at maturity (like a typical bond). Mortgage securities are based on different types of mortgages, including those on commercial real estate or residential properties. Fannie Maes and Freddie Macs are pass-through securities issued by Fannie Mae and Freddie Mac, respectively. Fannie Mae and Freddie Mac, which guarantee payment of interest and repayment of principal on Fannie Maes and Freddie Macs, respectively, are federally chartered corporations supervised by the U.S. Government that act as governmental instrumentalities under authority granted by Congress. Fannie Mae and Freddie Mac are authorized to borrow from the U.S. Treasury to meet their obligations. Fannie Maes and Freddie Macs are not backed by the full faith and credit of the U.S. Government. According to the Registration Statement, to earn additional income for the Funds, FMR may use a trading strategy that involves selling (or buying) mortgage securities and simultaneously agreeing to purchase (or sell) mortgage securities on a later date at a set price.

[15] According to the Registration Statement, the Funds may acquire loans by buying an assignment of all or a portion of the loan from a lender or by purchasing a loan participation from a lender or other purchaser of a participation.

letters of credit, revolving credit facilities and other standby financing commitments; structured securities; [16] stripped securities; [17] municipal securities; sovereign debt obligations; [18] obligations of international agencies or supranational entities; and other securities believed to have debt-like characteristics, including hybrid securities,[19] which may offer characteristics similar to those of a bond security such as stated maturity and preference over equity in bankruptcy (collectively, ''Debt Securities'').[20]

According to the Registration Statement, the Fund may hold uninvested cash or may invest it in cash equivalents such as repurchase agreements, shares of short-term bond exchange traded funds registered under the 1940 Act (''ETFs''),[21] mutual funds or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients).[22]

According to the Registration Statement, FMR will use the Barclays U.S. Aggregate Bond Index (the ''Aggregate Index'') as a guide in structuring the Fund and selecting its investments. FMR will manage the Fund to have similar overall interest rate risk to the Aggregate Index.

According to the Registration Statement, FMR will consider other factors when selecting the Fund's investments, including the credit quality of the issuer, security-specific features, current valuation relative to alternatives in the market, short-term trading opportunities resulting from market inefficiencies, and potential future valuation. In managing the Fund's exposure to various risks, including interest rate risk, FMR will consider, among other things, the market's overall risk characteristics, the market's current pricing of those risks, information on the Fund's competitive universe and internal views of potential future market conditions.

According to the Registration Statement, FMR will allocate the Fund's assets among different market sectors (for example, corporate, asset-backed, or government securities) and different maturities based on its view of the relative value of each sector or maturity.

According to the Registration Statement, FMR may invest the Fund's assets in Debt Securities of foreign issuers in addition to securities of domestic issuers.[23]

Fidelity Limited Term Bond ETF

According to the Registration Statement, the Fidelity Limited Term Bond ETF will seek to provide a high rate of income.

FMR normally [24] will invest at least 80% of the Fund's assets in investment-grade Debt Securities (those of medium and high quality).[25]

According to the Registration Statement, the Fund may hold uninvested cash or may invest it in cash equivalents such as repurchase agreements, shares of short-term bond ETFs, mutual funds or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients).[26]

According to the Registration Statement, FMR will use the Fidelity Limited Term Composite Index (the ''Composite Index'') as a guide in structuring the Fund and selecting its investments. FMR will manage the Fund to have similar overall interest rate risk to the Composite Index.

According to the Registration Statement, FMR will consider other factors when selecting the Fund's investments, including the credit quality of the issuer, security-specific features, current valuation relative to alternatives in the market, short-term trading opportunities resulting from market inefficiencies, and potential future valuation. In managing the Fund's exposure to various risks, including interest rate risk, FMR will consider, among other things, the market's overall risk characteristics, the market's current pricing of those risks, information on the Fund's competitive universe and internal views of potential future market conditions.

According to the Registration Statement, in addition, the Fund will normally maintain a dollar-weighted average maturity between two and five years. In determining a security's maturity for purposes of calculating the Fund's average maturity, an estimate of the average time for its principal to be paid may be used.

According to the Registration Statement, FMR will allocate the Fund's assets among different market sectors (for example, corporate, asset-backed, or government securities) and different maturities based on its view of the relative value of each sector or maturity.

According to the Registration Statement, FMR may invest the Fund's assets in Debt Securities of foreign issuers in addition to securities of domestic issuers.[27]

Fidelity Total Bond ETF

According to the Registration Statement, Fidelity Total Bond ETF will seek a high level of current income.

FMR normally [28] will invest at least 80% of the Fund's assets in Debt Securities. FMR will allocate the Fund's assets across investment-grade, high yield, and emerging market Debt Securities. FMR may invest up to 20% of the Fund's assets in lower-quality Debt Securities.[29]

[16] According to the Registration Statement, structured securities (also called ''structured notes''), are derivative debt securities, the interest rate on or principal of which is determined by an unrelated indicator. The Funds may invest in ''indexed securities,'' which are instruments whose prices are indexed to the prices of other securities, securities indexes, or other financial indicators.

[17] According to the Registration Statement, the Funds may invest in stripped securities, which are the separate income or principal components of a debt security. Stripped mortgage securities are created when the interest and principal components of a mortgage security are separated and sold as individual securities.

[18] According to the Manager, sovereign debt obligations are issued or guaranteed by foreign governments or their agencies, including debt of developing countries. Sovereign debt may be in the form of conventional securities or other types of debt instruments such as loans or loan participations.

[19] According to the Manager, a hybrid security generally combines both debt and equity characteristics. A common type of hybrid security is a convertible bond that has features of a debt security, until a certain date or triggering event, at which point the security may be converted into an equity security. A hybrid security may also be a warrant, convertible security, certificate of deposit or other evidence of indebtedness.

[20] According to the Manager, Debt Securities may be fixed, variable or floating rate securities. Variable rate securities provide for a specific periodic adjustment in the interest rate, while floating rate securities have interest rates that change whenever there is a change in a designated benchmark rate or the issuer's credit quality, sometimes subject to a cap or floor on such rate. Some variable or floating rate securities are structured with put features that permit holders to demand payment of the unpaid principal balance plus accrued interest from the issuers or certain financial intermediaries. In addition, Debt Securities may include zero coupon bonds. Investments in Debt Securities may have a leveraging effect on a Fund.

[21] For purposes of this filing, ETFs, which will be listed on a national securities exchange, include the following: Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600).

[22] According to the Manager, it is currently expected that the Funds will only invest in Fidelity central funds that are money market funds.

[23] The Fund's holdings are generally expected to be U.S. dollar denominated.

[24] *See, supra* note 9.

[25] *See, supra* note 10.

[26] *See, supra* note 22.

[27] *See, supra* note 23.

[28] *See, supra* note 9.

[29] According to the Registration Statement, lower-quality debt securities are those of less than investment-grade quality, also referred to as high yield debt securities. Emerging market securities may be investment-grade or less than investment-grade quality. *See, supra* note 10.

According to the Registration Statement, the Fund may hold uninvested cash or may invest it in cash equivalents such as repurchase agreements, shares of short-term bond ETFs mutual funds or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients).[30]

According to the Registration Statement, FMR will use the Barclays U.S. Universal Bond Index (the ''Universal Index'') as a guide in structuring the Fund and selecting its investments. FMR will use the Universal Index as a guide in allocating the Fund's assets across the investment-grade, high yield, and emerging market asset classes. FMR will manage the Fund to have similar overall interest rate risk to the Universal Index.

According to the Registration Statement, FMR will consider other factors when selecting the Fund's investments, including the credit quality of the issuer, security-specific features, current valuation relative to alternatives in the market, short-term trading opportunities resulting from market inefficiencies, and potential future valuation. In managing the Fund's exposure to various risks, including interest rate risk, FMR will consider, among other things, the market's overall risk characteristics, the market's current pricing of those risks, information on the Fund's competitive universe and internal views of potential future market conditions.

According to the Registration Statement, FMR may invest the Fund's assets in Debt Securities of foreign issuers in addition to securities of domestic issuers.[31]

According to the Registration Statement, FMR will allocate the Fund's assets among different asset classes using the composition of the Universal Index as a guide, and among different market sectors (for example, corporate, asset-backed, or government securities) and different maturities based on its view of the relative value of each sector or maturity.

According to the Registration Statement, in selecting foreign debt securities, FMR's analysis will also consider the credit, currency, and economic risks associated with the security and the country of its issuer. FMR may also consider an issuer's potential for success in light of its current financial condition, its industry position, and economic and market conditions.

Other Investments

While, as described above, FMR normally[32] will invest at least 80% of assets of the Fidelity Investment Grade Bond ETF and Fidelity Limited Term Bond ETF in investment-grade Debt Securities, and FMR normally will invest at least 80% of assets of the Fidelity Total Bond ETF in Debt Securities, FMR may invest up to 20% of a Fund's assets in other securities and financial instruments, as summarized below.

According to the Registration Statement, the Funds may invest in securities of other investment companies, including, in addition to the short-term bond ETFs described above, shares of ETFs, closed-end investment companies (which include business development companies), unit investment trusts, and open-end investment companies. In addition, the Funds may invest in other exchange-traded products (''ETPs'') such as commodity pools, or other entities that are traded on an exchange.[33]

According to the Registration Statement, the Funds may invest in inverse ETFs (also called ''short ETFs'' or ''bear ETFs''), shares of which are expected to increase in value as the value of the underlying benchmark decreases.

According to the Registration Statement, the Funds also may invest in leveraged and inverse leveraged ETFs, which seek to deliver multiples or inverse multiples of the performance of an index or other benchmark they track and use derivatives in an effort to amplify the returns of the underlying index or benchmark.

According to the Registration Statement, the Funds may invest in exchange traded notes (''ETNs''), which are a type of senior, unsecured, unsubordinated debt security issued by financial institutions that combines aspects of both bonds and ETFs.[34] An ETN's returns are based on the performance of a market index or other reference asset minus fees and expenses. The Funds may invest in leveraged ETNs.

According to the Registration Statement, the Funds may invest in American Depositary Receipts (''ADRs'') as well as other ''hybrid'' forms of ADRs, including European Depositary Receipts (''EDRs'') and Global Depositary Receipts (''GDRs''), which are certificates evidencing ownership of shares of a foreign issuer.[35] These certificates are issued by depository banks and generally trade on an established market in the United States or elsewhere. The underlying shares are held in trust by a custodian bank or similar financial institution in the issuer's home country. The depository bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions. ADRs are alternatives to directly purchasing the underlying foreign securities in their national markets and currencies.

In addition to the investment-grade Debt Securities described above, Fidelity Investment Grade Bond ETF and Fidelity Limited Term Bond ETF may invest in lower-quality Debt Securities.[36] FMR may invest up to 10% of the Fidelity Investment Grade Bond ETF's assets in lower-quality Debt Securities. Lower-quality Debt Securities include all types of debt instruments that have poor protection with respect to the payment of interest and repayment of principal, or may be in default.

According to the Manager, in addition to the investment grade repurchase agreements described above, Investment Grade Bond ETF and Limited Term Bond ETF may invest in repurchase agreements collateralized by U.S. Government securities as well as repurchase agreements collateralized by equity securities, non-investment-grade debt, and all other instruments in which a Fund can perfect a security interest, with repurchase agreement counterparties that do not have an investment-grade rating.

According to the Registration Statement, the Funds may invest in

[30] *See, supra* note 22.

[31] The Fund's holdings may be U.S. dollar denominated and non-dollar denominated.

[32] *See, supra* note 9.

[33] For purposes of this filing, ETPs include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

[34] ETNs are securities such as those described in NYSE Arca Equities Rule 5.2(j)(6).

[35] The Funds will invest only in ADRs, EDRs and GDRs that are traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. *See, infra* note 63.

[36] *See, supra* note 29. As noted above, Fidelity Total Bond ETF may invest in Debt Securities, including lower-quality debt securities.

preferred securities.[37] Preferred securities may take the form of preferred stock and represent an equity or ownership interest in an issuer that pays dividends at a specified rate and that has precedence over common stock in the payment of dividends. In the event an issuer is liquidated or declares bankruptcy, the claims of owners of bonds take precedence over the claims of those who own preferred and common stock.

According to the Registration Statement, the Funds may invest in real estate investment trusts (''REITs'').[38] REITs issue debt securities to fund the purchase and/or development of commercial properties.

According to the Registration Statement, the Funds may invest in restricted securities, which are subject to legal restrictions on their sale. Restricted securities generally can be sold in privately negotiated transactions, pursuant to an exemption from registration under the 1933 Act, or in a registered public offering.

As described in the Registration Statement, FMR may make investments in derivatives,[39] regardless of whether the Fund may own the asset, instrument, currency, or components of the index underlying the derivative, as well as forward-settling securities,[40] as applicable. The Funds' derivative investments may be on Debt Securities, interest rates, currencies, and related indexes. Depending on FMR's outlook and market conditions, FMR may engage, as applicable, in these transactions to increase or decrease a Fund's exposure to changing security prices, interest rates, credit qualities, foreign exchange rates, or other factors that affect security values, or to gain or reduce exposure to an asset, instrument, currency, or index. Currency-related derivatives include foreign exchange (''FX'') transactions such as FX forwards, non-deliverable forwards, and cross-currency FX trades (''Currency-related Derivatives'').

According to the Registration Statement, the Funds may conduct foreign currency transactions on a spot (*i.e.,* cash) or forward basis (*i.e.,* by entering into forward contracts to purchase or sell foreign currencies). Forward contracts are customized transactions that require a specific amount of a currency to be delivered at a specific exchange rate on a specific date or range of dates in the future. Forward contracts are generally traded in an interbank market directly between currency traders (usually large commercial banks) and their customers. The parties to a forward contract may agree to offset or terminate the contract before its maturity, or may hold the contract to maturity and complete the contemplated currency exchange.

According to the Registration Statement, the Funds may utilize certain currency management strategies involving forward contracts, as described below. The Funds may also use swap agreements, indexed securities, and options and futures contracts relating to foreign currencies for the same purposes. Forward contracts not calling for physical delivery of the underlying instrument will be settled through cash payments rather than through delivery of the underlying currency.

According to the Registration Statement, forward contracts may be used as a ''settlement hedge'' or ''transaction hedge'' designed to protect a Fund against an adverse change in foreign currency values between the date a security denominated in a foreign currency is purchased or sold and the date on which payment is made or received. Entering into a forward contract for the purchase or sale of the amount of foreign currency involved in an underlying security transaction for a fixed amount of U.S. dollars ''locks in'' the U.S. dollar price of the security. Forward contracts to purchase or sell a foreign currency may also be used to protect a Fund in anticipation of future purchases or sales of securities denominated in foreign currency, even if the specific investments have not yet been selected.

According to the Registration Statement, the Funds may also use forward contracts to hedge against a decline in the value of existing investments denominated in a foreign currency. The Funds also may enter into forward contracts to shift its investment exposure from one currency into another. This may include shifting exposure from U.S. dollars to a foreign currency, or from one foreign currency to another foreign currency. This type of strategy, sometimes known as a ''cross-hedge,'' will tend to reduce or eliminate exposure to the currency that is sold, and increase exposure to the currency that is purchased, much as if a Fund had sold a security denominated in one currency and purchased an equivalent security denominated in another.[41]

According to the Registration Statement, the Funds may invest in options and futures relating to foreign currencies.[42] Currency futures contracts are similar to forward currency exchange contracts, except that they are traded on exchanges (and have margin requirements) and are standardized as to contract size and delivery date. Most currency futures contracts call for payment or delivery in U.S. dollars. The underlying instrument of a currency option may be a foreign currency, which generally is purchased or delivered in exchange for U.S. dollars, or may be a futures contract. The purchaser of a currency call obtains the right to purchase the underlying currency, and the purchaser of a currency put obtains the right to sell the underlying currency.

According to the Registration Statement, each Fund may invest in futures.[43]

[37] According to the Manager, a Fund may invest in exchange-listed or non-exchange-listed preferred securities.

[38] According to the Manager, each Fund may invest in exchange-listed or non-exchange-listed REITs.

[39] According to the Registration Statement, derivatives are investments whose values are tied to an underlying asset, instrument, currency or index. The derivatives in which the Funds may invest are futures (both long and short positions), options (including options on futures and swaps), forwards, and swaps (including interest rate swaps (exchanging a floating rate for a fixed rate)), total return swaps (exchanging a floating rate for the total return of an index, security, or other instrument or investment) and credit default swaps (buying or selling credit default protection). Investments in derivatives may have a leveraging effect on a Fund. Not more than 10% of the net assets of a Fund in the aggregate shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[40] According to the Registration Statement, forward-settling securities involve a commitment to purchase or sell specific securities when issued, or at a predetermined price or yield. When a Fund does not already own or have the right to obtain securities equivalent in kind and amount, a commitment to sell securities is equivalent to a short sale. Payment and delivery take place after the customary settlement period.

[41] According to the Registration Statement, each Fund may cross-hedge its U.S. dollar exposure in order to achieve a representative weighted mix of the major currencies in its benchmark index and/or to cover an underweight country or region exposure in its portfolio. Cross-hedges protect against losses resulting from a decline in the hedged currency, but will cause a Fund to assume the risk of fluctuations in the value of the currency it purchases.

[42] The Funds' investments in foreign currency options will be exchange traded.

[43] According to the Registration Statement, in purchasing a futures contract, the buyer agrees to purchase a specified underlying instrument at a specified future date. In selling a futures contract, the seller agrees to sell a specified underlying instrument at a specified date. Futures contracts are standardized, exchange-traded contracts and the price at which the purchase and sale will take place is fixed when the buyer and seller enter into the contract. Some currently available futures contracts are based on specific securities or baskets of securities, some are based on commodities or commodities indexes (for funds that seek commodities exposure), and some are based on indexes of securities prices (including foreign indexes for funds that seek foreign exposure) or rates. In addition, some currently available futures contracts are based on Eurodollars. Positions in

According to the Registration Statement, the Funds may invest in U.S. exchange-traded as well as over-the-counter (''OTC'') options. Unlike exchange-traded options, which are standardized with respect to the underlying instrument, expiration date, contract size, and strike price, the terms of OTC options generally are established through negotiation with the other party to the option contract. The OTC options in which the Funds may invest will have various types of underlying instruments, including currencies, specific assets or securities, baskets of assets or securities, indexes of securities or commodities prices, and futures contracts (including commodity futures contracts).

According to the Registration Statement, the Funds may also buy and sell options on swaps (swaptions), which are generally options on interest rate swaps. An option on a swap gives a party the right (but not the obligation) to enter into a new swap agreement or to extend, shorten, cancel or modify an existing contract at a specific date in the future in exchange for a premium.

According to the Registration Statement, the Funds may hold swap agreements.[44] Swap agreements can take many different forms and are known by a variety of names, including interest rate swaps (where the parties exchange a floating rate for a fixed rate), asset swaps (e.g., where parties combine the purchase or sale of a bond with an interest rate swap), total return swaps, and credit default swaps.

According to the Registration Statement, a total return swap is a contract whereby one party agrees to make a series of payments to another party based on the change in the market value of the assets underlying such contract (which can include a security or other instrument, commodity, index or baskets thereof) during the specified period. In exchange, the other party to the contract agrees to make a series of payments calculated by reference to an interest rate and/or some other agreed-upon amount (including the change in market value of other underlying assets). A Fund may use total return swaps to gain exposure to an asset without owning it or taking physical custody of it.

According to the Registration Statement, in a credit default swap, the credit default protection buyer makes periodic payments, known as premiums, to the credit default protection seller. In return the credit default protection seller will make a payment to the credit default protection buyer upon the occurrence of a specified credit event. A credit default swap can refer to a single issuer or asset, a basket of issuers or assets or index of assets, each known as the reference entity or underlying asset.

According to the Registration Statement, the Funds may engage in transactions with financial institutions that are, or may be considered to be, ''affiliated persons'' of the Funds under the 1940 Act. These transactions may involve repurchase agreements with custodian banks; short-term obligations of, and repurchase agreements with, the 50 largest U.S. banks (measured by deposits); municipal securities; U.S. Government securities with affiliated financial institutions that are primary dealers in these securities; short-term currency transactions; and short-term borrowings. In accordance with exemptive orders issued by the Commission, each Fund's Board of Trustees has established and periodically reviews procedures applicable to transactions involving affiliated financial institutions.

Limitations on Investments

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Manager or Sub-Advisers.[45] Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity *if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid* assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[46]

According to the Registration Statement, each Fund may not with respect to 75% of the Fund's total assets, purchase the securities of any issuer (other than securities issued or guaranteed by the U.S. Government or any of its agencies or instrumentalities, or securities of other investment companies) if, as a result, (a) more than 5% of the Fund's total assets would be invested in the securities of that issuer, or (b) the Fund would hold more than 10% of the outstanding voting securities of that issuer.[47]

According to the Registration Statement, each Fund may not purchase the securities of any issuer (other than securities issued or guaranteed by the U.S. Government or any of its agencies

Eurodollar futures reflect market expectations of forward levels of three-month London Interbank Offered Rate (LIBOR) rates.

[44] According to the Registration Statement, swap agreements are two-party contracts entered into primarily by institutional investors. Cleared swaps are transacted through futures commission merchants that are members of central clearinghouses with the clearinghouse serving as a central counterparty similar to transactions in futures contracts. In a standard ''swap'' transaction, two parties agree to exchange one or more payments based, for example, on the returns (or differentials in rates of return) earned or realized on particular predetermined investments or instruments (such as securities, commodities, indexes, or other financial or economic interests). A portion of each Fund's holdings of swap agreements may consist of cleared swaps. The underlier of a cleared swap will depend on the product being cleared. For a cleared interest rate swap, as with previously uncleared interest rate swaps, the underlier will be a designated interest rate indicator. According to the Registration Statement, to limit the counterparty risk involved in swap agreements, a Fund will enter into swap agreements only with counterparties that meet certain standards of creditworthiness.

[45] According to the Manager, each Fund does not currently intend to purchase any asset if, as a result, more than 10% of its net assets would be invested in assets that are deemed to be illiquid because they are subject to legal or contractual restrictions on resale or because they cannot be sold or disposed of in the ordinary course of business at approximately the prices at which they are valued. For purposes of a Fund's illiquid assets limitation discussed above, if through a change in values, net assets, or other circumstances, the Fund were in a position where more than 10% of its net assets were invested in illiquid assets, it would consider appropriate steps to protect liquidity. According to the Registration Statement, various factors may be considered in determining the liquidity of the Fund's investments, including: (1) The frequency of trades and quotes for the asset; (2) the number of dealers wishing to purchase or sell the asset and the number of other potential purchasers; (3) dealer undertakings to make a market in the asset; and (4) the nature of the asset and the nature of the marketplace in which it trades (including any demand, put or tender features, the mechanics and other requirements for transfer, any letters of credit or other credit enhancement features, any ratings, the number of holders, the method of soliciting offers, the time required to dispose of the security, and the ability to assign or offset the rights and obligations of the asset).

[46] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[47] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

or instrumentalities) if, as a result, more than 25% of the Fund's total assets would be invested in the securities of companies whose principal business activities are in the same industry.[48]

According to the Registration Statement, the Trust, on behalf of the Funds, has filed with the National Futures Association a notice claiming an exclusion from the definition of the term ''commodity pool operator'' (''CPO'') under the Commodity Exchange Act, as amended, and the rules of the Commodity Futures Trading Commission (''CFTC'') promulgated thereunder, with respect to the Funds' operation. Accordingly, neither the Funds nor their Manager is subject to registration or regulation as a commodity pool or a CPO. However, the CFTC has adopted certain rule amendments that significantly affect the continued availability of this exclusion, and may subject advisers to funds to regulation by the CFTC. Neither the Manager nor any of the Sub-Advisers currently expects to register as a CPO of the Funds. However, there is no certainty that a fund or its adviser will be able to rely on an exclusion in the future as the fund's investments change over time. A fund may determine not to use investment strategies that trigger additional CFTC regulation or may determine to operate subject to CFTC regulation, if applicable. If the Fund or FMR operates subject to CFTC regulation, it may incur additional expenses.

Any foreign equity securities in which a Fund may invest will be limited to securities that trade in markets that are members of ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.[49]

According to the Registration Statement, each Fund intends to qualify annually and to elect to be treated as a regulated investment company (''RIC'') under the Internal Revenue Code.[50]

Net Asset Value

According to the Registration Statement, each Fund's net asset value (''NAV'') will be the value of a single Share. The NAV of a Fund will be computed by adding the value of the Fund's investments, cash, and other assets, subtracting its liabilities, and dividing the result by the number of Shares outstanding.

The value of a Fund's Shares bought and sold in the secondary market will be driven by market price. The price of these Shares, like the price of all traded securities, will be subject to factors such as supply and demand, as well as the current value of the portfolio securities held by the Fund. Secondary market Shares, available for purchase or sale on an intraday basis, do not have a fixed relationship either to the previous day's NAV or to the current day's NAV. Prices in the secondary market, therefore, may be below, at, or above the most recently calculated NAV of such Shares.

According to the Registration Statement, the Board of Trustees has delegated day-to-day valuation oversight responsibilities to FMR. FMR has established the FMR Fair Value Committee (''FMR Committee'') to fulfill these oversight responsibilities.

Generally, portfolio securities and assets held by a Fund will be valued as follows:

In computing each Fund's NAV, such Fund's Debt Securities (including defaulted debt[51] but excluding exchange-traded convertible securities); restricted securities; OTC-traded REITs; OTC-traded preferred securities; and forward-settling securities (collectively, ''OTC-Traded Securities'') will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service. Any such third-party pricing service may use a variety of methodologies to value some or all of such securities to determine the market price. For example, the prices of securities with characteristics similar to those held by a Fund may be used to assist with the pricing process. In addition, the pricing service may use proprietary pricing models. A Fund's OTC-Traded Securities will generally be valued at bid prices. In certain cases, some of a Fund's OTC-Traded Securities may be valued at the mean between the last available bid and ask prices.[52]

Debt securities with remaining maturities of sixty days or less for which market quotations and information furnished by a pricing service are not readily available will be valued at amortized cost, which approximates current value.

Exchange traded equity securities, including ETFs, ETPs, ETNs, ADRs, EDRs, and GDRs, as well as exchange-traded REITs, exchange-traded preferred securities, and exchange-traded convertible securities, will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation or, if no sale has occurred, at the last quoted bid price on the primary market or exchange on which they are traded.

Investment company securities (other than ETFs), including money market funds, central funds, closed end investment companies, unit investment trusts and open-end investment companies will be valued at NAV.

Futures contracts will be valued at the settlement or closing price determined by the applicable exchange. Exchange-traded option contracts, including options on futures and swaps, will be valued at their most recent sale price. If no such sales are reported, these contracts will be valued at their most recent bid price. In certain cases, some of a Fund's exchange-traded derivative securities may be valued at the mean between the last available bid and ask prices.

OTC-traded derivative instruments, including OTC-traded options, swaps, forwards and Currency-related Derivatives, will normally be valued on the basis of quotes obtained from a third party broker-dealer who makes markets in such instruments or on the basis of quotes obtained from an independent third-party pricing service. A Fund's OTC-traded derivative instruments will generally be valued at bid prices. Certain OTC-traded derivative instruments, such as interest rate swaps and credit default swaps, will be valued at the mean price.

Prices described above will be obtained from pricing services that have been approved by the Board of Trustees. A number of independent third party pricing services are available and the Funds may use more than one of these services. A Fund may also discontinue

[48] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975). According to the Registration Statement, for purposes of each Fund's concentration limitation discussed above, with respect to any investment in repurchase agreements collateralized by U.S. Government securities, FMR will look through to the U.S. Government securities. For purposes of each Fund's concentration limitation discussed above, FMR may analyze the characteristics of a particular issuer and security and assign an industry or sector classification consistent with those characteristics in the event that the third-party classification provider used by FMR does not assign a classification.

[49] *See, infra* ''Surveillance''.

[50] 26 U.S.C. 851.

[51] According to the Manager, when a bond defaults and goes into bankruptcy, a market often continues to exist for the bond (normally at a steep discount to its face value). Buyers typically value the defaulted bond based on expected restructuring outcomes or liquidation distributions. Market quotations provided by broker-dealers or pricing services reflect these market indicators.

[52] For example, foreign bonds for which a current bid price was not available would be valued at the mean between the last available bid and ask prices.

the use of any pricing service at any time. FMR will engage in oversight activities with respect to the Funds' pricing services, which include, among other things, testing the prices provided by pricing services prior to calculation of the Funds' NAV, conducting periodic due diligence meetings, and periodically reviewing the methodologies and inputs used by these services.

Foreign securities and instruments will be valued in their local currency following the methodologies described above. Foreign securities, instruments and currencies will be translated to U.S. dollars, based on foreign currency exchange rate quotations supplied by a pricing service as of the close of the New York Stock Exchange (''NYSE''), which will use a proprietary model to determine the exchange rate.

Forward foreign currency exchange contracts will be valued at an interpolated rate based on days to maturity between the closest preceding and subsequent settlement period. Such interpolated rates are derived from foreign currency exchange rate quotations reported by an independent third-party pricing service.

Other portfolio securities and assets for which market quotations, official closing prices, or information furnished by a pricing service are not readily available or, in the opinion of the FMR Committee, are deemed unreliable will be fair valued in good faith by the FMR Committee in accordance with applicable fair value pricing policies. For example, if, in the opinion of the FMR Committee, a security's value has been materially affected by events occurring before a Fund's pricing time but after the close of the exchange or market on which the security is principally traded, that security will be fair valued in good faith by the FMR Committee in accordance with applicable fair value pricing policies. In fair valuing a security, the FMR Committee may consider factors including price movements in futures contracts and ADRs, market and trading trends, the bid/ask quotes of brokers, and off-exchange institutional trading.

Creation and Redemption of Shares

According to the Registration Statement, each Fund will issue and redeem Shares on a continuous basis at NAV per Share in aggregations of a specified number of Shares called ''Creation Units.'' Creation Units generally will be issued in exchange for portfolio securities and/or cash. Shares will trade in the secondary market at market prices that may differ from the Shares' NAV. Shares will not be individually redeemable, but will be redeemable only in Creation Unit aggregations, and in exchange for portfolio securities and/or cash. A Creation Unit of a Fund initially will consist of a block of 50,000 Shares. The size of a Creation Unit is subject to change. Shareholders who are not ''Authorized Participants'' (as defined below) will not be able to purchase or redeem Shares directly with or from a Fund.

Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in-kind, under the circumstances set forth in the Exemptive Order.[53]

The Trust will issue and redeem Shares of the Funds only in Creation Units on a continuous basis through FDC, without a sales load, at its NAV next determined after receipt, on any business day, of an order in proper form. To be eligible to place orders to purchase or redeem a Creation Unit of a Fund an entity must be an Authorized Participant which is either (i) a ''Participating Party,'' *i.e.,* broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency that is registered with the Commission (the ''Clearing Process''); or (ii) a Depository Trust Company (''DTC'') participant, and, in each case, must have executed an agreement with FDC with respect to creations and redemptions of Creation Units (''Participant Agreement''). All Shares of the Funds, however created, will be entered on the records of DTC in the name of Cede & Co. for the account of a DTC participant.

The consideration for purchase of a Creation Unit generally will consist of an in-kind deposit of a designated portfolio of securities (''Deposit Securities'') together with a deposit of a specified cash payment (''Cash Component'') computed as described herein. Alternatively, a Fund may issue and redeem Creation Units in exchange for a specified all-cash payment (''Cash Deposit''). Together, the Deposit Securities and the Cash Component or, alternatively, the Cash Deposit, will constitute the ''Portfolio Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit. In the event a Fund requires Deposit Securities and a Cash Component in consideration for purchasing a Creation Unit, the function of the Cash Component is to compensate for any differences between the NAV per Creation Unit and the Deposit Amount (as defined below). The Cash Component would be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the ''Deposit Amount,'' which is an amount equal to the market value of the Deposit Securities. A fixed transaction fee is applicable to each purchase of Creation Units, and an additional variable transaction fee may apply under certain circumstances.[54]

Each Fund will make available through the NSCC on each business day, prior to the opening of trading on the NYSE (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security and the amount of the Cash Component (or Cash Deposit) to be included in the current Portfolio Deposit (based on information at the end of the previous business day) for the Fund. Such Portfolio Deposit will be applicable, subject to any adjustments as described below, in order to effect purchases of Creation Units until such time as the next-announced Portfolio Deposit composition is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the relevant Fund through the transfer agent and only on a business day through an Authorized Participant that has entered into a Participant Agreement. FMR, through NSCC, will make available immediately prior to the opening of trading on NYSE (currently 9:30 a.m. Eastern time) on each business day, the identity of the basket of securities (''Fund Securities'') that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as defined below) on that day.

All orders to purchase Creation Units of a Fund must be received by FDC or its agent no later than the closing time of regular trading hours on the NYSE (ordinarily 4:00 p.m. Eastern time), or one hour prior to the closing time (ordinarily 3:00 p.m. Eastern time) in the case of nonconforming orders,[55] in

[53] For example, Authorized Participants will be permitted to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Securities or Fund Securities, respectively, if such securities are not eligible for transfer through either the NSCC or DTC process.

[54] An additional variable transaction charge will be imposed for purchases effected outside the Clearing Process, which would include purchases of Creation Units for cash and in-kind purchases where the investor is allowed to substitute cash in lieu of depositing a portion of the Deposit Securities.

[55] A nonconforming order may be placed by an Authorized Participant in the event that a Fund permits the substitution of an amount of cash to be added to the Cash Component to replace any

Continued

each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of shares of the applicable Fund as next determined on such date after receipt of the order in proper form.

The redemption proceeds for a Creation Unit generally will consist of an in-kind transfer of Fund Securities—as announced by a Fund on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of the request in proper form, and the value of the Fund Securities (''Cash Redemption Amount''), less a redemption transaction fee and any applicable variable fee. In the event that the Fund Securities have a value greater than the NAV of the Shares being redeemed, a compensating cash payment to the relevant Fund equal to the differential plus the applicable redemption transaction fee will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, the Funds will substitute a cash-in-lieu amount to replace any Fund Security that is a non-deliverable instrument. Non-deliverable instruments will be part of the Cash Component.

An order to redeem Creation Units will be deemed received by a Fund on the transmittal date if such order is received in proper form by the transfer agent not later than 4:00 p.m. Eastern time (or one hour prior to the closing time (ordinarily 3:00 p.m. Eastern time) for nonconforming orders) on such transmittal date and other applicable requirements are met.

The right of redemption may be suspended or the date of payment postponed with respect to a Fund (i) for any period during which the NYSE is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the Shares or determination of the relevant Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as is permitted by the Commission.

Availability of Information

The Trust's Web site (*www.fidelity.com*), which will be publicly available, will include a form of the prospectus for each of the Funds that may be downloaded. The Trust's Web site will include 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, if that is unavailable, the mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[56] and a calculation of the premium or discount of the market closing price or, if that is unavailable, the Bid/Ask Price against the NAV. On each business day, before commencement of trading in Shares in the ''Core Trading Session'' (9:30 a.m. Eastern time to 4:00 p.m. Eastern time) on the Exchange, each Fund will disclose on the Trust's Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for that Fund's calculation of NAV at the end of the business day.[57]

On a daily basis, each Fund will disclose for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares (if applicable) and dollar value of each of the securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), each Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and underlying securities that are U.S. exchange listed, including ETFs, ETPs, ETNs, ADRs, EDRs, GDRs, exchange-traded REITs, exchange-traded preferred securities and exchange-traded convertible securities, will be available via the Consolidated Tape Association (''CTA'') high-speed line. Quotation and last sale information for such U.S. exchange-listed securities as well as futures will be available from the exchange on which they are listed. Quotation and last sale information for exchange-listed options will be available via the Options Price Reporting Authority.

Quotation information for OTC-Traded Securities, OTC-traded derivative securities (such as options, swaps, forwards and Currency-related Derivatives), and investment company securities (excluding ETFs), may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The U.S. dollar value of foreign securities, instruments and currencies can be derived by using foreign currency exchange rate quotations obtained from nationally recognized pricing services.

In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[58] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the approximate value of the underlying portfolio of each Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.[59] Trading in Shares of a Fund

Deposit Security. The Funds reserve the right to permit the substitution of an amount of cash (*i.e.,* a cash in lieu amount) to replace any Deposit Security which may, among other reasons, not be available in sufficient quantity for delivery, not be eligible for transfer through the systems of DTC, the Federal Reserve System or the clearing process, not be permitted to be re-registered in the name of the Trust as a result of an in-kind purchase order pursuant to local law or market convention, restricted under the securities laws or which may not be eligible for trading by an Authorized Participant or the investor for which it is acting.

[56] The Bid/Ask Price of each Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by each Fund or its service providers.

[57] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, each Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[58] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from the CTA or other data feeds.

[59] *See* NYSE Arca Equities Rule 7.12.

will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the relevant Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 [60] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share of each Fund will be calculated daily and that the NAV and the Disclosed Portfolio [61] of each Fund will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[62] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying exchange-traded options, futures, exchange-traded equity securities (including ADRs, EDRs, and GDRs), and other exchange-traded instruments with other markets and other entities that are members of the ISG and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying exchange-traded options, futures, exchange-traded equity securities (including ADRs, EDRs, and GDRs), and other exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded options, futures, exchange traded-equity securities (including ADRs, EDRs, and GDRs), and other exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[63] In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

Not more than 10% of the net assets of a Fund in the aggregate shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [64] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to

[60] 17 CFR 240.10A–3.

[61] The term ''Disclosed Portfolio'' is defined in NYSE Arca Equities Rule 8.600(c)(2).

[62] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[63] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[64] 15 U.S.C. 78f(b)(5).

prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying exchange-traded options, futures, exchange-traded equity securities (including ADRs, EDRs, and GDRs), and other exchange-traded instruments with other markets and other entities that are members of the ISG and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying exchange-traded options, futures, exchange-traded equity securities (including ADRs, EDRs, and GDRs), and other exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded options, futures, equity securities (including ADRs, EDRs, and GDRs), and other exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to TRACE. The Manager and the Sub-Advisers are not broker-dealers but are affiliated with one or more broker-dealers and have each implemented a fire wall with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the portfolios, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolios. Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Manager or Sub-Advisers.[65] Any foreign equity securities in which a Fund may invest will be limited to securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Funds will invest only in ADRs, EDRs and GDRs that are traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Not more than 10% of the net assets of a Fund in the aggregate shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares and underlying securities that are U.S. exchange listed, including ETFs, ETPs, ETNs, ADRs, EDRs, GDRs, exchange-traded REITs, exchange-traded preferred securities, and exchange-traded convertible securities, will be available via the CTA high-speed line. Quotation and last sale information for such U.S. exchange-listed securities as well as futures will be available from the exchange on which they are listed. Quotation and last sale information for exchange-listed options will be available via the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for Debt Securities; restricted securities; OTC-traded REITs; OTC-traded preferred securities; OTC-traded derivative securities, including options, swaps, and Currency-related Derivatives; forwards; and investment company securities (other than ETFs). Moreover, the Portfolio Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each Fund will disclose on the Trust's Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. The Trust's Web site will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Exchange Traded [sic] Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

[65] *See, supra* notes 45 and 46, and accompanying text.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2014–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NYSEArca–2014–46.* 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–NYSEArca–2014–46* and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10358 Filed 5–5–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72044; File No. SR–BATS–2014–014]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 11.17, Entitled ''Clearly Erroneous Executions''

April 30, 2014.

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 April 17, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to add new paragraphs (i) and (j) to Rule 11.17, entitled ''Clearly Erroneous Executions.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add new paragraph (i) to Rule 11.17 to provide the Exchange with authority to nullify transactions that were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information even if such transactions occur over a period of several days, as further described below. An example of fundamentally incorrect and grossly misinterpreted issuance information that led to a severe valuation error is included below for illustrative purposes.

The Exchange also proposes to add new paragraph (j) to Rule 11.17 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause (hereafter generally referred to as a ''trading halt'' for ease of reference), the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt with respect to such security. In the event a trading halt is declared, then prematurely lifted in error, and then re-instituted, proposed paragraph (j) would also result in nullification of any transactions that occur before the official, final end of the trading halt according to the primary listing market.

The Exchange also proposes a change to certain cross-references in Rule 11.17, due to the addition of paragraphs (i) and (j). Specifically, the Exchange proposes to update cross-references in existing

[66] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

paragraph (h) of Rule 11.17 in order to make clear that the provisions of paragraph (h) do not alter the application of other provisions of Rule 11.17, including new paragraphs (i) and (j).

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11.17 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[3] The Exchange also adopted additional changes to Rule 11.17 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.17,[4] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[5] The Exchange recently removed the specific provisions related to individual stock trading pauses and extended to April 8, 2014 the pilot program applicable to certain provisions of Rule 11.17.[6] More recently, the Exchange further extended the pilot program to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.[7]

As proposed, similar to other provisions added in recent years, as described above, both paragraph (i) and paragraph (j) would be subject to the pilot period, and thus, would coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.[8]

Executions Based on Incorrect or Grossly Misinterpreted Issuance Information

The Exchange proposes to adopt a new provision, paragraph (i), to Rule 11.17, which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, would be required to take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the Officer of the Exchange or senior level employee designee would be required to take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. The Exchange proposes to make clear that no action can be taken pursuant to proposed paragraph (i) with respect to any transactions that have reached settlement date for the security or that result from an initial public offering of a security. The Exchange believes that declaring a trade null and void after settlement date would be complex to administer and unfair to the affected parties. The Exchange also believes that excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no benchmark information are not called into question, as it is the IPO process itself, including the extensive public disclosure associated with IPOs, that is intended to drive price formation.

Further, the Exchange proposes that to the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. The Exchange also proposes to state in the Rule that any action taken in connection with paragraph (i) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 11.17. In particular, the Exchange believes that there could be scenarios where there are erroneous transactions related to an Event that do not meet applicable Numerical Guidelines but that are, upon review, clearly erroneous. One example of a situation that could occur is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to erroneous transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet applicable Numerical Guidelines, the Exchange would have the authority to nullify such transactions if they were affected based on the same fundamentally incorrect or grossly misinterpreted issuance information and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action the security continues to trade at a price that does not meet applicable Numerical Guidelines).

The Exchange also proposes to include a provision, as it does in many other sub-paragraphs of Rule 11.17, stating that each Member involved in a transaction subject to proposed paragraph (i) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11.17(e)(2).

In particular, the Exchange believes it is necessary to have authority to nullify trades that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the New York Stock Exchange (''NYSE'') in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information. As a result of such information, the securities traded at severely dislocated prices. At the time, the NYSE filed an emergency rule filing in order to respond to that event.[9] With the filing the NYSE interpreted the rule applicable to clearly erroneous executions as permitting the NYSE to nullify all trades resulting after the Exchange Offer at severely dislocated prices.[10] The Exchange believes it is important to have in place a rule to break such trades if an event like the U.S. Bancorp event occurs again in the future. The U.S. Bancorp event is described in further detail below and is intended to be illustrative of the manner

[3] Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–BATS–2010–016).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 68797 (Jan. 31, 2013), 78 FR 8635 (Feb. 6, 2013) (SR–BATS–2013–008); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* BATS Rule 11.17(h).

[6] Paragraphs (c), (e)(2), (f), (g), and (h) of Rule 11.17 are subject to the pilot program. *See* Securities Exchange Act Release No. 70513 (September 26, 2013), 78 FR 60973 (October 2, 2013) (SR–BATS–2013–053).

[7] *See* Securities Exchange Act Release No. 71795 (March 25, 2013 [sic]), 79 FR 18089 (March 31, 2014) (SR–BATS–2014–008).

[8] *Id.*

[9] Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (August 5, 2010) (SR–NYSE–2010–55).

[10] *Id.*

in which the Exchange proposes to utilize proposed paragraph (i), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17 and 18, 2010. On June 18, 2010, NYSE staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an $800 price. Upon learning of the pricing disparity, NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

In order to address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous execution rule such that the trading in Depository Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation (the ''U.S. Bancorp Event'').[11] Because the Depository Shares were halted before the price of the Depository Shares ceased to be dislocated, and remain halted, the NYSE was able to review trading in Depository Shares and declare null and void all trading in the U.S. Bancorp Event before the security resumed trading.

Rather than filing a proposal in response to a similar event happening again, the Exchange proposes to add paragraph (i) in order to nullify transactions consistent with the description of the proposed Rule above.

Executions After a Trading Halt Has Been Declared

The Exchange proposes to add new paragraph (j) to Rule 11.17 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt, the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt with respect to such security has officially ended according to the primary listing market. In addition, proposed paragraph (j) will make clear that in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, the Exchange will nullify transactions that occur before the official, final end of the trading halt according to the primary listing market.

As with other provisions in Rule 11.17, including proposed paragraph (i) as discussed above, the authority to nullify transactions pursuant to paragraph (j) would be vested in an officer of the Exchange or other senior level employee designee, acting on his or her own motion. Any action taken in connection with paragraph (j) would be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of Regular Trading Hours [12] on the trading day following the date of execution(s) under review. The Exchange also proposes to specify that any action taken in connection with proposed paragraph (j) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 11.17. The Exchange believes it is appropriate to act to nullify transactions pursuant to proposed paragraph (j) without regard to applicable Numerical Guidelines because in the situations covered by paragraph (j), such transactions should not have occurred in the first instance, and thus, their nullification does not put parties in any different position than they should have been. The Exchange also believes that the certainty that the proposed rule provides is critical in situations involving trading halts.

As it has proposed for paragraph (i), as described above, the Exchange also proposes to include a provision stating that each Member involved in a transaction subject to proposed paragraph (j) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11.17(e)(2).

The Exchange notes that trading in a security is typically halted immediately on the Exchange when the primary listing market issues a trading halt in such security. However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, executions can occur on the Exchange following the declaration of such a trading halt. Similarly, although rare, the Exchange has witnessed scenarios where due to extraordinary circumstances a trading halt is declared, then prematurely lifted in error and then re-instituted. It is these types of extraordinary circumstances that the Exchange believes require certainty, and thus, the Exchange believes it necessary to make clear that in such a circumstance any transactions after a trading halt has been declared will be nullified. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), the Exchange would only nullify transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market.

The Exchange also notes that it currently has authority pursuant to paragraph (f) of Rule 11.17 to review and nullify transactions that arise during a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange. Further, paragraph (f) of Rule 11.17 gives the Exchange authority to use a lower numerical guideline than is set forth in paragraph (c)(1) of the Rule when necessary to maintain a fair and orderly market and to protect investors and the public interest. Thus, while the Exchange believes that paragraph (f) does give the Exchange the authority to nullify transactions occurring when there is an Exchange technical issue related to the transmission or receipt of the electronic message instituting a trading halt or with respect to a technical issue related to a prematurely lifted trading halt, the Exchange believes that proposed paragraph (j) will provide appropriate authority for the Exchange to nullify all such transactions whether or not the systems problem occurs on the Exchange with respect to trading halts and explicit clarity for market participants that such transactions will be nullified. The Exchange believes that such authority is appropriate because

[11] *Id.*

[12] Regular Trading Hours are defined in Exchange Rule 1.5(w) as the time between 9:30 a.m. to 4:00 p.m. E.T.

when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. Finally, the Exchange believes that such authority is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[13] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[14] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that it is appropriate to adopt a provision granting the Exchange authority to nullify trades that occur if an Event similar to the U.S. Bancorp Event occurs again. The Exchange believes that this provision will allow the Exchange to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade and that the proposal is therefore consistent with the Act. Similarly, the Exchange believes that adding a provision allowing the Exchange to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and providing that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt the Exchange will nullify trades occurring after a trading halt has been declared by the primary listing market for the security will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. The Exchange further believes that the proposal is appropriate and consistent with the Act because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. The Exchange also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

The Exchange believes that the proposal to update cross-references in existing paragraph (h) of Rule 11.17 to include new paragraphs (i) and (j) is consistent with the Act because, as is the case with respect to the current rule, this change makes clear that the provisions of paragraph (h) do not alter the application of other provisions of Rule 11.17.

The Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals to add provisions similar to the provisions proposed by the Exchange above. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning treatment of transactions as clearly erroneous. The proposed rule change would also help to assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, the Exchange believes FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2014–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2014–014. 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 available publicly. All submissions should refer to File Number SR–BATS–2014–014, and should be submitted on or before May 27, 2014.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10280 Filed 5–5–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72068; File No. SR–NYSEArca–2014–47]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Proposing To List and Trade Shares of Fidelity® Corporate Bond ETF Managed Shares Under NYSE Arca Equities Rule 8.600

May 1, 2014.

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 April 16, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On April 30, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.[3] 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 list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Fidelity® Corporate Bond ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares:[4] Fidelity Corporate Bond ETF (the ''Fund'').[5] The Fund will be a fund of Fidelity Merrimack Street Trust (''Trust''), a Massachusetts business trust.[6]

Fidelity Management & Research Company (''FMR'') will be the Fund's manager (''Manager''). Fidelity Investments Money Management, Inc. (''FIMM'') and other investment advisers, as described below, will serve as sub-advisers for the Fund (''Sub-Advisers''). FIMM will have day-to-day responsibility for choosing investments for the Fund. FIMM is an affiliate of FMR. Other investment advisers, which also are affiliates of FMR, will assist FMR with foreign investments, including Fidelity Management & Research (U.K.) Inc. (''FMR U.K.''), Fidelity Management & Research (Hong Kong) Limited (''FMR H.K.''), and Fidelity Management & Research (Japan) Inc. (''FMR Japan''). Fidelity Distributors Corporation (''FDC'') will be the distributor for the Fund's Shares.[7]

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser will erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[8] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Manager and the Sub-Advisers are not broker-dealers but are affiliated with one or more broker-dealers and have implemented a fire wall with respect to

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 7.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has previously approved the listing and trading on the Exchange of other actively managed funds under Rule 8.600. *See e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving Exchange listing and trading of five fixed income funds of the PIMCO ETF Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving Exchange listing and trading of PIMCO Total Return ETF); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving Exchange listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[6] The Trust is registered under the 1940 Act. On April 17, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act'') and the 1940 Act relating to the Fund (File Nos. 333–186372 and 811–22796) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30513 (May 10, 2013) (''Exemptive Order'') (File No. 812–14104).

[7] This Amendment No. 1 to SR–NYSEArca–2014–47 replaces SR–NYSEArca–2014–47 as originally filed and supersedes such filing in its entirety.

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Manager and the Sub-Advisers, and their related personnel, are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio.

In the event (a) the Manager or any of the Sub-Advisers become registered as a broker-dealer or become newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, they will implement a fire wall with respect to their relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Fidelity Corporate Bond ETF

According to the Registration Statement, the Fund will seek a high level of current income.

According to the Registration Statement, FMR normally [9] will invest at least 80% of assets in investment-grade corporate bonds and other corporate debt securities.[10]

According to the Registration Statement, corporate debt securities are bonds and other debt securities issued by corporations and other business structures. According to the Manager, corporate debt securities include loans [11], loan participations and loan assignments, structured securities,[12] repurchase agreements with corporate counterparties,[13] and other securities believed to have corporate debt-like characteristics, including hybrid securities,[14] which may offer characteristics similar to those of a bond security such as stated maturity and preference over equity in bankruptcy. According to the Registration Statement, the Fund may hold uninvested cash or may invest it in cash equivalents such as money market securities, or shares of short-term bond exchanged- traded funds registered under the 1940 Act (''ETFs'') [15] or mutual funds or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients).[16]

FMR will use the Barclays® U.S. Credit Bond Index (''Index'') as a guide in structuring the Fund and selecting its investments. FMR will manage the Fund to have similar overall interest rate risk to the Index.

According to the Registration Statement, FMR also may invest the Fund's assets in debt securities of foreign issuers in addition to securities of domestic issuers. In selecting foreign securities, FMR's analysis also will consider the credit, currency, and economic risks associated with the security and the country of its issuer. FMR may also consider an issuer's potential for success in light of its current financial condition, its industry position, and economic and market conditions.

According to the Registration Statement, in buying and selling securities for the Fund, FMR analyzes the credit quality of the issuer, security-specific features, current valuation relative to alternatives in the market, short-term trading opportunities resulting from market inefficiencies, and potential future valuation. In managing the Fund's exposure to various risks, including interest rate risk, FMR will consider, among other things, the market's overall risk characteristics, the market's current pricing of those risks, information on the Fund's competitive universe and internal views of potential future market conditions.

Other Investments

While FMR normally will invest at least 80% of assets of the Fund in investment-grade corporate bonds and other corporate debt securities, as described above, FMR may invest up to 20% of the Fund's assets in other securities and financial instruments, as summarized below.[17]

In addition to corporate debt securities, the debt securities in which the Fund may invest are U.S. Government securities;[18] repurchase agreements [19] and reverse repurchase agreements;[20] mortgage and other asset-

[9] The term ''normally'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. According to the Registration Statement, however, the Fund reserves the right to invest without limitation in investment-grade money market or short-term debt instruments for temporary, defensive purposes.

[10] According to the Registration Statement, investment-grade debt securities include all types of debt instruments, including corporate debt securities, that are of medium and high-quality. An investment-grade rating means the security or issuer is rated investment-grade by a credit rating agency registered as a nationally recognized statistical rating organization (''NRSRO'') with the Commission (for example, Moody's Investors Service, Inc.), or is unrated but considered to be of equivalent quality by the Fund's Manager or Sub-Advisers.

[11] According to the Registration Statement, the Fund may acquire loans by buying an assignment of all or a portion of the loan from a lender or by purchasing a loan participation from a lender or other purchaser of a participation.

[12] According to the Registration Statement, structured securities (also called ''structured notes'') are derivative debt securities, the interest rate on or principal of which is determined by an unrelated indicator. According to the Registration Statement, the Fund may invest in ''indexed securities'', which are instruments whose prices are indexed to the prices of other securities, securities indexes, or other financial indicators.

[13] According to the Registration Statement, a repurchase agreement is an agreement to buy a security at one price and a simultaneous agreement to sell it back at an agreed-upon price. The Fund may engage in repurchase agreement transactions with parties whose creditworthiness has been reviewed and found satisfactory by the Manager. Investment-grade debt securities include repurchase agreements collateralized by U.S. Government securities as well as repurchase agreements collateralized by equity securities, non-investment-grade debt, and all other instruments in which the Fund can perfect a security interest, provided the repurchase agreement counterparty has an investment-grade rating.

[14] According to the Manager, a hybrid security generally combines both debt and equity characteristics. A common type of hybrid security is a convertible bond that has features of a debt security, until a certain date or triggering event, at which point the security may be converted into an equity security. A hybrid security may also be a warrant, convertible security, certificate of deposit or other evidence of indebtedness.

[15] For purposes of this filing, ETFs, which will be listed on a national securities exchange, include the following: Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600).

[16] According to the Manager, it is currently expected that the Fund will only invest in central funds that are money market funds.

[17] The Fund's holdings of investment grade corporate bonds and other corporate debt securities are generally expected to be U.S. dollar denominated.

[18] According to the Manager, U.S. Government securities are high-quality securities issued or guaranteed by the U.S. Treasury or by an agency or instrumentality of the U.S. Government. U.S. Government securities may be backed by the full faith and credit of the U.S. Treasury, the right to borrow from the U.S. Treasury, or the agency or instrumentality issuing or guaranteeing the security. Certain issuers of U.S. Government securities, including the Federal National Mortgage Association (''Fannie Mae''), the Federal Home Loan Mortgage Corporation (''Freddie Mac''), and the Federal Home Loan Banks, are sponsored or chartered by Congress but their securities are neither issued nor guaranteed by the U.S. Treasury. U.S. Government securities include mortgage and other asset-backed securities.

[19] According to the Manager, in addition to the investment-grade repurchase agreements with corporate counterparties described above, the Fund may invest in repurchase agreements collateralized by U.S. Government securities as well as repurchase agreements collateralized by equity securities, non-investment-grade debt, and all other instruments in which the Fund can perfect a security interest, with repurchase agreement counterparties that do not have an investment-grade rating.

[20] In a reverse repurchase agreement, a fund sells a security to another party, such as a bank or

backed securities;[21] loans; loan participations and loan assignments and other evidences of indebtedness, including letters of credit, revolving credit facilities and other standby financing commitments;[22] structured securities; stripped securities;[23] municipal securities; sovereign debt obligations;[24] obligations of international agencies or supranational entities; and other securities believed to have debt-like characteristics, including hybrid securities,[25] which may offer characteristics similar to those of a bond security such as stated maturity and preference over equity in bankruptcy (collectively, and including corporate debt securities, ''Debt Securities'').[26]

According to the Registration Statement, the Fund may invest in securities of other investment companies, including shares of ETFs registered under the 1940 Act, closed-end investment companies (which include business development companies), unit investment trusts, and open-end investment companies. In addition, the Fund may invest in other exchange-traded products (''ETPs'') such as commodity pools, or other entities that are traded on an exchange.[27] It is anticipated that the Fund's investments in other ETFs and ETPs will generally be limited to fixed income ETFs and ETPs.

According to the Registration Statement, the Fund may invest in inverse ETFs (also called ''short ETFs'' or ''bear ETFs''), shares of which are expected to increase in value as the value of the underlying benchmark decreases.

According to the Registration Statement, the Fund also may invest in leveraged ETFs, which seek to deliver multiples or inverse multiples of the performance of an index or other benchmark they track and use derivatives in an effort to amplify the returns of the underlying index or benchmark.

According to the Registration Statement, the Fund may invest in exchange traded notes (''ETNs''), which are a type of senior, unsecured, unsubordinated debt security issued by financial institutions that combines aspects of both bonds and ETFs.[28] It is anticipated that the Fund's investments in other ETNs will generally be limited to fixed income ETNs. An ETN's returns are based on the performance of a market index or other reference asset minus fees and expenses. The Fund may invest in leveraged ETNs.

According to the Registration Statement, the Fund may invest in American Depositary Receipts (''ADRs'') as well as other ''hybrid'' forms of ADRs, including European Depositary Receipts (''EDRs'') and Global Depositary Receipts (''GDRs''), which are certificates evidencing ownership of shares of a foreign issuer.[29] These certificates are issued by depository banks and generally trade on an established market in the United States or elsewhere. The underlying shares are held in trust by a custodian bank or similar financial institution in the issuer's home country. The depository bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions. ADRs are alternatives to directly purchasing the underlying foreign securities in their national markets and currencies.

According to the Registration Statement, FMR may make investments in derivatives,[30] regardless of whether the Fund may own the asset, instrument, or components of the index underlying the derivative, as applicable,(*e.g.,* a swap based on the Barclays U.S. Credit Bond Index), and

broker-dealer, in return for cash and agrees to repurchase that security at an agreed-upon price and time. According to the Registration Statement, the Fund will enter into reverse repurchase agreements with parties whose creditworthiness has been reviewed and found satisfactory by the Manager.

[21] According to the Registration Statement, asset-backed securities represent interests in pools of mortgages, loans, receivables, or other assets. The Fund's investments in asset backed securities may include investments in private label residential mortgage backed securities (''RMBS''). The Fund may invest in privately issued asset-backed securities. According to the Manager, the Fund may invest up to 20% of its total assets in mortgage-backed securities or in other asset-backed securities, although this 20% limitation will not apply to U.S. Government securities.

According to the Registration Statement, the Fund may invest in mortgage securities, which are issued by government and non-government entities such as banks, mortgage lenders, or other institutions. A mortgage security is an obligation of the issuer backed by a mortgage or pool of mortgages or a direct interest in an underlying pool of mortgages. Some mortgage securities, such as collateralized mortgage obligations (or ''CMOs''), make payments of both principal and interest at a range of specified intervals; others make semiannual interest payments at a predetermined rate and repay principal at maturity (like a typical bond). Mortgage securities are based on different types of mortgages, including those on commercial real estate or residential properties.

Fannie Maes and Freddie Macs are pass-through securities issued by Fannie Mae and Freddie Mac, respectively. Fannie Mae and Freddie Mac, which guarantee payment of interest and repayment of principal on Fannie Maes and Freddie Macs, respectively, are federally chartered corporations supervised by the U.S. Government that act as governmental instrumentalities under authority granted by Congress. Fannie Mae and Freddie Mac are authorized to borrow from the U.S. Treasury to meet their obligations. Fannie Maes and Freddie Macs are not backed by the full faith and credit of the U.S. Government.

According to the Registration Statement, to earn additional income for the Fund, FMR may use a trading strategy that involves selling (or buying) mortgage securities and simultaneously agreeing to purchase (or sell) mortgage securities on a later date at a set price.

[22] According to the Manager, in addition to the loans, loan participations and loan assignments described in corporate debt securities above, the Fund may invest in loans, loan participations and loan assignments that do not have an investment-grade rating.

[23] According to the Registration Statement, the Fund may invest in stripped securities, which are the separate income or principal components of a debt security. Stripped mortgage securities are created when the interest and principal components of a mortgage security are separated and sold as individual securities.

[24] According to the Manager, sovereign debt obligations are issued or guaranteed by foreign governments or their agencies, including debt of developing countries. Sovereign debt may be in the form of conventional securities or other types of debt instruments such as loans or loan participations.

[25] *See, supra* note 14.

[26] According to the Manager, Debt Securities may be fixed, variable or floating rate securities. Variable rate securities provide for a specific periodic adjustment in the interest rate, while floating rate securities have interest rates that change whenever there is a change in a designated benchmark rate or the issuer's credit quality, sometimes subject to a cap or floor on such rate. Some variable or floating rate securities are structured with put features that permit holders to demand payment of the unpaid principal balance plus accrued interest from the issuers or certain financial intermediaries. In addition, Debt Securities may include zero coupon bonds, which do not make interest payments; instead, they are sold at a discount from their face value and are redeemed at face value when they mature. Investments in Debt Securities may have a leveraging effect on the Fund.

[27] For purposes of this filing, ETPs, which will be listed on a national securities exchange, include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

[28] ETNs, which will be listed on a national securities exchange, are securities such as those described in NYSE Arca Equities Rule 5.2(j)(6).

[29] The Fund will invest only in ADRs, EDRs and GDRs that are traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. *See, infra* note 58.

[30] According to the Registration Statement, derivatives are investments whose values are tied to an underlying asset, instrument, currency or index. The derivatives in which the Fund may invest are futures (both long and short positions), options (including options on futures and swaps), forwards, and swaps (including interest rate swaps (exchanging a floating rate for a fixed rate)), total return swaps (exchanging a floating rate for the total return of an index, security, or other instrument or investment) and credit default swaps (buying or selling credit default protection). Investments in derivatives may have a leveraging effect on the Fund.

forward-settling securities.[31] The Fund's derivative investments may be on corporate debt securities, Debt Securities, interest rates, currencies, and related indexes. Depending on FMR's outlook and market conditions, FMR may engage in these transactions to increase or decrease the Fund's exposure to changing security prices, interest rates, credit qualities, or other factors that affect security values, or to gain or reduce exposure to an asset, instrument, or index.

According to the Registration Statement, the Fund may conduct foreign currency transactions on a spot (*i.e.,* cash) or forward basis (*i.e.,* by entering into forward contracts to purchase or sell foreign currencies). Forward contracts are customized transactions that require a specific amount of a currency to be delivered at a specific exchange rate on a specific date or range of dates in the future. Forward contracts are generally traded in an interbank market directly between currency traders (usually large commercial banks) and their customers. The parties to a forward contract may agree to offset or terminate the contract before its maturity, or may hold the contract to maturity and complete the contemplated currency exchange.

According to the Registration Statement, the Fund may utilize certain currency management strategies involving forward contracts, as described below. The Fund may also use swap agreements, indexed securities, and options and futures contracts relating to foreign currencies for the same purposes. Forward contracts not calling for physical delivery of the underlying instrument will be settled through cash payments rather than through delivery of the underlying currency.

According to the Registration Statement, forward contracts may be used as a ''settlement hedge'' or ''transaction hedge'' designed to protect the Fund against an adverse change in foreign currency values between the date a security denominated in a foreign currency is purchased or sold and the date on which payment is made or received. Entering into a forward contract for the purchase or sale of the amount of foreign currency involved in an underlying security transaction for a fixed amount of U.S. dollars ''locks in'' the U.S. dollar price of the security. Forward contracts to purchase or sell a foreign currency may also be used to protect the Fund in anticipation of future purchases or sales of securities denominated in foreign currency, even if the specific investments have not yet been selected.

According to the Registration Statement, the Fund may also use forward contracts to hedge against a decline in the value of existing investments denominated in a foreign currency. The Fund also may enter into forward contracts to shift its investment exposure from one currency into another. This may include shifting exposure from U.S. dollars to a foreign currency, or from one foreign currency to another foreign currency. This type of strategy, sometimes known as a ''cross-hedge'', will tend to reduce or eliminate exposure to the currency that is sold, and increase exposure to the currency that is purchased, much as if the Fund had sold a security denominated in one currency and purchased an equivalent security denominated in another.[32]

According to the Registration Statement, the Fund may invest in options and futures relating to foreign currencies. Currency futures contracts are similar to forward currency exchange contracts, except that they are traded on exchanges (and have margin requirements) and are standardized as to contract size and delivery date. Most currency futures contracts call for payment or delivery in U.S. dollars. The underlying instrument of a currency option may be a foreign currency, which generally is purchased or delivered in exchange for U.S. dollars, or may be a futures contract. The purchaser of a currency call obtains the right to purchase the underlying currency, and the purchaser of a currency put obtains the right to sell the underlying currency.

As described in the Registration Statement, the Fund may invest in exchange-listed futures.[33] The exchange-listed futures contracts in which the Fund may invest will have various types of underlying instruments, including specific assets or securities, baskets of assets or securities, commodities or commodities indexes, or indexes of securities prices or rates.

According to the Registration Statement, the Fund may invest in U.S. exchange-traded as well as over-the-counter (''OTC'') options.[34] Unlike exchange-traded options, which are standardized with respect to the underlying instrument, expiration date, contract size, and strike price, the terms of OTC options generally are established through negotiation with the other party to the option contract. The OTC options in which the Fund may invest will have various types of underlying instruments, including specific assets or securities, baskets of assets or securities, indexes of securities or commodities prices, and futures contracts (including commodity futures contracts).

According to the Registration Statement, the Fund may also buy and sell options on swaps (swaptions), which are generally options on interest rate swaps.[35] An option on a swap gives a party the right (but not the obligation) to enter into a new swap agreement or to extend, shorten, cancel or modify an existing contract at a specific date in the future in exchange for a premium.

As described in the Registration Statement, the Fund may hold swap agreements, a portion of which holdings may consist of cleared swaps.[36] The

[31] According to the Registration Statement, forward-settling securities involve a commitment to purchase or sell specific securities when issued, or at a predetermined price or yield. When a fund does not already own or have the right to obtain securities equivalent in kind and amount, a commitment to sell securities is equivalent to a short sale. Payment and delivery take place after the customary settlement period.

[32] According to the Registration Statement, the Fund may cross-hedge its U.S. dollar exposure in order to achieve a representative weighted mix of the major currencies in its benchmark index and/or to cover an underweight country or region exposure in its portfolio. Cross-hedges protect against losses resulting from a decline in the hedged currency, but will cause the Fund to assume the risk of fluctuations in the value of the currency it purchases.

[33] According to the Registration Statement, in purchasing a futures contract, the buyer agrees to purchase a specified underlying instrument at a specified future date. In selling a futures contract, the seller agrees to sell a specified underlying instrument at a specified date. Futures contracts are standardized, exchange-traded contracts and the price at which the purchase and sale will take place is fixed when the buyer and seller enter into the contract. Some currently available futures contracts are based on specific securities or baskets of securities, some are based on commodities or commodities indexes (for funds that seek commodities exposure), and some are based on indexes of securities prices (including foreign indexes for funds that seek foreign exposure) or rates. In addition, some currently available futures contracts are based on Eurodollars. Positions in Eurodollar futures reflect market expectations of forward levels of three-month London Interbank Offered Rate (LIBOR) rates.

[34] Not more than 10% of the net assets of the Fund in the aggregate shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[35] According to the Manager, the Fund may also enter into options on credit default swaps, credit default index swaps or interest rate swaps. Options on credit default swaps or credit default index swaps can be used to hedge the credit risk of the Fund. An option on an interest rate swap can be used to hedge the interest risk of the Fund.

[36] According to the Registration Statement, swap agreements are two-party contracts entered into primarily by institutional investors. Cleared swaps are transacted through futures commission merchants (FCMs) that are members of central clearinghouses with the clearinghouse serving as a central counterparty similar to transactions in futures contracts. In a standard ''swap'' transaction, two parties agree to exchange one or more payments based, for example, on the returns (or differentials

Fund may enter into, among other things, interest rate swaps (where the parties exchange a floating rate for a fixed rate),[37] asset swaps (*e.g.,* where parties combine the purchase or sale of a bond with an interest rate swap), total return swaps, and credit default swaps.

According to the Registration Statement, a total return swap is a contract whereby one party agrees to make a series of payments to another party based on the change in the market value of the assets underlying such contract (which can include a security or other instrument, commodity, index or baskets thereof) during the specified period. In exchange, the other party to the contract agrees to make a series of payments calculated by reference to an interest rate and/or some other agreed-upon amount (including the change in market value of other underlying assets). In total return swaps, the underlying asset, referred to as the reference asset, is usually a benchmark (*e.g.,* Barclays CMBS Index), asset class or designated security. The Fund may use total return swaps to gain exposure to an asset without owning it or taking physical custody of it.

According to the Registration Statement, in a credit default swap, the credit default protection buyer makes periodic payments, known as premiums, to the credit default protection seller. In return the credit default protection seller will make a payment to the credit default protection buyer upon the occurrence of a specified credit event. A credit default swap can refer to a single issuer or asset, a basket of issuers or assets or index of assets, each known as the reference entity or underlying asset.[38]

According to the Registration Statement, the Fund may invest in lower-quality Debt Securities. Lower-quality Debt Securities include all types of debt instruments, including debt securities of foreign issuers, that have poor protection with respect to the payment of interest and repayment of principal, or may be in default.

According to the Registration Statement, the Fund may invest in preferred securities.[39] Preferred securities may take the form of preferred stock and represent an equity or ownership interest in an issuer that pays dividends at a specified rate and that has precedence over common stock in the payment of dividends. The Fund's investments in preferred securities generally are not expected to be exchange-listed. In the event an issuer is liquidated or declares bankruptcy, the claims of owners of bonds take precedence over the claims of those who own preferred and common stock.

As described in the Registration Statement, the Fund may invest in real estate investment trusts (''REITS''). According to the Manager, the Fund may invest in exchange-listed and non-exchange-listed REITs.

According to the Registration Statement, the Fund may invest in restricted securities, which are subject to legal restrictions on their sale. Restricted securities generally can be sold in privately negotiated transactions, pursuant to an exemption from registration under the 1933 Act, or in a registered public offering.

According to the Registration Statement, the Fund may engage in transactions with financial institutions that are, or may be considered to be, ''affiliated persons'' of the Fund under the 1940 Act. These transactions may involve repurchase agreements with custodian banks; short-term obligations of, and repurchase agreements with, the 50 largest U.S. banks (measured by deposits); municipal securities; U.S. Government securities with affiliated financial institutions that are primary dealers in these securities; short-term currency transactions; and short-term borrowings. In accordance with exemptive orders issued by the Commission, the Fund's Board of Trustees has established and periodically reviews procedures applicable to transactions involving affiliated financial institutions.

Limitations on Investments

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Manager or Sub-Advisers.[40] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[41]

in rates of return) earned or realized on particular predetermined investments or instruments (such as securities, commodities, indexes, or other financial or economic interests). The underlier of a cleared swap will depend on the product being cleared. For a cleared interest rate swap, as with previously uncleared interest rate swaps, the underlier will be a designated interest rate indicator. According to the Registration Statement, to limit the counterparty risk involved in swap agreements, the Fund will enter into swap agreements only with counterparties that meet certain standards of creditworthiness.

[37] According to the Manager, an interest rate swap is a swap where one stream of future interest payments is exchanged for another based on a specified principal amount. Interest rate swaps often provide for the exchange of fixed rate payments for floating rate payments linked to a specified floating interest rate (most often the LIBOR) plus/minus a spread. Interest rate swaps can be used to limit or manage exposure to fluctuations in interest rates, or to obtain a marginally lower interest rate on a debt issuance hedged by the interest rate swap than it would have been able to get without the swap.

[38] A credit default index swap is similar to a credit default swap, but is a transaction on an index of single name entities. Again, the buyer of a credit default index swap receives credit protection on each name in the index and the seller of the swap takes on the risk of the creditworthiness of each name in the index. The buying or selling of protection on an index is an efficient way to adjust the overall exposure to a specific sector or subset of a sector rather than buying many single name credit default swaps to achieve a similar effect.

[39] According to the Manager, the Fund may invest in exchange-listed and non-exchange-listed preferred securities.

[40] According to the Registration Statement, the Fund does not currently intend to purchase any security if, as a result, more than 10% of its net assets would be invested in securities that are deemed to be illiquid because they are subject to legal or contractual restrictions on resale or because they cannot be sold or disposed of in the ordinary course of business at approximately the prices at which they are valued.

For purposes of the Fund's illiquid assets limitation discussed above, if through a change in values, net assets, or other circumstances, the Fund were in a position where more than 10% of its net assets were invested in illiquid assets, it would consider appropriate steps to protect liquidity. According to the Registration Statement, various factors may be considered in determining the liquidity of the Fund's investments, including: (1) The frequency of trades and quotes for the security; (2) the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; (3) dealer undertakings to make a market in the security; and (4) the nature of the security and the nature of the marketplace in which it trades (including any demand, put or tender features, the mechanics and other requirements for transfer, any letters of credit or other credit enhancement features, any ratings, the number of holders, the method of soliciting offers, the time required to dispose of the security, and the ability to assign or offset the rights and obligations of the security).

[41] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR

Continued

According to the Registration Statement, the Fund may not with respect to 75% of the Fund's total assets, purchase the securities of any issuer (other than securities issued or guaranteed by the U.S. Government or any of its agencies or instrumentalities, or securities of other investment companies) if, as a result, (a) more than 5% of the Fund's total assets would be invested in the securities of that issuer, or (b) the Fund would hold more than 10% of the outstanding voting securities of that issuer.[42]

According to the Registration Statement, the Fund may not purchase the securities of any issuer (other than securities issued or guaranteed by the U.S. Government or any of its agencies or instrumentalities) if, as a result, more than 25% of the Fund's total assets would be invested in the securities of companies whose principal business activities are in the same industry.[43]

According to the Registration Statement, the Trust, on behalf of the Fund, will file with the National Futures Association a notice claiming an exclusion from the definition of the term ''commodity pool operator'' (''CPO'') under the Commodity Exchange Act,[44] as amended, and the rules of the Commodity Futures Trading Commission (''CFTC'') promulgated thereunder, with respect to the Fund's operation. Accordingly, neither the Fund nor its Manager will be subject to registration or regulation as a commodity pool or a CPO. However, the CFTC has adopted certain rule amendments that significantly affect the continued availability of this exclusion, and may subject advisers to funds to regulation by the CFTC. The Manager currently does not expect to register as a CPO of the Fund. However, there is no certainty that the Fund or its Sub-Advisers will be able to rely on an exclusion in the future as the Fund's investments change over time. The Fund may determine not to use investment strategies that trigger additional CFTC regulation or may determine to operate subject to CFTC regulation, if applicable.

Any foreign equity securities in which the Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.[45]

According to the Registration Statement, the Fund intends to qualify annually and to elect to be treated as a regulated investment company (''RIC'') under the Internal Revenue Code.[46]

Net Asset Value

According to the Registration Statement, the Fund's net asset value (''NAV'') will be the value of a single Share. The NAV of the Fund will be computed by adding the value of the Fund's investments, cash, and other assets, subtracting its liabilities, and dividing the result by the number of Shares outstanding.

The value of the Fund's Shares bought and sold in the secondary market will be driven by market price. The price of these Shares, like the price of all traded securities, will be subject to factors such as supply and demand, as well as the current value of the portfolio securities held by the Fund. Secondary market Shares, available for purchase or sale on an intraday basis, do not have a fixed relationship either to the previous day's NAV or to the current day's NAV. Prices in the secondary market, therefore, may be below, at, or above the most recently calculated NAV of such Shares.

According to the Registration Statement, the Fund's Board of Trustees has delegated day-to-day valuation oversight responsibilities to FMR. FMR has established the FMR Fair Value Committee (''FMR Committee'') to fulfill these oversight responsibilities.

Generally, portfolio securities and assets held by the Fund will be valued as follows:

In computing the Fund's NAV, the Fund's Debt Securities (including defaulted debt,[47] but excluding exchange-traded convertible securities), restricted securities, OTC-traded REITs; OTC-traded preferred securities; and forward-settling securities (collectively, ''OTC-Traded Securities'') will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service. Any such third-party pricing service may use a variety of methodologies to value some or all such securities to determine the market price. For example, the prices of securities with characteristics similar to those held by the Fund may be used to assist with the pricing process. In addition, the pricing service may use proprietary pricing models. The Fund's OTC-Traded Securities will generally be valued at bid prices. In certain cases, some of the Fund's OTC-Traded Securities may be valued at the mean between the last available bid and ask prices.[48]

Debt securities with remaining maturities of sixty days or less for which market quotations and information furnished by a third party pricing service are not readily available will be valued at amortized cost, which approximates current value.

Exchange traded equity securities, including ETFs, ETPs, ETNs, ADRs, EDRs, and GDRs, as well as exchange-traded REITs, exchange-traded preferred securities, and exchange-traded convertible securities, will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation or, if no sale has occurred, at the last quoted bid price on the primary market or exchange on which they are traded.

Investment company securities (other than ETFs), including money market funds, central funds, closed end investment companies, unit investment trusts and open-end investment companies will be valued at NAV.

Exchange-traded futures contracts will be valued at the settlement or closing price determined by the applicable exchange.

Exchange-traded option contracts, including options on futures and swaps, will be valued at their most recent sale

9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[42] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[43] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

According to the Registration Statement, for purposes of the Fund's concentration limitation discussed above, with respect to any investment in repurchase agreements collateralized by U.S. Government securities, FMR will look through to the U.S. Government securities. For purposes of the Fund's concentration limitation discussed above, FMR may analyze the characteristics of a particular issuer and security and assign an industry or sector classification consistent with those characteristics in the event that the third-party classification provider used by FMR does not assign a classification.

[44] 7 U.S.C. 1.

[45] *See, infra* ''Surveillance''. The Fund does not currently intend to invest in foreign equity securities.

[46] 26 U.S.C. 851.

[47] According to the Manager, when a bond defaults and goes into bankruptcy, a market often continues to exist for the bond (normally at a steep discount to its face value). Buyers typically value the defaulted bond based on expected restructuring outcomes or liquidation distributions. Market quotations provided by broker-dealers or pricing services reflect these market indicators.

[48] For example, foreign bonds for which a current bid price is not available will be valued at the mean between the last available bid and ask prices.

price. If no such sales are reported, these contracts will be valued at their most recent bid price. In certain cases, some of the Fund's exchange-traded derivative securities may be valued at the mean between the last available bid and ask prices.

OTC-traded derivative instruments, including options, swaps, forwards and currency-related derivatives, will normally be valued on the basis of quotes obtained from a third party broker-dealer who makes markets in such securities or on the basis of quotes obtained from an independent third-party pricing service. The Fund's OTC-traded derivative instruments will generally be valued at bid prices. Certain OTC-traded derivative instruments, such as interest rate swaps and credit default swaps, are valued at the mean price.

Prices described above will be obtained from pricing services that have been approved by the Fund's Board of Trustees. A number of independent third party pricing services are available and the Fund may use more than one of these services. The Fund may also discontinue the use of any pricing service at any time. FMR will engage in oversight activities with respect to the Fund's pricing services, which includes, among other things, testing the prices provided by pricing services prior to calculation of the Fund's NAV, conducting periodic due diligence meetings, and periodically reviewing the methodologies and inputs used by these services.

Foreign securities and instruments will be valued in their local currency following the methodologies described above. Foreign securities, instruments and currencies will be translated to U.S. dollars, based on foreign currency exchange rate quotations supplied by a pricing service as of the close of the New York Stock Exchange (''NYSE''), which will use a proprietary model to determine the exchange rate.

Forward foreign currency exchange contracts will be valued at an interpolated rate based on days to maturity between the closest preceding and subsequent settlement period. Such interpolated rates are derived from foreign currency exchange rate quotations reported by an independent third-party pricing service.

Other portfolio securities and assets for which market quotations, official closing prices, or information furnished by a pricing service are not readily available or, in the opinion of the FMR Committee, are deemed unreliable will be fair valued in good faith by the FMR Committee in accordance with applicable fair value pricing policies. For example, if, in the opinion of the FMR Committee, a security's value has been materially affected by events occurring before the Fund's pricing time but after the close of the exchange or market on which the security is principally traded, that security will be fair valued in good faith by the FMR Committee in accordance with applicable fair value pricing policies.

In fair valuing a security, the FMR Committee may consider factors including price movements in futures contracts and ADRs, market and trading trends, the bid/ask quotes of brokers, and off-exchange institutional trading.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will issue and redeem Shares on a continuous basis at NAV per Share in aggregations of a specified number of Shares called ''Creation Units.'' Creation Units generally will be issued in exchange for portfolio securities and/or cash. Shares trade in the secondary market at market prices that may differ from the Shares' NAV. Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations, and in exchange for portfolio securities and/or cash. A Creation Unit of the Fund will consist of a block of 50,000 shares, which is subject to change. Shareholders who are not ''Authorized Participants'' (as defined below) will not be able to purchase or redeem Shares directly with or from the Fund.

Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in-kind, under the circumstances set forth in the Exemptive Order.

The Trust will issue and redeem Shares of the Fund only in Creation Units on a continuous basis through FDC, without a sales load, at its NAV next determined after receipt, on any business day, of an order in proper form. To be eligible to place orders to purchase a Creation Unit of the Fund, an entity must be an Authorized Participant, which is either (i) a ''Participating Party,'' *i.e.,* broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency that is registered with the Commission (the ''Clearing Process''); or (ii) a Depository Trust Company (''DTC'') participant, and, in each case, must have executed an agreement with FDC, with respect to creations and redemptions of Creation Units (''Participant Agreement''). All Shares of the Fund, however created, will be entered on the records of DTC in the name of Cede & Co. for the account of a DTC participant.

The consideration for purchase of a Creation Unit generally will consist of an in-kind deposit of a designated portfolio of securities (''Deposit Securities'') together with a deposit of a specified cash payment (''Cash Component'') computed as described herein. Alternatively, the Fund may issue and redeem Creation Units in exchange for a specified all-cash payment (''Cash Deposit''). Together, the Deposit Securities and the Cash Component or, alternatively, the Cash Deposit, will constitute the ''Portfolio Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit. In the event the Fund requires Deposit Securities and a Cash Component in consideration for purchasing a Creation Unit, the function of the Cash Component is to compensate for any differences between the NAV per Creation Unit and the Deposit Amount (as defined below). The Cash Component would be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the ''Deposit Amount,'' which is an amount equal to the market value of the Deposit Securities. A fixed transaction fee is applicable to each purchase of Creation Units, and an additional variable transaction fee may apply under certain circumstances.[49]

The Fund will make available through the NSCC on each business day, prior to the opening of trading on the NYSE (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security and the amount of the Cash Component (or Cash Deposit) to be included in the current Portfolio Deposit (based on information at the end of the previous business day) for the Fund. Such Portfolio Deposit will be applicable, subject to any adjustments as described below, in order to effect purchases of Creation Units until such time as the next-announced Portfolio Deposit composition is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the transfer agent and only on a business day through an Authorized Participant that has entered into a Participant Agreement. FMR, through

[49] An additional variable transaction charge will be imposed for purchases effected outside the Clearing Process, which would include purchases of Creation Units for cash and in-kind purchases where the investor is allowed to substitute cash in lieu of depositing a portion of the Deposit Securities.

NSCC, will make available immediately prior to the opening of trading on NYSE (currently 9:30 a.m. Eastern time) on each business day, the identity of the basket of securities (''Fund Securities'') that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as defined below) on that day.

All orders to purchase Creation Units of the Fund must be received by FDC or its agent no later than the closing time of regular trading hours on the NYSE (ordinarily 4:00 p.m. Eastern time), or one hour prior to the closing time (ordinarily 3:00 p.m. Eastern time) in the case of nonconforming orders,[50] in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

The redemption proceeds for a Creation Unit generally will consist of an in-kind transfer Fund Securities—as announced by the Fund on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of the request in proper form, and the value of the Fund Securities (''Cash Redemption Amount''), less a redemption transaction fee and any applicable variable fee. In the event that the Fund Securities have a value greater than the NAV of the Shares being redeemed, a compensating cash payment to the Fund equal to the differential plus the applicable redemption transaction fee is required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, the Fund will substitute a cash-in-lieu amount to replace any Fund Security that is a non-deliverable instrument. Non-deliverable instruments will be part of the Cash Component.

An order to redeem Creation Units will be deemed received by the Fund on the transmittal date if such order is received in proper form by the transfer agent not later than 4:00 p.m. Eastern time (or one hour prior to the closing time (ordinarily 3:00 p.m. Eastern time) for nonconforming orders) on such transmittal date and other applicable requirements are met.

The right of redemption may be suspended or the date of payment postponed with respect to the Fund (i) for any period during which the NYSE is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the shares or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as is permitted by the Commission.

Availability of Information

The Trust's Web site (*www.fidelity.com*), which will be publicly available, will include a form of the prospectus for the Fund that may be downloaded. The Trust's Web site will include additional quantitative information updated on a daily basis, including, on a per Share basis for the Fund, the prior business day's NAV and the market closing price or, if that is unavailable, the mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[51] and a calculation of the premium or discount of the market closing price, or if that is unavailable, the Bid/Ask Price against the NAV. On each business day, before commencement of trading in Shares in the ''Core Trading Session'' (9:30 a.m. Eastern time to 4:00 p.m. Eastern time) on the Exchange, the Fund will disclose on the Trust's Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600 (c) (2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[52]

On a daily basis, the Fund will disclose for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares (if applicable) and dollar value of each of the securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and underlying equity securities that are U.S. exchange listed, including ETFs, ETPs, ETNs, and ADRs and exchange-traded REITs, exchange-traded preferred securities, and exchange-traded convertible securities will be available via the Consolidated Tape Association (''CTA'') high speed line. Quotation and last sale information for such U.S. exchange-listed securities, as well as futures will be available from the exchange on which they are listed. Quotation and last sale information for exchange-listed options will be available via the Options Price Reporting Authority.

Quotation information for OTC-Traded Securities, OTC-traded derivative securities (such as options, swaps, forwards and currency-related derivatives), and investment company securities (excluding ETFs), may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The U.S. dollar value of foreign securities, instruments and currencies can be derived by using foreign currency exchange rate quotations obtained from nationally recognized pricing services.

In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading

[50] A nonconforming order may be placed by an Authorized Participant in the event that the Fund permits the substitution of an amount of cash to be added to the Cash Component to replace any Deposit Security. The Fund reserves the right to permit the substitution of an amount of cash (*i.e.,* a cash in lieu amount) to replace any Deposit Security which may, among other reasons, not be available in sufficient quantity for delivery, not be eligible for transfer through the systems of DTC, the Federal Reserve System or the clearing process, not be permitted to be re-registered in the name of the Trust as a result of an in-kind purchase order pursuant to local law or market convention, restricted under the securities laws or which may not be eligible for trading by an Authorized Participant or the investor for which it is acting.

[51] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[52] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Session.[53] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the approximate value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[54] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [55] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. [56]

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[57] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying exchange-traded options, futures, exchange-traded equity securities (including ADRs, EDRs and GDRs), and other exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying exchange-traded options, futures, exchange-traded equity securities (including ADRs, EDRs and GDRs), and other exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded options, futures, exchange-traded equity securities (including ADRs, EDRs and GDRs), and other exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[58] In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

Not more than 10% of the net assets of the Fund in the aggregate shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be

[53] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from the CTA or other data feeds.

[54] *See* NYSE Arca Equities Rule 7.12.

[55] 17 CFR 240.10A–3.

[56] The term ''Disclosed Portfolio'' is defined in NYSE Arca Equities Rule 8.600(c)(2).

[57] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[58] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

calculated after 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [59] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying exchange-traded options, futures, exchange-traded equity securities (including ADRs, EDRs and GDRs), and other exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying exchange-traded options, futures, exchange-traded equity securities (including ADRs, EDRs and GDRs), and other exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded options, futures, exchange-traded equity securities (including ADRs, EDRs and GDRs), and other exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

FMR normally will invest at least 80% of assets in investment-grade corporate bonds and other corporate debt securities. The Manager and the Sub-Advisers are affiliated with one or more broker-dealers and have implemented a fire wall with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Manager or Sub-Adviser. Any foreign equity securities in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG or parties to a comprehensive surveillance sharing agreement. The Fund will invest only in ADRs, EDRs and GDRs that are traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Not more than 10% of the net assets of the Fund in the aggregate shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares and underlying securities that are U.S. exchange listed, including ETFs, ETPs, ETNs, ADRs, EDRs, GDRs, exchange-traded REITs, exchange-traded preferred securities, and exchange-traded convertible securities, will be available via the CTA high speed line. Quotation and last sale information for such U.S. exchange-listed securities as well as futures will be available from the exchange on which they are listed. Quotation and last sale information for exchange-listed options will be available via the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for Debt Securities; restricted securities; OTC-traded REITs; OTC-traded preferred securities; OTC-traded derivative securities, including options, swaps, and currency-related derivatives; forwards; and investment company securities (other than ETFs).

Moreover, the Portfolio Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on the Trust's Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. The Trust's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

[59] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of another actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days after publication (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2014–47. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–NYSEArca-2014–47, and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10360 Filed 5–5–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72050; File No. SR–NYSEARCA–2014–48]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Adding New Paragraphs (j) and (k) to Rule 7.10, Entitled ''Clearly Erroneous Executions

April 30, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 21, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''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 add new paragraphs (j) and (k) to Rule 7.10, entitled ''Clearly Erroneous Executions.'' The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add new paragraph (j) to Rule 7.10 to provide the Exchange with authority to nullify transactions that were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information even if such transactions occur over a period of several days, as further described below. An example of fundamentally incorrect and grossly misinterpreted issuance information that led to a severe valuation error is included below for illustrative purposes.

The Exchange also proposes to add new paragraph (k) to Rule 7.10 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause (hereafter generally referred to as a ''trading halt'' for ease of reference), the

[60] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt with respect to such security. In the event a trading halt is declared, then prematurely lifted in error, and then re-instituted, proposed paragraph (k) would also result in nullification of any transactions that occur before the official, final end of the trading halt according to the primary listing market.

The Exchange also proposes a change to certain cross-references in Rule 7.10, due to the addition of (j) and (k). Specifically, the Exchange proposes to update cross-references in existing paragraph (i) of Rule 7.10 in order to make clear that the provisions of paragraph (i) do not alter the application of other provisions of Rule 7.10, including new paragraphs (j) and (k).

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 7.10 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[4] The Exchange also adopted additional changes to Rule 7.10 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 7.10,[5] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[6] Most recently, the Exchange removed the specific provisions related to individual stock trading pauses and extended the pilot program to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions thereof, applicable to certain provisions of Rule 7.10.[7]

As proposed, similar to other provisions added in recent years, as described above, both paragraph (j) and paragraph (k) would be subject to the pilot period, and thus, would coincide with the pilot period for the Limit Up-Limit Down Plan, unless extended or made permanent.

Executions Based on Incorrect or Grossly Misinterpreted Issuance Information

The Exchange proposes to adopt a new provision, paragraph (j), to Rule 7.10, which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, an Officer, acting on his or her own motion, would be required to take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the Officer would be required to take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. The Exchange proposes to make clear that no action can be taken pursuant to proposed paragraph (j) with respect to any transactions that have reached settlement date for the security or that result from an initial public offering of a security. The Exchange believes that declaring a trade null and void after settlement date would be complex to administer and unfair to the affected parties. The Exchange also believes that excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no benchmark information are not called into question, as it is the IPO process itself, including the extensive public disclosure associated with IPOs, that is intended to drive price formation.

Further, the Exchange proposes that to the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. The Exchange also proposes to state in the Rule that any action taken in connection with paragraph (j) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 7.10. In particular, the Exchange believes that there could be scenarios where there are erroneous transactions related to an Event that do not meet applicable Numerical Guidelines but that are, upon review, clearly erroneous. One example of a situation that could occur is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to erroneous transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet applicable Numerical Guidelines, the Exchange would have the authority to nullify such transactions if they were affected based on the same fundamentally incorrect or grossly misinterpreted issuance information and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action the security continues to trade at a price that does not meet applicable Numerical Guidelines).

The Exchange also proposes to include a provision, as it does in many other sub-paragraphs of Rule 7.10, stating that each ETP Holder involved in a transaction subject to proposed paragraph (j) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 7.10(e)(2).

In particular, the Exchange believes it is necessary to have authority to nullify trades that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the New York Stock Exchange (''NYSE'') in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information. As a result of such information, the securities traded at severely dislocated prices. At the time, the NYSE filed an emergency rule filing in order to respond to that event.[8] With the filing the NYSE interpreted the rule applicable to clearly erroneous executions as permitting the NYSE to nullify all trades resulting after the Exchange Offer at severely dislocated

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSEArca–2010–58).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 68809 (Feb. 1, 2013), 78 FR 9081 (Feb. 7, 2013) (SR–NYSEArca–2013–12); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* Exchange Rule 7.10(i).

[7] Paragraphs (c), (e)(2), (f), (g), and (i) of Rule 7.10 are currently subject to a pilot program. *See* Securities Exchange Act Release No. 70518 (September 26, 2013), 78 FR 60950 (October 2, 2013) (SR–NYSEArca–2013–100); Securities Exchange Act Release No. 71807 (March 26, 2014), 79 FR 18087 (March 21, 2014) [sic] (SR–NYSEArca–2014–32).

[8] *See* Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (August 5, 2010) (SR–NYSE–2010–55).

prices.[9] The Exchange believes it is important to have in place a rule to break such trades if an event like the U.S. Bancorp event occurs again in the future. The U.S. Bancorp event is described in further detail below and is intended to be illustrative of the manner in which the Exchange proposes to utilize proposed paragraph (j), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17 and 18, 2010. On June 18, 2010, NYSE staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an $800 price. Upon learning of the pricing disparity, NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

In order to address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous execution rule such that the trading in Depository Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation (the ''U.S. Bancorp Event'').[10] Because the Depository Shares were halted before the price of the Depository Shares ceased to be dislocated, and remain halted, the NYSE was able to review trading in Depository Shares and declare null and void all trading in the U.S. Bancorp Event before the security resumed trading.

Rather than filing a proposal in response to a similar event happening again, the Exchange proposes to add paragraph (j) in order to nullify transactions consistent with the description of the proposed Rule above.

Executions After a Trading Halt Has Been Declared

The Exchange proposes to add new paragraph (k) to Rule 7.10 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt, the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt with respect to such security has officially ended according to the primary listing market. In addition, proposed paragraph (k) will make clear that in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, the Exchange will nullify transactions that occur before the official, final end of the trading halt according to the primary listing market.

As with other provisions in Rule 7.10, including proposed paragraph (j) as discussed above, the authority to nullify transactions pursuant to paragraph (k) would be vested in an Officer, acting on his or her own motion. Any action taken in connection with paragraph (k) would be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of Core Trading Hours [11] on the trading day following the date of execution(s) under review. The Exchange also proposes to specify that any action taken in connection with proposed paragraph (k) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 7.10. The Exchange believes it is appropriate to act to nullify transactions pursuant to proposed paragraph (k) without regard to applicable Numerical Guidelines because in the situations covered by paragraph (k), such transactions should not have occurred in the first instance, and thus, their nullification does not put parties in any different position than they should have been. The Exchange also believes that the certainty that the proposed rule provides is critical in situations involving trading halts.

As it has proposed for paragraph (j), as described above, the Exchange also proposes to an [sic] include a provision stating that each ETP Holder involved in a transaction subject to proposed paragraph (k) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 7.10(e)(2).

The Exchange notes that trading in a security is typically halted immediately on the Exchange when the primary listing market issues a trading halt in such security. However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, executions can occur on the Exchange following the declaration of such a trading halt. Similarly, although rare, the Exchange has witnessed scenarios where due to extraordinary circumstances a trading halt is declared, then prematurely lifted in error and then re-instituted. It is these types of extraordinary circumstances that the Exchange believes require certainty, and thus, the Exchange believes it necessary to make clear that in such a circumstance any transactions after a trading halt has been declared will be nullified. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), the Exchange would only nullify transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market.

The Exchange also notes that it currently has authority pursuant to paragraph (f) of Rule 7.10 to review and nullify transactions that arise during a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange. Further, paragraph (f) of Rule 7.10 gives the Exchange authority to use a lower numerical guideline than is set forth in paragraph (c)(1) of the Rule when necessary to maintain a fair and orderly market and to protect investors and the public interest. Thus, while the Exchange believes that paragraph (f) does give the Exchange the authority to nullify transactions occurring when there is an Exchange technical issue related to the transmission or receipt of the electronic message instituting a trading halt or with respect to a technical issue related to a prematurely lifted trading halt, the Exchange believes that proposed paragraph (k) will provide appropriate authority for the Exchange to nullify all such transactions whether or not the systems problem occurs on the Exchange with respect to trading halts

[9] *Id.*

[10] *Id.*

[11] The Core Trading Hours on the Exchange are defined in Rule 1.1(j) and is generally the time between 6:30 a.m. to 1:00 p.m. P.T.

and explicit clarity for market participants that such transactions will be nullified. The Exchange believes that such authority is appropriate because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. Finally, the Exchange believes that such authority is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[13] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that it is appropriate to adopt a provision granting the Exchange authority to nullify trades that occur if an Event similar to the U.S. Bancorp Event occurs again. The Exchange believes that this provision will allow the Exchange to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade and that the proposal is therefore consistent with the Act. Similarly, the Exchange believes that adding a provision allowing the Exchange to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and providing that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt the Exchange will nullify trades occurring after a trading halt has been declared by the primary listing market for the security will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. The Exchange further believes that the proposal is appropriate and consistent with the Act because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. The Exchange also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

The Exchange believes that the proposal to update cross-references in existing paragraph (i) of Rule 7.10 to include new paragraphs (j) and (k) is consistent with the Act because, as is the case with respect to the current rule, this change makes clear that the provisions of paragraph (i) do not alter the application of other provisions of Rule 7.10.

The Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals to add provisions similar to the provisions proposed by the Exchange above. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning treatment of transactions as clearly erroneous. The proposed rule change would also help to assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, the Exchange believes FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2014–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2014–48. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–NYSEARCA–2014–48 and should be submitted on or before May 27, 2014.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10286 Filed 5–5–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72057; File No. SR–FINRA–2014–021]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)

April 30, 2014.

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 April 17, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Rule 11892 to add new provisions to address multi-day clearly erroneous events, transactions occurring during trading halts, and to make non-substantive clarifications to the rule.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing amendments to Rule 11892 (the ''Rule'') to add new paragraphs (c) and (d) to provide FINRA authority to: (1) Declare as null and void transactions effected on one or more trading days that were based on the same fundamentally incorrect or grossly misinterpreted issuance information, and (2) in the event of a disruption or malfunction in the operation of the electronic communication and trading facilities of a self-regulatory organization or responsible single plan processor in connection with transmittal or receipt of a regulatory halt, suspension or pause (*i.e.,* a ''trading halt''), declare as null and void any transactions that occur after the primary listing market for a security declares a trading halt with respect to such security.[3] FINRA also is proposing to make non-substantive clarifications to the text of the Rule.

FINRA also proposes a change to certain cross-references in the Rule, due to the addition of paragraphs (c) and (d). Specifically, FINRA proposes to update cross-references in existing Rule 11892.03 in order to make clear that the provisions of Supplementary Material .03 do not alter the application of other provisions of Rule 11892, including new paragraphs (c) and (d).

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to FINRA Rule 11892 to provide for uniform treatment of clearly erroneous reviews: (1) In multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect.[4] FINRA also adopted additional changes to Rule 11892 that reduced FINRA's ability to deviate from the objective standards set forth in the Rule[5] and, in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[6] Most recently, FINRA removed the specific provisions related to individual stock trading pauses and extended until April 8, 2014 the pilot program applicable to certain provisions of Rule 11892.[7]

As proposed, new paragraphs Rule 11892(c) and (d) would be subject to the existing clearly erroneous pilot period, which recently was amended to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan.[8]

Multi-Day Clearly Erroneous Executions Based on Fundamentally Incorrect or Grossly Misinterpreted Issuance Information

FINRA proposes to adopt a new paragraph (c) to Rule 11892 (Multi-day Events), which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, a FINRA officer, acting on his or her own motion, would be required to take action to declare all transactions in a security that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the FINRA officer would be required to take action to declare all transactions in that security that occurred during the Event null and void prior to the resumption of trading. FINRA proposes to make clear that no action can be taken pursuant to proposed paragraph (c) with respect to any transactions that

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In the event a trading halt is declared, prematurely lifted in error, and then re-instituted, under proposed paragraph (d), any transactions that occurred before the official, final end of the trading halt according to the primary listing market also would be declared as null and void.

[4] *See* Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (Order Approving File No. SR–FINRA–2010–032).

[5] *Supra* note 4.

[6] *See* Securities Exchange Act Release No. 68808 (February 1, 2013), 78 FR 9083 (February 7, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–012); *See also* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[7] *See* Securities Exchange Act Release No. 70516 (September 26, 2013), 78 FR 60952 (October 2, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–041).

[8] *See* Securities Exchange Act Release No. 71781 (March 24, 2014), 79 FR 17615 (March 28, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2014–013).

have reached the settlement date for the security or that result from an initial public offering (''IPO'') of a security. FINRA believes that declaring a trade null and void after the settlement date would be complex to administer and unfair to the affected parties. FINRA also believes that excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no benchmark information are not called into question as it is the IPO process itself including the extensive public disclosure associated with IPOs, that is intended to drive price formation.

Further, FINRA proposes that, to the extent transactions related to an Event involve one or more other self-regulatory organizations, FINRA promptly will coordinate with such other self-regulatory organizations to ensure consistent treatment of the transactions related to the Event, if practicable. FINRA also proposes to state in the Rule that any action taken in connection with paragraph (c) will be taken without regard to the numerical guidelines set forth in paragraph (b)(1) of Rule 11892. In particular, FINRA believes that there could be scenarios where there are erroneous transactions related to an Event that would not meet the applicable numerical guidelines but that are, upon review, clearly erroneous. An example of a scenario that proposed new paragraph (c) is intended to address is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet the applicable numerical guidelines, the proposal would provide FINRA with the authority to declare as null and void such transactions if they were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous price range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action, the security continues to trade at a price that does not meet the applicable numerical guidelines).

FINRA also proposes to provide that each member involved in a transaction subject to proposed paragraph (c) shall be notified as soon as practicable of a determination to declare such transaction null and void, and the party aggrieved by such action may appeal in accordance with Rule 11894.

In particular, FINRA believes it is necessary to have authority to declare as null and void transactions that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the New York Stock Exchange (''NYSE'') in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information and, as a result, the securities traded at severely dislocated prices (the ''U.S. Bancorp Event''). At the time, the NYSE filed an emergency rule filing in order to respond to that event.[9] With the filing, the NYSE interpreted its clearly erroneous rule as permitting the NYSE to nullify all trades occurring after the Exchange Offer at severely dislocated prices.[10] FINRA believes it is important to have in place a provision to declare trades null and void if an event like the U.S. Bancorp Event occurs again in the future. The U.S. Bancorp Event is described in further detail below and is intended to be illustrative of the manner in which FINRA proposes to utilize proposed paragraph (c), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17, 2010 and June 18, 2010. On June 18th, the NYSE learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to $800 per share. Upon learning of the pricing disparity, the NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

To address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous rule such that trading in the Depository Shares from June 16th to June 18th constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation.[11] Because the Depository Shares were halted before the price of the Depository Shares ceased to be dislocated, and remained halted, the NYSE was able to review trading in the Depository Shares and declare as null and void all trading related to the U.S. Bancorp Event before the security resumed trading. FINRA believes it is appropriate to include in Rule 11892 the authority to address such an event should a similar situation arise in the future.

Transactions Occurring After a Trading Halt Has Been Declared

FINRA proposes to add new paragraph (d) to Rule 11892 (Transactions Occurring During Trading Halts) to make clear that, in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of a self-regulatory organization or responsible single plan processor in connection with the transmittal or receipt of a trading halt, a FINRA officer, acting on his or her own motion, shall declare as null and void any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt with respect to such security has officially ended according to the primary listing market.

In addition, proposed paragraph (d) will make clear that, in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, FINRA will declare as null and void all transactions that occur before the official, final end of the trading halt according to the primary listing market. Any action taken in connection with paragraph (d) must be taken in a timely fashion, generally within thirty minutes of the detection of the erroneous transaction and in no circumstances later than the start of normal market hours[12] on the trading day following the date of the execution(s) under review. FINRA also proposes to specify that any action taken in connection with proposed paragraph (d) will be taken without regard to the numerical guidelines set forth in paragraph (b)(1) of Rule 11892. FINRA believes it is appropriate to declare transactions pursuant to

[9] *See* Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (August 5, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSE–2010–55).

[10] *Supra* note 9.

[11] *Supra* note 9.

[12] Normal market hours are from 9:30 a.m. E.T. to 4:00 p.m. E.T.

proposed paragraph (d) as null and void without regard to the numerical guidelines because, in the situations covered by paragraph (d), the subject transactions were prohibited from occurring during a trading halt and, thus, declaring them null and void does not put the parties in any different position than they should have been. FINRA also believes that the certainty provided by this provision is critical in situations involving trading halts. FINRA proposes that each member involved in a transaction subject to proposed paragraph (d) shall be notified by FINRA as soon as practicable of a determination to declare a transaction(s) as null and void, and the party aggrieved by such action may appeal the action in accordance with Rule 11894.

FINRA rules provide authority to halt over-the-counter trading in an exchange-listed security in certain cases, including when the primary listing market issues a trading halt in the security.[13] However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, members may execute transactions over the counter following the declaration of such a trading halt. Similarly, although rare, there have been extraordinary circumstances in which a trading halt is declared, then prematurely lifted in error, and then re-instituted. FINRA believes it is appropriate to provide for certainty that, in such extraordinary circumstances, any transactions occurring after a trading halt has been declared will be deemed null and void. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), FINRA would nullify only those transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market. FINRA believes that such authority is appropriate because, when relied upon, FINRA will be nullifying trades that should not have occurred in the first instance and because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities. Finally, FINRA is making non-substantive amendments to the rule to simplify and clarify the text.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

FINRA believes that it is appropriate to adopt a provision granting FINRA authority to declare as null and void trades that occur if an event similar to the U.S. Bancorp Event occurs again. FINRA believes that this provision will allow FINRA to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade; and that the proposal is, therefore, consistent with the Act. Similarly, FINRA believes that adding a provision: (1) Allowing FINRA to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and (2) providing that, in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of a self-regulatory organization or responsible single plan processor in connection with the transmittal or receipt of a trading halt, FINRA will nullify trades occurring after a trading halt has been declared by the primary listing market for the security—will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore is consistent with the Act.

FINRA further believes that the proposal is appropriate and consistent with the Act because, when relied upon, FINRA will be nullifying trades that should not have occurred in the first instance. FINRA also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

FINRA believes that the proposal to update cross-references in existing Supplementary Material .03 of Rule 11892 to include new paragraphs (c) and (d) is consistent with the Act because, as is the case with respect to the current Rule, this change makes clear that the provisions of Supplementary Material .03 do not alter the application of other provisions of Rule 11892. Finally, FINRA believes that the proposed non-substantive clarifications are consistent with the Act in that they provide the market with clarity as to the intended operation of the Rule.

FINRA believes that other self-regulatory organizations also are filing similar proposals to add provisions similar to the provisions being proposed by FINRA in this filing. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across the self-regulatory organizations concerning treatment of transactions as clearly erroneous. The proposed rule change also helps ensure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, FINRA believes that other self-regulatory organizations also are filing similar proposals and, thus, that the proposal will help to ensure consistency across markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA has not solicited, and does not intend to solicit, comments on this proposed rule change. FINRA has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule

[13] *See* FINRA Rules 6120 and 6121.

[14] 15 U.S.C. 78*o*–3(b)(6).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–021. 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 the filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2014–021 and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10293 Filed 5–5–14; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72047; File No. SR–EDGA–2014–11]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 11.13, Entitled ''Clearly Erroneous Executions''

April 30, 2014.

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 April 17, 2014, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to add new paragraphs (j) and (k) to Rule 11.13, entitled ''Clearly Erroneous Executions.'' The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add new paragraph (j) to Rule 11.13 to provide the Exchange with authority to nullify transactions that were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information, even if such transactions occur over a period of several days, as further described below. An example of fundamentally incorrect and grossly misinterpreted issuance information that led to a severe valuation error is included below for illustrative purposes.

The Exchange also proposes to add new paragraph (k) to Rule 11.13 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause (hereafter generally referred to as a ''trading halt'' for ease of reference), the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt with respect to such security. In the event a trading halt is declared, then prematurely lifted in error, and then re-instituted, proposed paragraph (k) would also result in nullification of any transactions that occur before the official, final end of the trading halt according to the primary listing market.

The Exchange also proposes a change to certain cross-references in Rule 11.13, due to the addition of paragraphs (j) and (k). Specifically, the Exchange proposes to update cross-references in existing paragraph (i) of Rule 11.13 in order to make clear that the provisions of paragraph (i) do not alter the application of other provisions of Rule 11.13, including new paragraphs (j) and (k).

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11.13 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[3] The Exchange also adopted additional changes to Rule 11.13 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.13,[4] and in 2013, adopted a provision designed to address the operation of the Plan to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGA–2010–03).

[4] *Id.*

Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[5] The Exchange recently removed the specific provisions related to individual stock trading pauses and extended to April 8, 2014 the pilot program applicable to certain provisions of Rule 11.13.[6] More recently, the Exchange further extended the pilot program to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.[7]

As proposed, similar to other provisions added in recent years, as described above, both paragraph (j) and paragraph (k) would be subject to the pilot period, and thus, would coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.[8]

Executions Based on Incorrect or Grossly Misinterpreted Issuance Information

The Exchange proposes to adopt a new provision, paragraph (j), to Rule 11.13, which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, would be required to take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the Officer of the Exchange or senior level employee designee would be required to take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. The Exchange proposes to make clear that no action can be taken pursuant to proposed paragraph (j) with respect to any transactions that have reached settlement date for the security or that result from an initial public offering of a security. The Exchange believes that declaring a trade null and void after settlement date would be complex to administer and unfair to the affected parties. The Exchange also believes that excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no benchmark information are not called into question, as it is the IPO process itself, including the extensive public disclosure associated with IPOs, that is intended to drive price formation.

Further, the Exchange proposes that to the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. The Exchange also proposes to state in the Rule that any action taken in connection with paragraph (j) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 11.13. In particular, the Exchange believes that there could be scenarios where there are erroneous transactions related to an Event that do not meet applicable Numerical Guidelines but that are, upon review, clearly erroneous. One example of a situation that could occur is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to erroneous transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet applicable Numerical Guidelines, the Exchange would have the authority to nullify such transactions if they were affected based on the same fundamentally incorrect or grossly misinterpreted issuance information, and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action the security continues to trade at a price that does not meet applicable Numerical Guidelines).

The Exchange also proposes to include a provision, as it does in many other sub-paragraphs of Rule 11.13, stating that each Member involved in a transaction subject to proposed paragraph (j) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11.13(e)(2).

In particular, the Exchange believes it is necessary to have authority to nullify trades that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the New York Stock Exchange (''NYSE'') in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information. As a result of such information, the securities traded at severely dislocated prices. At the time, the NYSE filed an emergency rule filing in order to respond to that event.[9] With the filing the NYSE interpreted the rule applicable to clearly erroneous executions as permitting the NYSE to nullify all trades resulting after the Exchange Offer at severely dislocated prices.[10] The Exchange believes it is important to have in place a rule to break such trades if an event like the U.S. Bancorp event occurs again in the future. The U.S. Bancorp event is described in further detail below and is intended to be illustrative of the manner in which the Exchange proposes to utilize proposed paragraph (j), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17 and 18, 2010. On June 18, 2010, NYSE staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an $800 price. Upon learning of the pricing disparity, NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other

[5] *See* Securities Exchange Act Release No. 68813 (February 1, 2013), 78 FR 9073 (February 7, 2013) (SR–EDGA–2013–06); *see* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* Exchange Rule 11.13(i).

[6] Paragraphs (c), (e)(2), (f), (g), and (i) of Rule 11.13 are subject to the pilot program. *See* Securities Exchange Act Release No. 70512 (September 26, 2013), 78 FR 60965 (October 2, 2013) (SR–EDGA–2013–28).

[7] *See* Securities Exchange Act Release No. 71808 (March 26, 2014), 79 FR 18355 (April 1, 2014) (SR–EDGA–2014–006).

[8] *Id.*

[9] Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (August 5, 2010) (SR–NYSE–2010–55).

[10] *Id.*

exchanges that traded the Depositary Shares of the pricing discrepancy.

In order to address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous execution rule such that the trading in Depository Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation (the ''U.S. Bancorp Event'').[11] Because the Depository Shares were halted before the price of the Depository Shares ceased to be dislocated, and remain halted, the NYSE was able to review trading in Depository Shares and declare null and void all trading in the U.S. Bancorp Event before the security resumed trading.

Rather than filing a proposal in response to a similar event happening again, the Exchange proposes to add paragraph (j) in order to nullify transactions consistent with the description of the proposed Rule above.

Executions After a Trading Halt Has Been Declared

The Exchange proposes to add new paragraph (k) to Rule 11.13 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt, the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt with respect to such security has officially ended according to the primary listing market. In addition, proposed paragraph (k) will make clear that in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, the Exchange will nullify transactions that occur before the official, final end of the trading halt according to the primary listing market.

As with other provisions in Rule 11.13, including proposed paragraph (j) as discussed above, the authority to nullify transactions pursuant to paragraph (k) would be vested in an officer of the Exchange or other senior level employee designee, acting on his or her own motion. Any action taken in connection with paragraph (k) would be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of Regular Trading Hours[12] on the trading day following the date of execution(s) under review. The Exchange also proposes to specify that any action taken in connection with proposed paragraph (k) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 11.13. The Exchange believes it is appropriate to act to nullify transactions pursuant to proposed paragraph (k) without regard to applicable Numerical Guidelines because in the situations covered by paragraph (k), such transactions should not have occurred in the first instance, and thus, their nullification does not put parties in any different position than they should have been. The Exchange also believes that the certainty that the proposed rule provides is critical in situations involving trading halts.

As it has proposed for paragraph (j), as described above, the Exchange also proposes to include a provision stating that each Member involved in a transaction subject to proposed paragraph (k) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11.13(e)(2).

The Exchange notes that trading in a security is typically halted immediately on the Exchange when the primary listing market issues a trading halt in such security. However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, executions can occur on the Exchange following the declaration of such a trading halt. Similarly, although rare, the Exchange has witnessed scenarios where due to extraordinary circumstances a trading halt is declared, then prematurely lifted in error and then re-instituted. It is these types of extraordinary circumstances that the Exchange believes require certainty, and thus, the Exchange believes it necessary to make clear that in such a circumstance any transactions after a trading halt has been declared will be nullified. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), the Exchange would only nullify transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market.

The Exchange also notes that it currently has authority pursuant to paragraph (f) of Rule 11.13 to review and nullify transactions that arise during a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange. Further, paragraph (f) of Rule 11.13 gives the Exchange authority to use a lower numerical guideline than is set forth in paragraph (c)(1) of the Rule when necessary to maintain a fair and orderly market and to protect investors and the public interest. Thus, while the Exchange believes that paragraph (f) does give the Exchange the authority to nullify transactions occurring when there is an Exchange technical issue related to the transmission or receipt of the electronic message instituting a trading halt or with respect to a technical issue related to a prematurely lifted trading halt, the Exchange believes that proposed paragraph (k) will provide appropriate authority for the Exchange to nullify all such transactions whether or not the systems problem occurs on the Exchange with respect to trading halts and explicit clarity for market participants that such transactions will be nullified. The Exchange believes that such authority is appropriate because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. Finally, the Exchange believes that such authority is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[13] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[14] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that it is appropriate to adopt a provision granting the Exchange authority to nullify trades that occur if an Event similar to the U.S. Bancorp Event occurs

[11] *Id.*

[12] Regular Trading Hours are defined in Exchange Rule 1.5(y) as the time between 9:30 a.m. to 4:00 p.m. E.T.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

again. The Exchange believes that this provision will allow the Exchange to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade and that the proposal is therefore consistent with the Act. Similarly, the Exchange believes that adding a provision allowing the Exchange to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and providing that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt the Exchange will nullify trades occurring after a trading halt has been declared by the primary listing market for the security will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. The Exchange further believes that the proposal is appropriate and consistent with the Act because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. The Exchange also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

The Exchange believes that the proposal to update cross-references in existing paragraph (i) of Rule 11.13 to include new paragraphs (j) and (k) is consistent with the Act because, as is the case with respect to the current rule, this change makes clear that the provisions of paragraph (i) do not alter the application of other provisions of Rule 11.13.

The Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals to add provisions similar to the provisions proposed by the Exchange above. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning treatment of transactions as clearly erroneous. The proposed rule change would also help to assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, the Exchange believes FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2014–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2014–11. 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. 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 available publicly. All submissions should refer to File Number SR–EDGA–2014–11, and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10283 Filed 5–5–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72045; File No. SR–BYX–2014–007]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 11.17, Entitled ''Clearly Erroneous Executions''

April 30, 2014.

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 April 17, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to add new paragraphs (i) and (j) to Rule 11.17, entitled ''Clearly Erroneous Executions.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add new paragraph (i) to Rule 11.17 to provide the Exchange with authority to nullify transactions that were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information even if such transactions occur over a period of several days, as further described below. An example of fundamentally incorrect and grossly misinterpreted issuance information that led to a severe valuation error is included below for illustrative purposes.

The Exchange also proposes to add new paragraph (j) to Rule 11.17 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause (hereafter generally referred to as a ''trading halt'' for ease of reference), the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt with respect to such security. In the event a trading halt is declared, then prematurely lifted in error, and then re-instituted, proposed paragraph (j) would also result in nullification of any transactions that occur before the official, final end of the trading halt according to the primary listing market.

The Exchange also proposes a change to certain cross-references in Rule 11.17, due to the addition of paragraphs (i) and (j). Specifically, the Exchange proposes to update cross-references in existing paragraph (h) of Rule 11.17 in order to make clear that the provisions of paragraph (h) do not alter the application of other provisions of Rule 11.17, including new paragraphs (i) and (j).

Background

On October 4, 2010, the Exchange filed an immediately effective filing to adopt various rule changes to bring BYX Rules up to date with the changes that had been made to the rules of BATS Exchange, Inc., the Exchange's affiliate, while BYX's Form 1 Application to register as a national security exchange was pending approval. Such changes included changes to the Exchange's Rule 11.17, on a pilot basis, to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[3] The Exchange also adopted additional changes to Rule 11.17 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.17,[4] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[5] The Exchange recently removed the specific provisions related to individual stock trading pauses and extended to April 8, 2014 the pilot program applicable to certain provisions of Rule 11.17.[6] More recently, the Exchange further extended the pilot program to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.[7]

As proposed, similar to other provisions added in recent years, as described above, both paragraph (i) and paragraph (j) would be subject to the pilot period, and thus, would coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.[8]

Executions Based on Incorrect or Grossly Misinterpreted Issuance Information

The Exchange proposes to adopt a new provision, paragraph (i), to Rule 11.17, which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, would be required to take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the Officer of the Exchange or senior level employee designee would be required to take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. The Exchange proposes to make clear that no action can be taken pursuant to proposed paragraph (i) with respect to any transactions that have reached settlement date for the security or that result from an initial public offering of a security. The Exchange believes that declaring a trade null and void after settlement date would be complex to administer and unfair to the affected parties. The Exchange also believes that excluding IPOs from the proposed rule will ensure that transactions in a new

[3] Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR–BYX–2010–002).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 68798 (Jan. 31, 2013), 78 FR 8628 (Feb. 6, 2013) (SR–BYX–2013–005); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* BYX Rule 11.17(h).

[6] Paragraphs (c), (e)(2), (f), (g), and (h) of Rule 11.17 are subject to the pilot program. *See* Securities Exchange Act Release No. 70514 (September 26, 2013), 78 FR 60963 (October 2, 2013) (SR–BYX–2013–033).

[7] *See* Securities Exchange Act Release No. 71796 (March 25, 2014), 79 FR 18099 (March 31, 214 [sic]) (SR–BYX–2014–003).

[8] *Id.*

security for which there is no benchmark information are not called into question, as it is the IPO process itself, including the extensive public disclosure associated with IPOs, that is intended to drive price formation.

Further, the Exchange proposes that to the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. The Exchange also proposes to state in the Rule that any action taken in connection with paragraph (i) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 11.17. In particular, the Exchange believes that there could be scenarios where there are erroneous transactions related to an Event that do not meet applicable Numerical Guidelines but that are, upon review, clearly erroneous. One example of a situation that could occur is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to erroneous transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet applicable Numerical Guidelines, the Exchange would have the authority to nullify such transactions if they were affected based on the same fundamentally incorrect or grossly misinterpreted issuance information and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action the security continues to trade at a price that does not meet applicable Numerical Guidelines).

The Exchange also proposes to include a provision, as it does in many other sub-paragraphs of Rule 11.17, stating that each Member involved in a transaction subject to proposed paragraph (i) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11.17(e)(2).

In particular, the Exchange believes it is necessary to have authority to nullify trades that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the New York Stock Exchange (''NYSE'') in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information. As a result of such information, the securities traded at severely dislocated prices. At the time, the NYSE filed an emergency rule filing in order to respond to that event.[9] With the filing the NYSE interpreted the rule applicable to clearly erroneous executions as permitting the NYSE to nullify all trades resulting after the Exchange Offer at severely dislocated prices.[10] The Exchange believes it is important to have in place a rule to break such trades if an event like the U.S. Bancorp event occurs again in the future. The U.S. Bancorp event is described in further detail below and is intended to be illustrative of the manner in which the Exchange proposes to utilize proposed paragraph (i), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17 and 18, 2010. On June 18, 2010, NYSE staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an $800 price. Upon learning of the pricing disparity, NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

In order to address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous execution rule such that the trading in Depository Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation (the ''U.S. Bancorp Event'').[11] Because the Depository Shares were halted before the price of the Depository Shares ceased to be dislocated, and remain halted, the NYSE was able to review trading in Depository Shares and declare null and void all trading in the U.S. Bancorp Event before the security resumed trading.

Rather than filing a proposal in response to a similar event happening again, the Exchange proposes to add paragraph (i) in order to nullify transactions consistent with the description of the proposed Rule above.

Executions After a Trading Halt Has Been Declared

The Exchange proposes to add new paragraph (j) to Rule 11.17 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt, the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt with respect to such security has officially ended according to the primary listing market. In addition, proposed paragraph (j) will make clear that in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, the Exchange will nullify transactions that occur before the official, final end of the trading halt according to the primary listing market.

As with other provisions in Rule 11.17, including proposed paragraph (i) as discussed above, the authority to nullify transactions pursuant to paragraph (j) would be vested in an officer of the Exchange or other senior level employee designee, acting on his or her own motion. Any action taken in connection with paragraph (j) would be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of Regular Trading Hours [12] on the trading day following the date of execution(s) under review. The Exchange also proposes to specify that any action taken in connection with proposed paragraph (j) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 11.17. The Exchange believes it is appropriate to act to nullify transactions pursuant to proposed paragraph (j) without regard to

[9] Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (August 5, 2010) (SR–NYSE–2010–55).

[10] *Id.*

[11] *Id.*

[12] Regular Trading Hours are defined in Exchange Rule 1.5(w) as the time between 9:30 a.m. to 4:00 p.m. E.T.

applicable Numerical Guidelines because in the situations covered by paragraph (j), such transactions should not have occurred in the first instance, and thus, their nullification does not put parties in any different position than they should have been. The Exchange also believes that the certainty that the proposed rule provides is critical in situations involving trading halts.

As it has proposed for paragraph (i), as described above, the Exchange also proposes to include a provision stating that each Member involved in a transaction subject to proposed paragraph (j) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11.17(e)(2).

The Exchange notes that trading in a security is typically halted immediately on the Exchange when the primary listing market issues a trading halt in such security. However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, executions can occur on the Exchange following the declaration of such a trading halt. Similarly, although rare, the Exchange has witnessed scenarios where due to extraordinary circumstances a trading halt is declared, then prematurely lifted in error and then re-instituted. It is these types of extraordinary circumstances that the Exchange believes require certainty, and thus, the Exchange believes it necessary to make clear that in such a circumstance any transactions after a trading halt has been declared will be nullified. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), the Exchange would only nullify transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market.

The Exchange also notes that it currently has authority pursuant to paragraph (f) of Rule 11.17 to review and nullify transactions that arise during a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange. Further, paragraph (f) of Rule 11.17 gives the Exchange authority to use a lower numerical guideline than is set forth in paragraph (c)(1) of the Rule when necessary to maintain a fair and orderly market and to protect investors and the public interest. Thus, while the Exchange believes that paragraph (f) does give the Exchange the authority to nullify transactions occurring when there is an Exchange technical issue related to the transmission or receipt of the electronic message instituting a trading halt or with respect to a technical issue related to a prematurely lifted trading halt, the Exchange believes that proposed paragraph (j) will provide appropriate authority for the Exchange to nullify all such transactions whether or not the systems problem occurs on the Exchange with respect to trading halts and explicit clarity for market participants that such transactions will be nullified. The Exchange believes that such authority is appropriate because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. Finally, the Exchange believes that such authority is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[13] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[14] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that it is appropriate to adopt a provision granting the Exchange authority to nullify trades that occur if an Event similar to the U.S. Bancorp Event occurs again. The Exchange believes that this provision will allow the Exchange to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade and that the proposal is therefore consistent with the Act. Similarly, the Exchange believes that adding a provision allowing the Exchange to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and providing that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt the Exchange will nullify trades occurring after a trading halt has been declared by the primary listing market for the security will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. The Exchange further believes that the proposal is appropriate and consistent with the Act because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. The Exchange also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

The Exchange believes that the proposal to update cross-references in existing paragraph (h) of Rule 11.17 to include new paragraphs (i) and (j) is consistent with the Act because, as is the case with respect to the current rule, this change makes clear that the provisions of paragraph (h) do not alter the application of other provisions of Rule 11.17.

The Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals to add provisions similar to the provisions proposed by the Exchange above. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning treatment of transactions as clearly erroneous. The proposed rule change would also help to assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, the Exchange believes FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2014–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2014–007. 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 available publicly. All submissions should refer to File Number SR–BYX–2014–007, and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10281 Filed 5–5–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72054; File No. SR–NASDAQ–2014–044]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Add New Paragraphs (h) and (i) to Rule 11890, Entitled ''Clearly Erroneous Transactions''

April 30, 2014.

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 April 17, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add new paragraphs (h) and (i) to Rule 11890, entitled ''Clearly Erroneous Transactions.''

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com/Filings/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add new paragraph (h) to Rule 11890 to provide the Exchange with authority to nullify transactions that were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information even if such transactions occur over a period of several days, as further described below. An example of fundamentally incorrect and grossly misinterpreted issuance information that led to a severe valuation error is included below for illustrative purposes.

The Exchange also proposes to add new paragraph (i) to Rule 11890 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause (hereafter generally referred to as a ''trading halt'' for ease of reference), the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt with respect to such security. In the event a trading halt is declared, then prematurely lifted in error, and then re-instituted, proposed paragraph (i) would also result in nullification of any transactions that occur before the official, final end of the trading halt according to the primary listing market.

The Exchange also proposes a change to certain cross-references in Rule

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

11890, due to the addition of paragraphs (h) and (i). Specifically, the Exchange proposes to update cross-references in existing paragraph (g) of Rule 11890 in order to make clear that the provisions of paragraph (g) do not alter the application of other provisions of Rule 11890, including new paragraphs (h) and (i).

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11890 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[3] The Exchange also adopted additional changes to Rule 11890 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11890,[4] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[5] The Exchange removed the specific provisions related to individual stock trading pauses and extended to April 8, 2014 the pilot program applicable to certain provisions of Rule 11890.[6] Most recently, the Exchange extended the effectiveness of the pilot program under Rule 11890 to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.[7]

As proposed, similar to other provisions added in recent years, as described above, both paragraph (h) and paragraph (i) would be subject to the pilot period, and thus, will coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.

Executions Based on Incorrect or Grossly Misinterpreted Issuance Information

The Exchange proposes to adopt a new provision, paragraph (h), to Rule 11890, which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, would be required to take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the Officer of the Exchange or senior level employee designee would be required to take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. The Exchange proposes to make clear that no action can be taken pursuant to proposed paragraph (h) with respect to any transactions that have reached settlement date for the security or that result from an initial public offering of a security. The Exchange believes that declaring a trade null and void after settlement date would be complex to administer and unfair to the affected parties. The Exchange also believes that excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no benchmark information are not called into question, as it is the IPO process itself, including the extensive public disclosure associated with IPOs, that is intended to drive price formation.

Further, the Exchange proposes that to the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. The Exchange also proposes to state in the Rule that any action taken in connection with paragraph (h) will be taken without regard to the Numerical Guidelines set forth in paragraph (a)(2)(C)(1) of Rule 11890. In particular, the Exchange believes that there could be scenarios where there are erroneous transactions related to an Event that do not meet applicable Numerical Guidelines but that are, upon review, clearly erroneous. One example of a situation that could occur is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to erroneous transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet applicable Numerical Guidelines, the Exchange would have the authority to nullify such transactions if they were affected based on the same fundamentally incorrect or grossly misinterpreted issuance information and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action the security continues to trade at a price that does not meet applicable Numerical Guidelines).

The Exchange also proposes to include a provision, as it does in many other sub-paragraphs of Rule 11890, stating that each Member involved in a transaction subject to proposed paragraph (h) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11890(c).

In particular, the Exchange believes it is necessary to have authority to nullify trades that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the New York Stock Exchange (''NYSE'') in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information. As a result of such information, the securities traded at severely dislocated prices. At the time, the NYSE filed an emergency rule filing in order to respond to that event.[8] With the filing the NYSE interpreted the rule applicable to clearly erroneous executions as permitting the NYSE to nullify all trades resulting after the Exchange Offer at severely dislocated prices.[9] The Exchange believes it is important to have in place a rule to break such trades if an event like the U.S. Bancorp event occurs again in the future. The U.S. Bancorp event is described in further detail below and is

[3] Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NASDAQ–2010–076).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 68819 (Feb. 1, 2013), 78 FR 9438 (Feb. 8, 2013) (SR–NASDAQ–2013–022); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* Exchange Rule 11890(g).

[6] Paragraphs (a)(2)(C), (c)(1), (b)(i), (b)(ii), and (g) of Rule 11890 are currently subject to a pilot program. *See* Securities Exchange Act Release No. 70529 (Sept. 26, 2013), 78 FR 60977 (Oct. 2, 2013) (SR–NASDAQ–2013–127).

[7] Securities Exchange Act Release No. 71785 (Mar. 24, 2014), 79 FR 17621 (Mar. 28, 2014) (SR–NASDAQ–2014–028).

[8] Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (Aug. 5, 2010) (SR–NYSE–2010–55).

[9] *Id.*

intended to be illustrative of the manner in which the Exchange proposes to utilize proposed paragraph (h), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17 and 18, 2010. On June 18, 2010, NYSE staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an $800 price. Upon learning of the pricing disparity, NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

In order to address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous execution rule such that the trading in Depositary Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation (the ''U.S. Bancorp Event'').[10] Because the Depository Shares were halted before the price of the Depository Shares ceased to be dislocated, and remained halted, the NYSE was able to review trading in Depository Shares and declare null and void all trading in the U.S. Bancorp Event before the security resumed trading.

Rather than filing a proposal in response to a similar event happening again, the Exchange proposes to add paragraph (h) in order to nullify transactions consistent with the description of the proposed Rule above.

Executions After a Trading Halt Has Been Declared

The Exchange proposes to add new paragraph (i) to Rule 11890 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt, the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt with respect to such security has officially ended according to the primary listing market. In addition, proposed paragraph (i) will make clear that in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, the Exchange will nullify transactions that occur before the official, final end of the trading halt according to the primary listing market.

As with other provisions in Rule 11890, including proposed paragraph (h) as discussed above, the authority to nullify transactions pursuant to paragraph (i) would be vested in an officer of the Exchange or other senior level employee designee, acting on his or her own motion. Any action taken in connection with paragraph (i) would be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of Regular Market Session [11] on the trading day following the date of execution(s) under review. The Exchange also proposes to specify that any action taken in connection with proposed paragraph (i) will be taken without regard to the Numerical Guidelines set forth in paragraph (a)(2)(C)(1) of Rule 11890. The Exchange believes it is appropriate to act to nullify transactions pursuant to proposed paragraph (i) without regard to applicable Numerical Guidelines because in the situations covered by paragraph (i), such transactions should not have occurred in the first instance, and thus, their nullification does not put parties in any different position than they should have been. The Exchange also believes that the certainty that the proposed rule provides is critical in situations involving trading halts.

As it has proposed for paragraph (h), as described above, the Exchange also proposes to include a provision stating that each Member involved in a transaction subject to proposed paragraph (i) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11890(c).

The Exchange notes that trading in a security is typically halted immediately on the Exchange when the primary listing market issues a trading halt in such security. However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, executions can occur on the Exchange following the declaration of such a trading halt. Similarly, although rare, the Exchange has witnessed scenarios where due to extraordinary circumstances a trading halt is declared, then prematurely lifted in error and then re-instituted. It is these types of extraordinary circumstances that the Exchange believes require certainty, and thus, the Exchange believes it necessary to make clear that in such a circumstance any transactions after a trading halt has been declared will be nullified. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), the Exchange would only nullify transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market.

The Exchange also notes that it currently has authority pursuant to paragraph (b)(i) of Rule 11890 to review and nullify transactions that arise during a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange. Further, paragraph (b)(i) of Rule 11890 gives the Exchange authority to use a lower numerical guideline than is set forth in paragraph (a)(2)(C)(1) of Rule 11890 when necessary to maintain a fair and orderly market and to protect investors and the public interest. Thus, while the Exchange believes that paragraph (b)(i) does give the Exchange the authority to nullify transactions occurring when there is an Exchange technical issue related to the transmission or receipt of the electronic message instituting a trading halt or with respect to a technical issue related to a prematurely lifted trading halt, the Exchange believes that proposed paragraph (i) will provide appropriate authority for the Exchange to nullify all such transactions whether or not the systems problem occurs on the Exchange with respect to trading halts and explicit clarity for market participants that such transactions will be nullified. The

[10] *Id.*

[11] Regular Market Session is defined in Exchange Rule 4120(b)(4)(D) as the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m.

Exchange believes that such authority is appropriate because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. Finally, the Exchange believes that such authority is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[13] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that it is appropriate to adopt a provision granting the Exchange authority to nullify trades that occur if an Event similar to the U.S. Bancorp Event occurs again. The Exchange believes that this provision will allow the Exchange to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade and that the proposal is therefore consistent with the Act. Similarly, the Exchange believes that adding a provision allowing the Exchange to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and providing that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt the Exchange will nullify trades occurring after a trading halt has been declared by the primary listing market for the security will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. The Exchange further believes that the proposal is appropriate and consistent with the Act because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. The Exchange also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

The Exchange believes that the proposal to update cross-references in existing paragraph (g) of Rule 11890 to include new paragraphs (h) and (i) is consistent with the Act because, as is the case with respect to the current rule, this change makes clear that the provisions of paragraph (g) do not alter the application of other provisions of Rule 11890.

The Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals to add provisions similar to the provisions proposed by the Exchange above. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning treatment of transactions as clearly erroneous. The proposed rule change would also help to assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, the Exchange believes FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2014–044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–044. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–NASDAQ–2014–044 and should be submitted on or before May 27, 2014.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10290 Filed 5–5–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72049; File No. SR–ISE–2014–25]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Amend ISE Rule 2128 Relating to Clearly Erroneous Trades

April 30, 2014.

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 April 17, 2014 the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to add new paragraphs (j) and (k) to Rule 2128, entitled ''Clearly Erroneous Trades.'' The text of the proposed rule change is available on the Exchange's Web site *www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add new paragraph (j) to Rule 2128 to provide the Exchange with authority to nullify transactions that were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information even if such transactions occur over a period of several days, as further described below. An example of fundamentally incorrect and grossly misinterpreted issuance information that led to a severe valuation error is included below for illustrative purposes.

The Exchange also proposes to add new paragraph (k) to Rule 2128 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause (hereafter generally referred to as a ''trading halt'' for ease of reference), the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt with respect to such security. In the event a trading halt is declared, then prematurely lifted in error, and then re-instituted, proposed paragraph (k) would also result in nullification of any transactions that occur before the official, final end of the trading halt according to the primary listing market.

The Exchange also proposes a change to certain cross-references in Rule 2128, due to the addition of paragraphs (j) and (k). Specifically, the Exchange proposes to update cross-references in existing paragraph (i) of Rule 2128 in order to make clear that the provisions of paragraph (i) do not alter the application of other provisions of Rule 2128, including new paragraphs (j) and (k).

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 2128 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[3] The Exchange also adopted additional changes to Rule 2128 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 2128,[4] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[5] In September 2013, the Exchange removed the specific provisions related to individual stock trading pauses and extended to April 8, 2014 the pilot program applicable to certain provisions of Rule 2128,[6] and, most recently, in March 2014 further extended this pilot program to coincide with the pilot period for the Plan.[7]

As proposed, similar to other provisions added in recent years, as described above, both paragraph (j) and paragraph (k) would be subject to a pilot period, which will coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan.

Executions Based on Incorrect or Grossly Misinterpreted Issuance Information

The Exchange proposes to adopt a new provision, paragraph (j), to Rule 2128, which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, would be required to take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–ISE–2010–62).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 68822 (Feb. 4, 2013), 78 FR 9440 (Feb. 8, 2013) (SR–ISE–2013–12); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* ISE Rule 2128(i).

[6] *See* Securities Exchange Act Release No. 70510 (September 26, 2013), 78 FR 60991 (October 2, 2013) (SR–ISE–2013–49).

[7] Paragraphs (c), (e)(2), (f), (g), and (i) of Rule 2128 are currently subject to a pilot program. *See* Securities Exchange Act Release No. 71806 (March 26, 2014), 79 FR 18375 (April 1, 2014) (SR–ISE–2014–19).

Event. If trading in the security is halted before the valuation error is corrected, the Officer of the Exchange or senior level employee designee would be required to take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. The Exchange proposes to make clear that no action can be taken pursuant to proposed paragraph (j) with respect to any transactions that have reached settlement date for the security or that result from an initial public offering of a security. The Exchange believes that declaring a trade null and void after settlement date would be complex to administer and unfair to the affected parties. The Exchange also believes that excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no benchmark information are not called into question, as it is the IPO process itself, including the extensive public disclosure associated with IPOs, that is intended to drive price formation.

Further, the Exchange proposes that to the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. The Exchange also proposes to state in the Rule that any action taken in connection with paragraph (j) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 2128. In particular, the Exchange believes that there could be scenarios where there are erroneous transactions related to an Event that do not meet applicable Numerical Guidelines but that are, upon review, clearly erroneous. One example of a situation that could occur is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to erroneous transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet applicable Numerical Guidelines, the Exchange would have the authority to nullify such transactions if they were affected based on the same fundamentally incorrect or grossly misinterpreted issuance information and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action the security continues to trade at a price that does not meet applicable Numerical Guidelines).

The Exchange also proposes to an include a provision, as it does in many other sub-paragraphs of Rule 2128, stating that each Member involved in a transaction subject to proposed paragraph (j) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 2128(e)(2)–(4).

In particular, the Exchange believes it is necessary to have authority to nullify trades that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the New York Stock Exchange (''NYSE'') in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information. As a result of such information, the securities traded at severely dislocated prices. At the time, the NYSE filed an emergency rule filing in order to respond to that event.[8] With the filing the NYSE interpreted the rule applicable to clearly erroneous executions as permitting the NYSE to nullify all trades resulting after the Exchange Offer at severely dislocated prices.[9] The Exchange believes it is important to have in place a rule to break such trades if an event like the U.S. Bancorp event occurs again in the future. The U.S. Bancorp event is described in further detail below and is intended to be illustrative of the manner in which the Exchange proposes to utilize proposed paragraph (j), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17 and 18, 2010. On June 18, 2010, NYSE staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an $800 price. Upon learning of the pricing disparity, NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

In order to address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous execution rule such that the trading in Depository Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation (the ''U.S. Bancorp Event'').[10] Because the Depository Shares were halted before the price of the Depository Shares ceased to be dislocated, and remain halted, the NYSE was able to review trading in Depository Shares and declare null and void all trading in the U.S. Bancorp Event before the security resumed trading.

Rather than filing a proposal in response to a similar event happening again, the Exchange proposes to add paragraph (j) in order to nullify transactions consistent with the description of the proposed Rule above.

Executions After a Trading Halt Has Been Declared

The Exchange proposes to add new paragraph (k) to Rule 2128 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt, the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt with respect to such security has officially ended according to the primary listing market. In addition, proposed paragraph (k) will make clear that in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, the Exchange will nullify transactions that occur before the official, final end of the trading halt according to the primary listing market.

As with other provisions in Rule 2128, including proposed paragraph (j) as discussed above, the authority to nullify transactions pursuant to paragraph (k) would be vested in an officer of the Exchange or other senior

[8] Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (August 5, 2010) (SR–NYSE–2010–55).

[9] *Id.*

[10] *Id.*

level employee designee, acting on his or her own motion. Any action taken in connection with paragraph (k) would be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of the Regular Market Session [11] on the trading day following the date of execution(s) under review. The Exchange also proposes to specify that any action taken in connection with proposed paragraph (k) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 2128. The Exchange believes it is appropriate to act to nullify transactions pursuant to proposed paragraph (k) without regard to applicable Numerical Guidelines because in the situations covered by paragraph (k), such transactions should not have occurred in the first instance, and thus, their nullification does not put parties in any different position than they should have been. The Exchange also believes that the certainty that the proposed rule provides is critical in situations involving trading halts.

As it has proposed for paragraph (j), as described above, the Exchange also proposes to an include a provision stating that each Member involved in a transaction subject to proposed paragraph (k) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 2128(e)(2)–(4).

The Exchange notes that trading in a security is typically halted immediately on the Exchange when the primary listing market issues a trading halt in such security. However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, executions can occur on the Exchange following the declaration of such a trading halt. Similarly, although rare, the Exchange has witnessed scenarios where due to extraordinary circumstances a trading halt is declared, then prematurely lifted in error and then re-instituted. It is these types of extraordinary circumstances that the Exchange believes require certainty, and thus, the Exchange believes it necessary to make clear that in such a circumstance any transactions after a trading halt has been declared will be nullified. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), the Exchange would only nullify transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market.

The Exchange also notes that it currently has authority pursuant to paragraph (f) of Rule 2128 to review and nullify transactions that arise during a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange. Further, paragraph (f) of Rule 2128 gives the Exchange authority to use a lower numerical guideline than is set forth in paragraph (c)(1) of the Rule when necessary to maintain a fair and orderly market and to protect investors and the public interest. Thus, while the Exchange believes that paragraph (f) does give the Exchange the authority to nullify transactions occurring when there is an Exchange technical issue related to the transmission or receipt of the electronic message instituting a trading halt or with respect to a technical issue related to a prematurely lifted trading halt, the Exchange believes that proposed paragraph (k) will provide appropriate authority for the Exchange to nullify all such transactions whether or not the systems problem occurs on the Exchange with respect to trading halts and explicit clarity for market participants that such transactions will be nullified. The Exchange believes that such authority is appropriate because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. Finally, the Exchange believes that such authority is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[13] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that it is appropriate to adopt a provision granting the Exchange authority to nullify trades that occur if an Event similar to the U.S. Bancorp Event occurs again. The Exchange believes that this provision will allow the Exchange to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade and that the proposal is therefore consistent with the Act. Similarly, the Exchange believes that adding a provision allowing the Exchange to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and providing that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt the Exchange will nullify trades occurring after a trading halt has been declared by the primary listing market for the security will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. The Exchange further believes that the proposal is appropriate and consistent with the Act because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. The Exchange also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

The Exchange believes that the proposal to update cross-references in existing paragraph (i) of Rule 2128 to include new paragraphs (j) and (k) is consistent with the Act because, as is the case with respect to the current rule, this change makes clear that the provisions of paragraph (i) do not alter the application of other provisions of Rule 2128.

The Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals to add provisions similar to the provisions proposed by the Exchange above. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning treatment of transactions as clearly erroneous. The proposed rule change would also help to assure

[11] The Regular Market Session Regular Market Session commences at 9:30 a.m. Eastern Time. *See* ISE Rules 2102 and 2106.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, the Exchange believes FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2014–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2014–25. 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 available publicly. All submissions should refer to File Number SR–ISE–2014–25, and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10285 Filed 5–5–14; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72051; File No. SR–NYSEMKT–2014–37]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Adding New Paragraphs (j) and (k) to Rule 128—Equities, Entitled ''Clearly Erroneous Executions for Equities''

April 30, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 21, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''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 add new paragraphs (j) and (k) to Rule 128—Equities, entitled ''Clearly Erroneous Executions For Equities.'' The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add new paragraph (j) to Rule 128—Equities to provide the Exchange with authority to nullify transactions that were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information even if such transactions occur over a period of several days, as further described below. An example of fundamentally incorrect and grossly misinterpreted issuance information that led to a severe valuation error is included below for illustrative purposes.

The Exchange also proposes to add new paragraph (k) to Rule 128—Equities to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause (hereafter generally referred to as a ''trading halt'' for ease of reference), the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt with respect to such security. In the event a trading halt is declared, then prematurely lifted in error, and then re-instituted, proposed paragraph (k) would also result in nullification of any transactions that occur before the official, final end of the trading halt according to the primary listing market.

The Exchange also proposes a change to certain cross-references in Rule 128—Equities, due to the addition of (j) and (k). Specifically, the Exchange proposes to update cross-references in existing paragraph (i) of Rule 128—Equities in order to make clear that the provisions of paragraph (i) do not alter the application of other provisions of Rule 128—Equities, including new paragraphs (j) and (k).

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 128—Equities to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[4] The Exchange also adopted additional changes to Rule 128—Equities that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 128—Equities,[5] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[6] Most recently, the Exchange removed the specific provisions related to individual stock trading pauses and extended the pilot program to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions thereof, applicable to certain provisions of Rule 128—Equities.[7]

As proposed, similar to other provisions added in recent years, as described above, both paragraph (j) and paragraph (k) would be subject to the pilot period, and thus, would coincide with the pilot period for the Limit Up-Limit Down Plan, unless extended or made permanent.

Executions Based on Incorrect or Grossly Misinterpreted Issuance Information

The Exchange proposes to adopt a new provision, paragraph (j), to Rule 128—Equities, which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, an Officer, acting on his or her own motion, would be required to take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the Officer would be required to take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. The Exchange proposes to make clear that no action can be taken pursuant to proposed paragraph (j) with respect to any transactions that have reached settlement date for the security or that result from an initial public offering of a security. The Exchange believes that declaring a trade null and void after settlement date would be complex to administer and unfair to the affected parties. The Exchange also believes that excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no benchmark information are not called into question, as it is the IPO process itself, including the extensive public disclosure associated with IPOs, that is intended to drive price formation.

Further, the Exchange proposes that to the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. The Exchange also proposes to state in the Rule that any action taken in connection with paragraph (j) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 128—Equities. In particular, the Exchange believes that there could be scenarios where there are erroneous transactions related to an Event that do not meet applicable Numerical Guidelines but that are, upon review, clearly erroneous. One example of a situation that could occur is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to erroneous transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet applicable Numerical Guidelines, the Exchange would have the authority to nullify such transactions if they were affected based on the same fundamentally incorrect or grossly misinterpreted issuance information and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action the security continues to trade at a price that does not meet applicable Numerical Guidelines).

The Exchange also proposes to include a provision, as it does in many other sub-paragraphs of Rule 128—Equities, stating that each member or member organization involved in a transaction subject to proposed paragraph (j) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 128—Equities (e)(2).

In particular, the Exchange believes it is necessary to have authority to nullify trades that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the New York Stock Exchange (''NYSE'') in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information. As a result of such information, the securities traded at severely dislocated prices. At the

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSEAmex–2010–60).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 68801 (Feb. 1, 2013), 78 FR 8630 (Feb. 6, 2013) (SR–NYSEMKT–2013–11); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* Exchange Rule 128—Equities (i).

[7] Paragraphs (c), (e)(2), (f), (g), and (i) of Rule 128—Equities are currently subject to a pilot program. *See* Securities Exchange Act Release No. 70517 (September 26, 2013), 78 FR 60943 (October 2, 2013) (SR–NYSEMKT–2013–78); Securities Exchange Act Release No. 71820 (March 27, 2014), 79 FR 18595 (April 2, 2014) (SR–NYSEMKT–2014–28).

time, the NYSE filed an emergency rule filing in order to respond to that event.[8] With the filing the NYSE interpreted the rule applicable to clearly erroneous executions as permitting the NYSE to nullify all trades resulting after the Exchange Offer at severely dislocated prices.[9] The Exchange believes it is important to have in place a rule to break such trades if an event like the U.S. Bancorp event occurs again in the future. The U.S. Bancorp event is described in further detail below and is intended to be illustrative of the manner in which the Exchange proposes to utilize proposed paragraph (j), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17 and 18, 2010. On June 18, 2010, NYSE staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an $800 price. Upon learning of the pricing disparity, NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

In order to address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous execution rule such that the trading in Depository Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation (the ''U.S. Bancorp Event'').[10] Because the Depository Shares were halted before the price of the Depository Shares ceased to be dislocated, and remain halted, the NYSE was able to review trading in Depository Shares and declare null and void all trading in the U.S. Bancorp Event before the security resumed trading.

Rather than filing a proposal in response to a similar event happening again, the Exchange proposes to add paragraph (j) in order to nullify transactions consistent with the description of the proposed Rule above.

Executions After a Trading Halt Has Been Declared

The Exchange proposes to add new paragraph (k) to Rule 128—Equities to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt, the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt with respect to such security has officially ended according to the primary listing market. In addition, proposed paragraph (k) will make clear that in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, the Exchange will nullify transactions that occur before the official, final end of the trading halt according to the primary listing market.

As with other provisions in Rule 128—Equities, including proposed paragraph (j) as discussed above, the authority to nullify transactions pursuant to paragraph (k) would be vested in an Officer, acting on his or her own motion. Any action taken in connection with paragraph (k) would be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of regular trading hours [11] on the trading day following the date of execution(s) under review. The Exchange also proposes to specify that any action taken in connection with proposed paragraph (k) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 128—Equities. The Exchange believes it is appropriate to act to nullify transactions pursuant to proposed paragraph (k) without regard to applicable Numerical Guidelines because in the situations covered by paragraph (k), such transactions should not have occurred in the first instance, and thus, their nullification does not put parties in any different position than they should have been. The Exchange also believes that the certainty that the proposed rule provides is critical in situations involving trading halts.

As it has proposed for paragraph (j), as described above, the Exchange also proposes to an [sic] include a provision stating that each member or member organization involved in a transaction subject to proposed paragraph (k) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 128—Equities (e)(2).

The Exchange notes that trading in a security is typically halted immediately on the Exchange when the primary listing market issues a trading halt in such security. However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, executions can occur on the Exchange following the declaration of such a trading halt. Similarly, although rare, the Exchange has witnessed scenarios where due to extraordinary circumstances a trading halt is declared, then prematurely lifted in error and then re-instituted. It is these types of extraordinary circumstances that the Exchange believes require certainty, and thus, the Exchange believes it necessary to make clear that in such a circumstance any transactions after a trading halt has been declared will be nullified. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), the Exchange would only nullify transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market.

The Exchange also notes that it currently has authority pursuant to paragraph (f) of Rule 128—Equities to review and nullify transactions that arise during a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange. Further, paragraph (f) of Rule 128—Equities gives the Exchange authority to use a lower numerical guideline than is set forth in paragraph (c)(1) of the Rule when necessary to maintain a fair and orderly market and to protect investors and the public interest. Thus, while the Exchange believes that paragraph (f) does give the Exchange the authority to nullify

[8] *See* Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (August 5, 2010) (SR–NYSE–2010–55).

[9] *Id.*

[10] *Id.*

[11] The regular trade hours [sic] on the Exchange are defined in Rule 51—Equities and is generally the time between 9:30 a.m. to 4:00 p.m. E.T.

transactions occurring when there is an Exchange technical issue related to the transmission or receipt of the electronic message instituting a trading halt or with respect to a technical issue related to a prematurely lifted trading halt, the Exchange believes that proposed paragraph (k) will provide appropriate authority for the Exchange to nullify all such transactions whether or not the systems problem occurs on the Exchange with respect to trading halts and explicit clarity for market participants that such transactions will be nullified. The Exchange believes that such authority is appropriate because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. Finally, the Exchange believes that such authority is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[13] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that it is appropriate to adopt a provision granting the Exchange authority to nullify trades that occur if an Event similar to the U.S. Bancorp Event occurs again. The Exchange believes that this provision will allow the Exchange to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade and that the proposal is therefore consistent with the Act. Similarly, the Exchange believes that adding a provision allowing the Exchange to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and providing that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt the Exchange will nullify trades occurring after a trading halt has been declared by the primary listing market for the security will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. The Exchange further believes that the proposal is appropriate and consistent with the Act because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. The Exchange also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

The Exchange believes that the proposal to update cross-references in existing paragraph (i) of Rule 128—Equities to include new paragraphs (j) and (k) is consistent with the Act because, as is the case with respect to the current rule, this change makes clear that the provisions of paragraph (i) do not alter the application of other provisions of Rule 128—Equities.

The Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals to add provisions similar to the provisions proposed by the Exchange above. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning treatment of transactions as clearly erroneous. The proposed rule change would also help to assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, the Exchange believes FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NYSEMKT–2014–37.* 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

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–NYSEMKT–2014–37 and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10287 Filed 5–5–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72052; File No. SR–NYSE–2014–22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Adding New Paragraphs (j) and (k) to Rule 128, Entitled ''Clearly Erroneous Executions for NYSE Equities''

April 30, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 21, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 add new paragraphs (j) and (k) to Rule 128, entitled ''Clearly Erroneous Executions For NYSE Equities.'' The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add new paragraph (j) to Rule 128 to provide the Exchange with authority to nullify transactions that were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information even if such transactions occur over a period of several days, as further described below. An example of fundamentally incorrect and grossly misinterpreted issuance information that led to a severe valuation error is included below for illustrative purposes.

The Exchange also proposes to add new paragraph (k) to Rule 128 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause (hereafter generally referred to as a ''trading halt'' for ease of reference), the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt with respect to such security. In the event a trading halt is declared, then prematurely lifted in error, and then re-instituted, proposed paragraph (k) would also result in nullification of any transactions that occur before the official, final end of the trading halt according to the primary listing market.

The Exchange also proposes a change to certain cross-references in Rule 128 due to the addition of (j) and (k). Specifically, the Exchange proposes to update cross-references in existing paragraph (i) of Rule 128 in order to make clear that the provisions of paragraph (i) do not alter the application of other provisions of Rule 128, including new paragraphs (j) and (k).

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 128 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[4] The Exchange also adopted additional changes to Rule 128 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 128,[5] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[6] Most recently, the Exchange removed the specific provisions related to individual stock trading pauses and extended the pilot program to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions thereof, applicable to certain provisions of Rule 128.[7]

As proposed, similar to other provisions added in recent years, as described above, both paragraph (j) and paragraph (k) would be subject to the pilot period, and thus, would coincide with the pilot period for the Limit Up-Limit Down Plan, unless extended or made permanent.

Executions Based on Incorrect or Grossly Misinterpreted Issuance Information

The Exchange proposes to adopt a new provision, paragraph (j), to Rule 128, which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSE–2010–47).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 68804 (Feb. 1, 2013), 78 FR 8677 (Feb. 6, 2013) (SR–NYSE–2013–11); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* Exchange Rule 128(i).

[7] Paragraphs (c), (e)(2), (f), (g), and (i) of Rule 128 are currently subject to a pilot program. *See* Securities Exchange Act Release No. 70519 (September 26, 2013), 78 FR 60969 (October 2, 2013) (SR–NYSE–2013–65); Securities Exchange Act Release No. 71821 (March 27, 2014), 79 FR 18592 (April 2, 2014) (SR–NYSE–2014–17).

same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, an Officer, acting on his or her own motion, would be required to take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the Officer would be required to take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. The Exchange proposes to make clear that no action can be taken pursuant to proposed paragraph (j) with respect to any transactions that have reached settlement date for the security or that result from an initial public offering of a security. The Exchange believes that declaring a trade null and void after settlement date would be complex to administer and unfair to the affected parties. The Exchange also believes that excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no benchmark information are not called into question, as it is the IPO process itself, including the extensive public disclosure associated with IPOs, that is intended to drive price formation.

Further, the Exchange proposes that to the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. The Exchange also proposes to state in the Rule that any action taken in connection with paragraph (j) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 128. In particular, the Exchange believes that there could be scenarios where there are erroneous transactions related to an Event that do not meet applicable Numerical Guidelines but that are, upon review, clearly erroneous. One example of a situation that could occur is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to erroneous transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet applicable Numerical Guidelines, the Exchange would have the authority to nullify such transactions if they were affected based on the same fundamentally incorrect or grossly misinterpreted issuance information and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action the security continues to trade at a price that does not meet applicable Numerical Guidelines).

The Exchange also proposes to include a provision, as it does in many other sub-paragraphs of Rule 128, stating that each member or member organization involved in a transaction subject to proposed paragraph (j) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 128(e)(2).

In particular, the Exchange believes it is necessary to have authority to nullify trades that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the NYSE in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information. As a result of such information, the securities traded at severely dislocated prices. At the time, the NYSE filed an emergency rule filing in order to respond to that event.[8] With the filing the NYSE interpreted the rule applicable to clearly erroneous executions as permitting the NYSE to nullify all trades resulting after the Exchange Offer at severely dislocated prices.[9] The Exchange believes it is important to have in place a rule to break such trades if an event like the U.S. Bancorp event occurs again in the future. The U.S. Bancorp event is described in further detail below and is intended to be illustrative of the manner in which the Exchange proposes to utilize proposed paragraph (j), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17 and 18, 2010. On June 18, 2010, NYSE staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an $800 price. Upon learning of the pricing disparity, NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

In order to address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous execution rule such that the trading in Depository Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation (the ''U.S. Bancorp Event'').[10] Because the Depository Shares were halted before the price of the Depository Shares ceased to be dislocated, and remain halted, the NYSE was able to review trading in Depository Shares and declare null and void all trading in the U.S. Bancorp Event before the security resumed trading.

Rather than filing a proposal in response to a similar event happening again, the Exchange proposes to add paragraph (j) in order to nullify transactions consistent with the description of the proposed Rule above.

Executions After a Trading Halt Has Been Declared

The Exchange proposes to add new paragraph (k) to Rule 128 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt, the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt with respect to such security has officially ended according to the primary listing market. In addition, proposed paragraph (k) will make clear that in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, the Exchange will nullify transactions that

[8] *See* Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (August 5, 2010) (SR–NYSE–2010–55).

[9] *Id.*

[10] *Id.*

occur before the official, final end of the trading halt according to the primary listing market.

As with other provisions in Rule 128, including proposed paragraph (j) as discussed above, the authority to nullify transactions pursuant to paragraph (k) would be vested in an Officer, acting on his or her own motion. Any action taken in connection with paragraph (k) would be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of regular trading hours [11] on the trading day following the date of execution(s) under review. The Exchange also proposes to specify that any action taken in connection with proposed paragraph (k) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 128. The Exchange believes it is appropriate to act to nullify transactions pursuant to proposed paragraph (k) without regard to applicable Numerical Guidelines because in the situations covered by paragraph (k), such transactions should not have occurred in the first instance, and thus, their nullification does not put parties in any different position than they should have been. The Exchange also believes that the certainty that the proposed rule provides is critical in situations involving trading halts.

As it has proposed for paragraph (j), as described above, the Exchange also proposes to an [sic] include a provision stating that each member or member organization involved in a transaction subject to proposed paragraph (k) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 128(e)(2).

The Exchange notes that trading in a security is typically halted immediately on the Exchange when the primary listing market issues a trading halt in such security. However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, executions can occur on the Exchange following the declaration of such a trading halt. Similarly, although rare, the Exchange has witnessed scenarios where due to extraordinary circumstances a trading halt is declared, then prematurely lifted in error and then re-instituted. It is these types of extraordinary circumstances that the Exchange believes require certainty, and thus, the Exchange believes it necessary to make clear that in such a circumstance any transactions after a trading halt has been declared will be nullified. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), the Exchange would only nullify transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market.

The Exchange also notes that it currently has authority pursuant to paragraph (f) of Rule 128 to review and nullify transactions that arise during a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange. Further, paragraph (f) of Rule 128 gives the Exchange authority to use a lower numerical guideline than is set forth in paragraph (c)(1) of the Rule when necessary to maintain a fair and orderly market and to protect investors and the public interest. Thus, while the Exchange believes that paragraph (f) does give the Exchange the authority to nullify transactions occurring when there is an Exchange technical issue related to the transmission or receipt of the electronic message instituting a trading halt or with respect to a technical issue related to a prematurely lifted trading halt, the Exchange believes that proposed paragraph (k) will provide appropriate authority for the Exchange to nullify all such transactions whether or not the systems problem occurs on the Exchange with respect to trading halts and explicit clarity for market participants that such transactions will be nullified. The Exchange believes that such authority is appropriate because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. Finally, the Exchange believes that such authority is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[13] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that it is appropriate to adopt a provision granting the Exchange authority to nullify trades that occur if an Event similar to the U.S. Bancorp Event occurs again. The Exchange believes that this provision will allow the Exchange to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade and that the proposal is therefore consistent with the Act. Similarly, the Exchange believes that adding a provision allowing the Exchange to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and providing that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt the Exchange will nullify trades occurring after a trading halt has been declared by the primary listing market for the security will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. The Exchange further believes that the proposal is appropriate and consistent with the Act because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. The Exchange also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

The Exchange believes that the proposal to update cross-references in existing paragraph (i) of Rule 128 to include new paragraphs (j) and (k) is consistent with the Act because, as is the case with respect to the current rule, this change makes clear that the provisions of paragraph (i) do not alter the application of other provisions of Rule 128.

The Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals to add provisions similar to

[11] The regular trade hours [sic] on the Exchange are defined in Rule 51 and is generally the time between 9:30 a.m. to 4:00 p.m. E.T.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

the provisions proposed by the Exchange above. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning treatment of transactions as clearly erroneous. The proposed rule change would also help to assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, the Exchange believes FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2014–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NYSE–2014–22.* 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–NYSE–2014–22 and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10288 Filed 5–5–14; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72055; File No. SR-Phlx-2014–27]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Add New Paragraphs (h) and (i) to Rule 3312, entitled ''Clearly Erroneous Transactions''

April 30, 2014.

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 April 17, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add new paragraphs (h) and (i) to Rule 3312, entitled ''Clearly Erroneous Transactions.''

The text of the proposed rule change is available from Phlx's Web site at *http://nasdaqomxphlx.cchwallstreet.com*, at Phlx's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add new paragraph (h) to Rule 3312 to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

provide the Exchange with authority to nullify transactions that were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information even if such transactions occur over a period of several days, as further described below. An example of fundamentally incorrect and grossly misinterpreted issuance information that led to a severe valuation error is included below for illustrative purposes.

The Exchange also proposes to add new paragraph (i) to Rule 3312 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause (hereafter generally referred to as a ''trading halt'' for ease of reference), the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt with respect to such security. In the event a trading halt is declared, then prematurely lifted in error, and then re-instituted, proposed paragraph (i) would also result in nullification of any transactions that occur before the official, final end of the trading halt according to the primary listing market.

The Exchange also proposes a change to certain cross-references in Rule 3312, due to the addition of paragraphs (h) and (i). Specifically, the Exchange proposes to update cross-references in existing paragraph (g) of Rule 3312 in order to make clear that the provisions of paragraph (g) do not alter the application of other provisions of Rule 3312, including new paragraphs (h) and (i).

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to the clearly erroneous rules of the national securities exchanges to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[3] The national securities exchanges adopted additional changes to their clearly erroneous rules that reduced the ability of the national securities exchanges to deviate from the objective standards set forth in their respective clearly erroneous rules.[4] In connection with its resumption of trading of NMS Stocks through the NASDAQ OMX PSX system, the Exchange amended Rule 3312 to conform it to the newly-adopted changes to the national securities exchanges' clearly erroneous rules, so that it could participate in the pilot program.[5] In 2013, the Exchange adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[6] The Exchange removed the specific provisions related to individual stock trading pauses and extended to April 8, 2014 the pilot program applicable to certain provisions of Rule 3312.[7] Most recently, the Exchange extended the effectiveness of the pilot program under Rule 3312 to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.[8]

As proposed, similar to other provisions added in recent years, as described above, both paragraph (h) and paragraph (i) would be subject to the pilot period, and thus, will coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.

Executions Based on Incorrect or Grossly Misinterpreted Issuance Information

The Exchange proposes to adopt a new provision, paragraph (h), to Rule 3312, which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, would be required to take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the Officer of the Exchange or senior level employee designee would be required to take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. The Exchange proposes to make clear that no action can be taken pursuant to proposed paragraph (h) with respect to any transactions that have reached settlement date for the security or that result from an initial public offering of a security. The Exchange believes that declaring a trade null and void after settlement date would be complex to administer and unfair to the affected parties. The Exchange also believes that excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no benchmark information are not called into question, as it is the IPO process itself, including the extensive public disclosure associated with IPOs, that is intended to drive price formation.

Further, the Exchange proposes that to the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. The Exchange also proposes to state in the Rule that any action taken in connection with paragraph (h) will be taken without regard to the Numerical Guidelines set forth in paragraph (a)(2)(C)(i) of Rule 3312. In particular, the Exchange believes that there could be scenarios where there are erroneous transactions related to an Event that do not meet applicable Numerical Guidelines but that are, upon review, clearly erroneous. One example of a situation that could occur is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to erroneous transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet applicable Numerical Guidelines, the Exchange would have the authority to nullify such

[3] Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010).

[4] *Id.*

[5] Securities Exchange Act Release No. 63023 (Sept. 30, 2010), 75 FR 61802 (Oct. 6, 2010) (SR–Phlx–2010–125).

[6] *See* Securities Exchange Act Release No. 68820 (Feb. 1, 2013), 78 FR 9436 (Feb. 8, 2013) (SR–Phlx–2013–12); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* Exchange Rule 3312(g).

[7] Paragraphs (a)(2)(C), (b), (c)(1) and (g) of Rule 3312 are currently subject to a pilot program. *See* Securities Exchange Act Release No. 70541 (Sept. 27, 2013), 78 FR 61431 (Oct. 3, 2013) (SR–Phlx–2013–97).

[8] Securities Exchange Act Release No. 71783 (Mar. 24, 2014), 79 FR 17617 (Mar. 28, 2014) (SR–Phlx–2014–18).

transactions if they were affected based on the same fundamentally incorrect or grossly misinterpreted issuance information and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action the security continues to trade at a price that does not meet applicable Numerical Guidelines).

The Exchange also proposes to include a provision, as it does in many other sub-paragraphs of Rule 3312, stating that each Member involved in a transaction subject to proposed paragraph (h) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 3312(c).

In particular, the Exchange believes it is necessary to have authority to nullify trades that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the New York Stock Exchange (''NYSE'') in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information. As a result of such information, the securities traded at severely dislocated prices. At the time, the NYSE filed an emergency rule filing in order to respond to that event.[9] With the filing the NYSE interpreted the rule applicable to clearly erroneous executions as permitting the NYSE to nullify all trades resulting after the Exchange Offer at severely dislocated prices.[10] The Exchange believes it is important to have in place a rule to break such trades if an event like the U.S. Bancorp event occurs again in the future. The U.S. Bancorp event is described in further detail below and is intended to be illustrative of the manner in which the Exchange proposes to utilize proposed paragraph (h), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17 and 18, 2010. On June 18, 2010, NYSE staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an $800 price. Upon learning of the pricing disparity, NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

In order to address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous execution rule such that the trading in Depositary Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation (the ''U.S. Bancorp Event'').[11] Because the Depositary Shares were halted before the price of the Depositary Shares ceased to be dislocated, and remained halted, the NYSE was able to review trading in Depositary Shares and declare null and void all trading in the U.S. Bancorp Event before the security resumed trading.

Rather than filing a proposal in response to a similar event happening again, the Exchange proposes to add paragraph (h) in order to nullify transactions consistent with the description of the proposed Rule above.

Executions After a Trading Halt Has Been Declared

The Exchange proposes to add new paragraph (i) to Rule 3312 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt, the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt with respect to such security has officially ended according to the primary listing market. In addition, proposed paragraph (i) will make clear that in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, the Exchange will nullify transactions that occur before the official, final end of the trading halt according to the primary listing market.

As with other provisions in Rule 3312, including proposed paragraph (h) as discussed above, the authority to nullify transactions pursuant to paragraph (i) would be vested in an officer of the Exchange or other senior level employee designee, acting on his or her own motion. Any action taken in connection with paragraph (i) would be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of Regular Market Session[12] on the trading day following the date of execution(s) under review. The Exchange also proposes to specify that any action taken in connection with proposed paragraph (i) will be taken without regard to the Numerical Guidelines set forth in paragraph (a)(2)(C)(i) of Rule 3312. The Exchange believes it is appropriate to act to nullify transactions pursuant to proposed paragraph (i) without regard to applicable Numerical Guidelines because in the situations covered by paragraph (i), such transactions should not have occurred in the first instance, and thus, their nullification does not put parties in any different position than they should have been. The Exchange also believes that the certainty that the proposed rule provides is critical in situations involving trading halts.

As it has proposed for paragraph (h), as described above, the Exchange also proposes to include a provision stating that each Member involved in a transaction subject to proposed paragraph (i) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 3312(c).

The Exchange notes that trading in a security is typically halted immediately on the Exchange when the primary listing market issues a trading halt in such security. However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, executions can occur on the Exchange following the declaration of such a trading halt. Similarly, although rare, the Exchange has witnessed scenarios where due to extraordinary circumstances a trading

[9] Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (Aug. 5, 2010) (SR–NYSE–2010–55).

[10] *Id.*

[11] *Id.*

[12] Regular Market Session is defined in Exchange Rule 3100(b)(4)(D) as the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m.

halt is declared, then prematurely lifted in error and then re-instituted. It is these types of extraordinary circumstances that the Exchange believes require certainty, and thus, the Exchange believes it necessary to make clear that in such a circumstance any transactions after a trading halt has been declared will be nullified. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), the Exchange would only nullify transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market.

The Exchange also notes that it currently has authority pursuant to paragraph (b)(1) of Rule 3312 to review and nullify transactions that arise during a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange. Further, paragraph (b)(1) of Rule 3312 gives the Exchange authority to use a lower numerical guideline than is set forth in paragraph (a)(2)(C)(i) of Rule 3312 when necessary to maintain a fair and orderly market and to protect investors and the public interest. Thus, while the Exchange believes that paragraph (b)(1) does give the Exchange the authority to nullify transactions occurring when there is an Exchange technical issue related to the transmission or receipt of the electronic message instituting a trading halt or with respect to a technical issue related to a prematurely lifted trading halt, the Exchange believes that proposed paragraph (i) will provide appropriate authority for the Exchange to nullify all such transactions whether or not the systems problem occurs on the Exchange with respect to trading halts and explicit clarity for market participants that such transactions will be nullified. The Exchange believes that such authority is appropriate because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. Finally, the Exchange believes that such authority is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[13] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[14] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that it is appropriate to adopt a provision granting the Exchange authority to nullify trades that occur if an Event similar to the U.S. Bancorp Event occurs again. The Exchange believes that this provision will allow the Exchange to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade and that the proposal is therefore consistent with the Act. Similarly, the Exchange believes that adding a provision allowing the Exchange to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and providing that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt the Exchange will nullify trades occurring after a trading halt has been declared by the primary listing market for the security will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. The Exchange further believes that the proposal is appropriate and consistent with the Act because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. The Exchange also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

The Exchange believes that the proposal to update cross-references in existing paragraph (g) of Rule 3312 to include new paragraphs (h) and (i) is consistent with the Act because, as is the case with respect to the current rule, this change makes clear that the provisions of paragraph (g) do not alter the application of other provisions of Rule 3312.

The Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals to add provisions similar to the provisions proposed by the Exchange above. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning treatment of transactions as clearly erroneous. The proposed rule change would also help to assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, the Exchange believes FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2014–27 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2014–27. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–Phlx–2014–27 and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10291 Filed 5–5–14; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72053; File No. SR–BX–2014–021]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Add New Paragraphs (h) and (i) to Rule 11890, entitled ''Clearly Erroneous Transactions''

April 30, 2014.

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 April 17, 2014, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add new paragraphs (h) and (i) to Rule 11890, entitled ''Clearly Erroneous Transactions.''

The text of the proposed rule change is available from BX's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add new paragraph (h) to Rule 11890 to provide the Exchange with authority to nullify transactions that were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information even if such transactions occur over a period of several days, as further described below. An example of fundamentally incorrect and grossly misinterpreted issuance information that led to a severe valuation error is included below for illustrative purposes.

The Exchange also proposes to add new paragraph (i) to Rule 11890 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause (hereafter generally referred to as a ''trading halt'' for ease of reference), the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt with respect to such security. In the event a trading halt is declared, then prematurely lifted in error, and then re-instituted, proposed paragraph (i) would also result in nullification of any transactions that occur before the official, final end of the trading halt according to the primary listing market.

The Exchange also proposes a change to certain cross-references in Rule 11890, due to the addition of paragraphs (h) and (i). Specifically, the Exchange proposes to update cross-references in existing paragraph (g) of Rule 11890 in order to make clear that the provisions of paragraph (g) do not alter the application of other provisions of Rule 11890, including new paragraphs (h) and (i).

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11890 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[3] The Exchange also adopted additional changes to Rule 11890 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11890,[4] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–BX–2010–040).

[4] *Id.*

in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[5] The Exchange removed the specific provisions related to individual stock trading pauses and extended to April 8, 2014 the pilot program applicable to certain provisions of Rule 11890.[6] Most recently, the Exchange extended the effectiveness of the pilot program under Rule 11890 to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.[7]

As proposed, similar to other provisions added in recent years, as described above, both paragraph (h) and paragraph (i) would be subject to the pilot period, and thus, will coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.

Executions Based on Incorrect or Grossly Misinterpreted Issuance Information

The Exchange proposes to adopt a new provision, paragraph (h), to Rule 11890, which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, would be required to take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the Officer of the Exchange or senior level employee designee would be required to take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. The Exchange proposes to make clear that no action can be taken pursuant to proposed paragraph (h) with respect to any transactions that have reached settlement date for the security or that result from an initial public offering of a security. The Exchange believes that declaring a trade null and void after settlement date would be complex to administer and unfair to the affected parties. The Exchange also believes that excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no benchmark information are not called into question, as it is the IPO process itself, including the extensive public disclosure associated with IPOs, that is intended to drive price formation.

Further, the Exchange proposes that to the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. The Exchange also proposes to state in the Rule that any action taken in connection with paragraph (h) will be taken without regard to the Numerical Guidelines set forth in paragraph (a)(2)(C)(1) of Rule 11890. In particular, the Exchange believes that there could be scenarios where there are erroneous transactions related to an Event that do not meet applicable Numerical Guidelines but that are, upon review, clearly erroneous. One example of a situation that could occur is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to erroneous transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet applicable Numerical Guidelines, the Exchange would have the authority to nullify such transactions if they were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action the security continues to trade at a price that does not meet applicable Numerical Guidelines).

The Exchange also proposes to include a provision, as it does in many other sub-paragraphs of Rule 11890, stating that each Member involved in a transaction subject to proposed paragraph (h) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11890(c).

In particular, the Exchange believes it is necessary to have authority to nullify trades that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the New York Stock Exchange (''NYSE'') in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information. As a result of such information, the securities traded at severely dislocated prices. At the time, the NYSE filed an emergency rule filing in order to respond to that event.[8] With the filing the NYSE interpreted the rule applicable to clearly erroneous executions as permitting the NYSE to nullify all trades resulting after the Exchange Offer at severely dislocated prices.[9] The Exchange believes it is important to have in place a rule to break such trades if an event like the U.S. Bancorp event occurs again in the future. The U.S. Bancorp event is described in further detail below and is intended to be illustrative of the manner in which the Exchange proposes to utilize proposed paragraph (h), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17 and 18, 2010. On June 18, 2010, NYSE staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an $800 price. Upon learning of the pricing disparity, NYSE immediately halted trading in the

[5] *See* Securities Exchange Act Release No. 68818 (Feb. 1, 2013), 78 FR 9100 (Feb. 7, 2013) (SR–BX–2013–010); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* Exchange Rule 11890(g).

[6] Paragraphs (a)(2)(C), (c)(1), (b)(i), (b)(ii), and (g) of Rule 11890 are currently subject to a pilot program. *See* Securities Exchange Act Release No. 70542 (Sept. 27, 2013), 78 FR 61427 (Oct. 3, 2013) (SR–BX–2013–053).

[7] Securities Exchange Act Release No. 71784 (Mar. 24, 2014), 79 FR 17610 (Mar. 28, 2014) (SR–BX–2014–014).

[8] Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (Aug. 5, 2010) (SR–NYSE–2010–55).

[9] *Id.*

Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

In order to address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous execution rule such that the trading in Depositary Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation (the ''U.S. Bancorp Event'').[10] Because the Depositary Shares were halted before the price of the Depositary Shares ceased to be dislocated, and remained halted, the NYSE was able to review trading in Depositary Shares and declare null and void all trading in the U.S. Bancorp Event before the security resumed trading.

Rather than filing a proposal in response to a similar event happening again, the Exchange proposes to add paragraph (h) in order to nullify transactions consistent with the description of the proposed Rule above.

Executions After a Trading Halt Has Been Declared

The Exchange proposes to add new paragraph (i) to Rule 11890 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt, the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt with respect to such security has officially ended according to the primary listing market. In addition, proposed paragraph (i) will make clear that in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, the Exchange will nullify transactions that occur before the official, final end of the trading halt according to the primary listing market.

As with other provisions in Rule 11890, including proposed paragraph (h) as discussed above, the authority to nullify transactions pursuant to paragraph (i) would be vested in an officer of the Exchange or other senior level employee designee, acting on his or her own motion. Any action taken in connection with paragraph (i) would be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of Regular Market Session [11] on the trading day following the date of execution(s) under review. The Exchange also proposes to specify that any action taken in connection with proposed paragraph (i) will be taken without regard to the Numerical Guidelines set forth in paragraph (a)(2)(C)(1) of Rule 11890. The Exchange believes it is appropriate to act to nullify transactions pursuant to proposed paragraph (i) without regard to applicable Numerical Guidelines because in the situations covered by paragraph (i), such transactions should not have occurred in the first instance, and thus, their nullification does not put parties in any different position than they should have been. The Exchange also believes that the certainty that the proposed rule provides is critical in situations involving trading halts.

As it has proposed for paragraph (h), as described above, the Exchange also proposes to include a provision stating that each Member involved in a transaction subject to proposed paragraph (i) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11890(c).

The Exchange notes that trading in a security is typically halted immediately on the Exchange when the primary listing market issues a trading halt in such security. However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, executions can occur on the Exchange following the declaration of such a trading halt. Similarly, although rare, the Exchange has witnessed scenarios where due to extraordinary circumstances a trading halt is declared, then prematurely lifted in error and then re-instituted. It is these types of extraordinary circumstances that the Exchange believes require certainty, and thus, the Exchange believes it necessary to make clear that in such a circumstance any transactions after a trading halt has been declared will be nullified. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), the Exchange would only nullify transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market.

The Exchange also notes that it currently has authority pursuant to paragraph (b)(i) of Rule 11890 to review and nullify transactions that arise during a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange. Further, paragraph (b)(i) of Rule 11890 gives the Exchange authority to use a lower numerical guideline than is set forth in paragraph (a)(2)(C)(1) of Rule 11890 when necessary to maintain a fair and orderly market and to protect investors and the public interest. Thus, while the Exchange believes that paragraph (b)(i) does give the Exchange the authority to nullify transactions occurring when there is an Exchange technical issue related to the transmission or receipt of the electronic message instituting a trading halt or with respect to a technical issue related to a prematurely lifted trading halt, the Exchange believes that proposed paragraph (i) will provide appropriate authority for the Exchange to nullify all such transactions whether or not the systems problem occurs on the Exchange with respect to trading halts and explicit clarity for market participants that such transactions will be nullified. The Exchange believes that such authority is appropriate because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. Finally, the Exchange believes that such authority is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[13] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that it is appropriate to adopt a provision

[10] *Id.*

[11] Regular Market Session is defined in Exchange Rule 4120(b)(4)(D) as the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

granting the Exchange authority to nullify trades that occur if an Event similar to the U.S. Bancorp Event occurs again. The Exchange believes that this provision will allow the Exchange to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade and that the proposal is therefore consistent with the Act. Similarly, the Exchange believes that adding a provision allowing the Exchange to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and providing that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt the Exchange will nullify trades occurring after a trading halt has been declared by the primary listing market for the security will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. The Exchange further believes that the proposal is appropriate and consistent with the Act because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. The Exchange also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

The Exchange believes that the proposal to update cross-references in existing paragraph (g) of Rule 11890 to include new paragraphs (h) and (i) is consistent with the Act because, as is the case with respect to the current rule, this change makes clear that the provisions of paragraph (g) do not alter the application of other provisions of Rule 11890.

The Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals to add provisions similar to the provisions proposed by the Exchange above. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning treatment of transactions as clearly erroneous. The proposed rule change would also help to assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, the Exchange believes FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2014–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2014–021. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–BX–2014–021 and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10289 Filed 5–5–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72056; File No. SR–CHX–2014–06]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend Article 20, Rule 10 Concerning the Handling of Clearly Erroneous Transactions

April 30, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 22, 2014, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

(the ''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

CHX proposes to adopt paragraphs (j) and (k) to Article 20, Rule 10 (''Handling of Clearly Erroneous Transactions''). The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add new paragraph (j) to Article 20, Rule 10 to provide the Exchange with authority to nullify transactions that were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information even if such transactions occur over a period of several days, as further described below. An example of fundamentally incorrect and grossly misinterpreted issuance information that led to a severe valuation error is included below for illustrative purposes.

The Exchange also proposes to add new paragraph (k) to Article 20, Rule 10 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause (hereafter generally referred to as a ''trading halt'' for ease of reference), the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt with respect to such security. In the event a trading halt is declared, then prematurely lifted in error, and then re-instituted, proposed paragraph (k) would also result in nullification of any transactions that occur before the official, final end of the trading halt according to the primary listing market.

The Exchange also proposes a change to certain cross-references in Article 20, Rule 10, due to the addition of paragraphs (j) and (k). Specifically, the Exchange proposes to update cross-references in existing paragraph (i) of Article 20, Rule 10 to make clear that the provisions of paragraph (i) do not alter the application of other provisions of Article 20, Rule 10, including new paragraphs (j) and (k).

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to Article 20, Rule 10 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[4] The Exchange also adopted additional changes to Article 20, Rule 10 that reduced the ability of the Exchange to deviate from the objective standards set forth in Article 20, Rule 10,[5] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[6] The Exchange then removed the specific provisions related to individual stock trading pauses and extended to April 8, 2014 the pilot program applicable to certain provisions of Article 20, Rule 10.[7] Most recently, on March 19, 2014, the Exchange extended the pilot program again to coincide with the pilot period for the Limit Up-Limit Down Plan.[8]

As proposed, similar to other provisions added in recent years, as described above, both paragraph (j) and paragraph (k) would be subject to the pilot period, and thus, would also coincide with the pilot period for the Limit Up-Limit Down plan. Thus, the Exchange proposes to amend Interpretation and Policy .01 of Article 20, Rule 10, to reflect that ''the provisions of paragraphs (i) through (k) shall be in effect during a pilot period to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan.''

Executions Based on Incorrect or Grossly Misinterpreted Issuance Information

The Exchange proposes to adopt a new provision, paragraph (j), to Article 20, Rule 10, which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, would be required to take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the Officer of the Exchange or senior level employee designee would be required to take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. The Exchange proposes to make clear that no action can be taken pursuant to proposed paragraph (j) with respect to any transactions that have reached settlement date for the security or that result from an initial public offering of a security. The Exchange believes that declaring a trade null and void after settlement date would be complex to administer and unfair to the affected parties. The Exchange also believes that

[4] Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–CHX–2010–13).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 68802 (February 1, 2013), 78 FR 9092 (Feb. 7, 2013) (SR–CHX–2013–04); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* CHX Article 20, Rule 10(i).

[7] Paragraphs (c), (e)(2), (f), (g), and (i) of Article 20, Rule 10 are currently subject to a pilot program. *See* Securities Exchange Act Release No. 70515 (September 26, 2013), 78 FR 60945 (October 2, 2013) (SR–CHX–2013–17).

[8] Securities Exchange Act Release No. 71782 (March 24, 2014), 79 FR 17630 (March 28, 2014) (SR–CHX–2014–04).

excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no benchmark information are not called into question, as it is the IPO process itself that, including the extensive public disclosure associated with IPOs, is intended to drive price formation.

Further, the Exchange proposes that to the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. The Exchange also proposes to state in the Rule that any action taken in connection with paragraph (j) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Article 20, Rule 10. In particular, the Exchange believes that there could be scenarios where there are erroneous transactions related to an Event that do not meet applicable Numerical Guidelines but that are, upon review, clearly erroneous. One example of a situation that could occur is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to erroneous transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet applicable Numerical Guidelines, the Exchange would have the authority to nullify such transactions if they were affected based on the same fundamentally incorrect or grossly misinterpreted issuance information and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action the security continues to trade at a price that does not meet applicable Numerical Guidelines).

The Exchange also proposes to an [sic] include a provision, as it does in many other sub-paragraphs of Article 20, Rule 10, stating that each Participant involved in a transaction subject to proposed paragraph (j) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Article 20, Rule 10(e)(2).

In particular, the Exchange believes it is necessary to have authority to nullify trades that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the New York Stock Exchange (''NYSE'') in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information. As a result of such information, the securities traded at severely dislocated prices. At the time, the NYSE filed an emergency rule filing in order to respond to that event.[9] With the filing the NYSE interpreted the rule applicable to clearly erroneous executions as permitting the NYSE to nullify all trades resulting after the Exchange Offer at severely dislocated prices.[10] The Exchange believes it is important to have in place a rule to break such trades if an event like the U.S. Bancorp event occurs again in the future. The U.S. Bancorp event is described in further detail below and is intended to be illustrative of the manner in which the Exchange proposes to utilize proposed paragraph (j), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17 and 18, 2010. On June 18, 2010, NYSE staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an $800 price. Upon learning of the pricing disparity, NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

In order to address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous execution rule such that the trading in Depository Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation (the ''U.S. Bancorp Event'').[11] Because the Depository Shares were halted before the price of the Depository Shares ceased to be dislocated, and remain halted, the NYSE was able to review trading in Depository Shares and declare null and void all trading in the U.S. Bancorp Event before the security resumed trading.

Rather than filing a proposal in response to a similar event happening again, the Exchange proposes to add paragraph (j) in order to nullify transactions consistent with the description of the proposed Rule above.

Executions After a Trading Halt Has Been Declared

The Exchange proposes to add new paragraph (k) to Article 20, Rule 10 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt, the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt with respect to such security has officially ended according to the primary listing market. In addition, proposed paragraph (k) will make clear that in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, the Exchange will nullify transactions that occur before the official, final end of the trading halt according to the primary listing market.

As with other provisions in Article 20, Rule 10, including proposed paragraph (j) as discussed above, the authority to nullify transactions pursuant to paragraph (k) would be vested in an officer of the Exchange or other senior level employee designee, acting on his or her own motion. Any action taken in connection with paragraph (k) would be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of Regular Trading Session[12] on the trading day following the date of execution(s) under review. The Exchange also proposes to specify that any action taken in connection with proposed paragraph (k) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1)

[9] Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (August 5, 2010) (SR–NYSE–2010–55).

[10] *Id.*

[11] *Id.*

[12] Regular Trading Session is defined in CHX Article 20, Rule 1(b) as 8:30 a.m. to 3:00 p.m. CST.

of Article 20, Rule 10. The Exchange believes it is appropriate to act to nullify transactions pursuant to proposed paragraph (k) without regard to applicable Numerical Guidelines because in the situations covered by paragraph (k), such transactions should not have occurred in the first instance, and thus, their nullification does not put parties in any different position than they should have been. The Exchange also believes that the certainty that the proposed rule provides is critical in situations involving trading halts.

As it has proposed for paragraph (j), as described above, the Exchange also proposes to an [sic] include a provision stating that each Participant involved in a transaction subject to proposed paragraph (k) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with paragraph (e)(2) of Article 20, Rule 10.

The Exchange notes that trading in a security is typically halted immediately on the Exchange when the primary listing market issues a trading halt in such security. However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, executions can occur on the Exchange following the declaration of such a trading halt. Similarly, although rare, the Exchange has witnessed scenarios where due to extraordinary circumstances a trading halt is declared, then prematurely lifted in error and then re-instituted. It is these types of extraordinary circumstances that the Exchange believes require certainty, and thus, the Exchange believes it necessary to make clear that in such a circumstance any transactions after a trading halt has been declared will be nullified. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), the Exchange would only nullify transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market.

The Exchange also notes that it currently has authority pursuant to paragraph (f) of Article 20, Rule 10 to review and nullify transactions that arise during a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange. Further, paragraph (f) of Article 20, Rule 10 gives the Exchange authority to use a lower numerical guideline than is set forth in paragraph (c)(1) of Article 20, Rule 10 when necessary to maintain a fair and orderly market and to protect investors and the public interest. Thus, while the Exchange believes that paragraph (f) does give the Exchange the authority to nullify transactions occurring when there is an Exchange technical issue related to the transmission or receipt of the electronic message instituting a trading halt or with respect to a technical issue related to a prematurely lifted trading halt, the Exchange believes that proposed paragraph (k) will provide appropriate authority for the Exchange to nullify all such transactions whether or not the systems problem occurs on the Exchange with respect to trading halts and explicit clarity for market participants that such transactions will be nullified. The Exchange believes that such authority is appropriate because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. Finally, the Exchange believes that such authority is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[13] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[14] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that it is appropriate to adopt a provision granting the Exchange authority to nullify trades that occur if an Event similar to the U.S. Bancorp Event occurs again. The Exchange believes that this provision will allow the Exchange to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade and that the proposal is therefore consistent with the Act. Similarly, the Exchange believes that adding a provision allowing the Exchange to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and providing that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt the Exchange will nullify trades occurring after a trading halt has been declared by the primary listing market for the security will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. The Exchange further believes that the proposal is appropriate and consistent with the Act because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. The Exchange also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

The Exchange believes that the proposal to update cross-references in existing paragraph (i) of Article 20, Rule 10 to include new paragraphs (j) and (k) is consistent with the Act because, as is the case with respect to the current rule, this change makes clear that the provisions of paragraph (i) do not alter the application of other provisions of Article 20, Rule 10.

The Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals to add provisions similar to the provisions proposed by the Exchange above. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning treatment of transactions as clearly erroneous. The proposed rule change would also help to assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, the Exchange believes FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CHX–2014–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2014–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–CHX–2014–06 and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10292 Filed 5–5–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72046; File No. SR–NSX–2014–08]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend Exchange Rule 11.19 Entitled ''Clearly Erroneous Executions'' To Add Provisions Regarding Executions Based on Incorrect or Grossly Misinterpreted Issuance Information and Executions Occurring After a Trading Halt Has Been Declared

April 30, 2014.

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 April 17, 2014, National Stock Exchange, Inc. (''NSX®'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to amend Rule 11.19 entitled ''Clearly Erroneous Executions'' to add new paragraphs (k) and (l) and to amend paragraph (j) to make certain conforming changes based on the addition of these new paragraphs.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add new paragraph (k) to Exchange Rule 11.19 to provide the Exchange with authority to nullify transactions that were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information even if such transactions occur over a period of several days, as further described below. An example of fundamentally incorrect and grossly misinterpreted issuance information that led to a severe valuation error is included below for illustrative purposes.

The Exchange also proposes to add new paragraph (l) to Rule 11.19 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause (hereafter generally referred to as a ''trading halt'' for ease of reference), the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

halt with respect to such security. In the event a trading halt is declared, then prematurely lifted in error, and then re-instituted, proposed paragraph (l) would also result in nullification of any transactions that occur before the official, final end of the trading halt according to the primary listing market.

The Exchange also proposes to change certain cross-references in Rule 11.19, due to the addition of paragraphs (k) and (l). Specifically, the Exchange proposes to update cross-references in existing paragraph (j) of Rule 11.19 in order to make clear that the provisions of paragraph (j) do not alter the application of other provisions of Rule 11.19, including new paragraphs (k) and (l).

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11.19 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[3] The Exchange also adopted additional changes to Rule 11.19 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.19,[4] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[5] In October 2013, the Exchange removed the specific provisions related to individual stock trading pauses and extended to April 8, 2014 the pilot program applicable to certain provisions of Rule 11.19.[6] Most recently, the Exchange extended the pilot program applicable to certain provisions of Rule 11.19 to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan.[7]

As proposed, similar to other provisions added in recent years, as described above, both paragraph (k) and paragraph (l) would be subject to the pilot period, and thus, would last for a period to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan.

Executions Based on Incorrect or Grossly Misinterpreted Issuance Information

The Exchange proposes to adopt a new provision, paragraph (k), to Rule 11.19, which would provide that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, would be required to take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the Officer of the Exchange or senior level employee designee would be required to take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. The Exchange proposes to make clear that no action can be taken pursuant to proposed paragraph (k) with respect to any transactions that have reached settlement date for the security or that result from an initial public offering of a security. The Exchange believes that declaring a trade null and void after settlement date would be complex to administer and unfair to the affected parties. The Exchange also believes that excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no benchmark information are not called into question, as it is the IPO process itself, including the extensive public disclosure associated with IPOs that is intended to drive price formation.

Further, the Exchange proposes that to the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. The Exchange also proposes to state in the Rule that any action taken in connection with paragraph (k) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 11.19. In particular, the Exchange believes that there could be scenarios where there are erroneous transactions related to an Event that do not meet applicable Numerical Guidelines but that are, upon review, clearly erroneous. One example of a situation that could occur is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to erroneous transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet applicable Numerical Guidelines, the Exchange would have the authority to nullify such transactions if they were affected based on the same fundamentally incorrect or grossly misinterpreted issuance information and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action the security continues to trade at a price that does not meet applicable Numerical Guidelines).

The Exchange also proposes to include a provision, as it does in many other sub-paragraphs of Rule 11.19, stating that each Equity Trading Permit (''ETP'') Holder involved in a transaction subject to proposed paragraph (k) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11.19(e)(2).

In particular, the Exchange believes it is necessary to have authority to nullify trades that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the New York Stock Exchange (''NYSE'') in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information. As a result of such information, the securities traded at severely dislocated prices. At the time, the NYSE filed an emergency rule

[3] *See,* Exchange Act Release No. 62886 (Sept. 10, 2010); 75 FR 56613 (Sept. 16, 2010); SR–NSX–2010–07.

[4] *Id.*

[5] *See* Exchange Act Release No. 68803 (February 1, 2013), 78 FR 9078 (February 7, 2013) (SR–NSX–2013–06); Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *See also* NSX Rule 11.19(j).

[6] Paragraphs (c), (e)(2), (g), (h) and (j) of Rule 11.19 are currently subject to a pilot program. *See* Exchange Act Release No. 70589 (October 1, 2013); 78 FR 62782 (October 22, 2013) (SR–NSX–2013–19).

[7] *See* Exchange Act Release No. 71797 (March 25, 2014); 79 FR 18108 (March 31, 2014) (SR–NSX–2014–07).

filing in order to respond to that event.[8] With the filing the NYSE interpreted the rule applicable to clearly erroneous executions as permitting the NYSE to nullify all trades resulting after the Exchange Offer at severely dislocated prices.[9] The Exchange believes it is important to have in place a rule to break such trades if an event like the U.S. Bancorp event occurs again in the future. The U.S. Bancorp event is described in further detail below and is intended to be illustrative of the manner in which the Exchange proposes to utilize proposed paragraph (k), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17 and 18, 2010. On June 18, 2010, NYSE staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an $800 price. Upon learning of the pricing disparity, NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

In order to address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous execution rule such that the trading in Depository Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation (the ''U.S. Bancorp Event'').[10] Because the Depository Shares were halted before the price of the Depository Shares ceased to be dislocated, and remain halted, the NYSE was able to review trading in Depository Shares and declare null and void all trading in the U.S. Bancorp Event before the security resumed trading. Rather than filing a proposal in response to a similar event happening again, the Exchange proposes to add paragraph (k) in order to nullify transactions consistent with the description of the proposed Rule above.

Executions After a Trading Halt Has Been Declared

The Exchange proposes to add new paragraph (l) to Rule 11.19 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt, the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt with respect to such security has officially ended according to the primary listing market. In addition, proposed paragraph (l) will make clear that in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, the Exchange will nullify transactions that occur before the official, final end of the trading halt according to the primary listing market.

As with other provisions in Rule 11.19, including proposed paragraph (k) as discussed above, the authority to nullify transactions pursuant to paragraph (l) would be vested in an Officer of the Exchange or other senior level employee designee, acting on his or her own motion. Any action taken in connection with paragraph (l) would be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of Regular Trading Hours [11] on the trading day following the date of the execution(s) under review. The Exchange also proposes to specify that any action taken in connection with proposed paragraph (l) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 11.19. The Exchange believes it is appropriate to act to nullify transactions pursuant to proposed paragraph (l) without regard to applicable Numerical Guidelines because in the situations covered by paragraph (l), such transactions should not have occurred in the first instance, and thus, their nullification does not put parties in any different position than they should have been. The Exchange also believes that the certainty that the proposed rule provides is critical in situations involving trading halts.

As it has proposed for paragraph (k) described above, the Exchange also proposes to include a provision stating that each ETP Holder involved in a transaction subject to proposed paragraph (l) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11.19(e)(2).

The Exchange notes that trading in a security is typically halted immediately on the Exchange when the primary listing market issues a trading halt in such security. However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, executions can occur on the Exchange following the declaration of such a trading halt. Similarly, although rare, the Exchange has witnessed scenarios where due to extraordinary circumstances a trading halt is declared, then prematurely lifted in error and then re-instituted. It is these types of extraordinary circumstances that the Exchange believes require certainty, and thus, the Exchange believes it necessary to make clear that in such a circumstance any transactions after a trading halt has been declared will be nullified. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination among market participants), the Exchange would only nullify transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market.

The Exchange also notes that it currently has authority pursuant to paragraph (g) of Rule 11.19 to review and nullify transactions that arise during a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange. Further, paragraph (g) of Rule 11.19 gives the Exchange authority to use a lower numerical guideline than is set forth in paragraph (c)(1) of the Rule when necessary to maintain a fair and orderly market and to protect investors and the public interest. Thus, while the Exchange believes that paragraph (g) does give the Exchange the authority to nullify transactions occurring when there is an Exchange

[8] Securities Exchange Act Release No. 62609 (July 30, 2010), 75 FR 47327 (August 5, 2010) (SR–NYSE–2010–55).

[9] *Id.*

[10] *Id.*

[11] Regular Trading Hours are defined in Exchange Rule 1.5 as the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

technical issue related to the transmission or receipt of the electronic message instituting a trading halt or with respect to a technical issue related to a prematurely lifted trading halt, the Exchange believes that proposed paragraph (l) will provide appropriate authority for the Exchange to nullify all such transactions whether or not the systems problem occurs on the Exchange with respect to trading halts and explicit clarity for market participants that such transactions will be nullified. The Exchange believes that such authority is appropriate because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. Finally, the Exchange believes that such authority is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.[12] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[13] because it would promote just and equitable principles of trade and operate to remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that it is appropriate to adopt a provision granting it the authority to nullify trades that occur if an Event similar to the U.S. Bancorp Event occurs again. The Exchange believes that this provision will allow the Exchange to act in the event of such a severe valuation error, that such an action would promote just and equitable principles of trade, and that the proposal is therefore consistent with the Act. Similarly, the Exchange believes that adding a provision allowing the Exchange to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and providing that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt the Exchange will nullify trades occurring after a trading halt has been declared by the primary listing market for the security, will help to avoid confusion among market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. The Exchange further believes that the proposal is appropriate and consistent with the Act because when relied upon the Exchange will be canceling trades that should not have occurred in the first instance. The Exchange also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

The Exchange believes that the proposal to update the cross-references in existing paragraph (j) of Rule 11.19 to include new paragraphs (k) and (l) is consistent with the Act because, as is the case with respect to the current rule, this change makes clear that the provisions of paragraph (j) do not alter the application of the other provisions of Rule 11.19.

The Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals to add provisions similar to the provisions proposed by the Exchange above. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning treatment of transactions as clearly erroneous. The proposed rule change would also help to assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, the Exchange believes FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change was filed with the Commission pursuant to Section 19(b)(2) of the Act. Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) by order approve or disapprove the proposed rule change; or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2014–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2014–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

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 available publicly. All submissions should refer to File Number SR–NSX–2014–08, and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10282 Filed 5–5–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72048; File No. SR–EDGX–2014–12]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 11.13, Entitled ''Clearly Erroneous Executions''

April 30, 2014.

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 April 17, 2014, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to add new paragraphs (j) and (k) to Rule 11.13, entitled ''Clearly Erroneous Executions.'' The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add new paragraph (j) to Rule 11.13 to provide the Exchange with authority to nullify transactions that were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information, even if such transactions occur over a period of several days, as further described below. An example of fundamentally incorrect and grossly misinterpreted issuance information that led to a severe valuation error is included below for illustrative purposes.

The Exchange also proposes to add new paragraph (k) to Rule 11.13 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause (hereafter generally referred to as a ''trading halt'' for ease of reference), the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt with respect to such security. In the event a trading halt is declared, then prematurely lifted in error, and then re-instituted, proposed paragraph (k) would also result in nullification of any transactions that occur before the official, final end of the trading halt according to the primary listing market.

The Exchange also proposes a change to certain cross-references in Rule 11.13, due to the addition of paragraphs (j) and (k). Specifically, the Exchange proposes to update cross-references in existing paragraph (i) of Rule 11.13 in order to make clear that the provisions of paragraph (i) do not alter the application of other provisions of Rule 11.13, including new paragraphs (j) and (k).

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11.13 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[3] The Exchange also adopted additional changes to Rule 11.13 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.13,[4] and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[5] The Exchange recently removed the specific provisions related to individual stock trading pauses and extended to April 8, 2014 the pilot program applicable to certain provisions of Rule 11.13.[6] More recently, the Exchange further extended the pilot program to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.[7]

As proposed, similar to other provisions added in recent years, as described above, both paragraph (j) and paragraph (k) would be subject to the pilot period, and thus, would coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan.[8]

Executions Based on Incorrect or Grossly Misinterpreted Issuance Information

The Exchange proposes to adopt a new provision, paragraph (j), to Rule 11.13, which would provide that a

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGX–2010–03).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 68814 (February 1, 2013), 78 FR 9086 (February 7, 2013) (SR–EDGX–2013–06); *see* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''); *see also* Exchange Rule 11.13(i).

[6] Paragraphs (c), (e)(2), (f), (g), and (i) of Rule 11.13 are subject to the pilot program. *See* Securities Exchange Act Release No. 70511 (September 26, 2013), 78 FR 60941 (October 2, 2013) (SR–EDGX–2013–35).

[7] *See* Securities Exchange Act Release No. 71809 (March 26, 2014), 79 FR 18353 (April 1, 2014) (SR–EDGX–2014–007).

[8] *Id.*

series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information (*e.g.,* with respect to a stock split or corporate dividend) resulting in a severe valuation error for all such transactions (the ''Event'').

As proposed, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, would be required to take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, the Officer of the Exchange or senior level employee designee would be required to take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. The Exchange proposes to make clear that no action can be taken pursuant to proposed paragraph (j) with respect to any transactions that have reached settlement date for the security or that result from an initial public offering of a security. The Exchange believes that declaring a trade null and void after settlement date would be complex to administer and unfair to the affected parties. The Exchange also believes that excluding IPOs from the proposed rule will ensure that transactions in a new security for which there is no benchmark information are not called into question, as it is the IPO process itself, including the extensive public disclosure associated with IPOs, that is intended to drive price formation.

Further, the Exchange proposes that to the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. The Exchange also proposes to state in the Rule that any action taken in connection with paragraph (j) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 11.13. In particular, the Exchange believes that there could be scenarios where there are erroneous transactions related to an Event that do not meet applicable Numerical Guidelines but that are, upon review, clearly erroneous. One example of a situation that could occur is a corporate action, such as a stock split, that results in the dissemination of fundamentally incorrect or grossly misinterpreted issuance information and leads to erroneous transactions at a price that is close to the price at which the security was previously trading. Even if such trading is consistent with prior trading activity for the security, and thus would not meet applicable Numerical Guidelines, the Exchange would have the authority to nullify such transactions if they were affected based on the same fundamentally incorrect or grossly misinterpreted issuance information, and there was a severe valuation error as a result (*i.e.,* although the security should be trading at a price further away from its previous range, due to fundamentally incorrect or grossly misinterpreted issuance information with respect to the corporate action the security continues to trade at a price that does not meet applicable Numerical Guidelines).

The Exchange also proposes to include a provision, as it does in many other sub-paragraphs of Rule 11.13, stating that each Member involved in a transaction subject to proposed paragraph (j) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11.13(e)(2).

In particular, the Exchange believes it is necessary to have authority to nullify trades that occur in an event similar to an event involving an exchange offer (''Exchange Offer'') made by U.S. Bancorp on the New York Stock Exchange (''NYSE'') in 2010 in which there were a series of executions based on incorrect or grossly misinterpreted issuance information. As a result of such information, the securities traded at severely dislocated prices. At the time, the NYSE filed an emergency rule filing in order to respond to that event.[9] With the filing the NYSE interpreted the rule applicable to clearly erroneous executions as permitting the NYSE to nullify all trades resulting after the Exchange Offer at severely dislocated prices.[10] The Exchange believes it is important to have in place a rule to break such trades if an event like the U.S. Bancorp event occurs again in the future. The U.S. Bancorp event is described in further detail below and is intended to be illustrative of the manner in which the Exchange proposes to utilize proposed paragraph (j), if necessary.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the ''Depositary Shares'') for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of $1,000 (the ''Normal ITS''). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of $79.00 per share. There were additional executions on the NYSE in that price range on June 17 and 18, 2010. On June 18, 2010, NYSE staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an $800 price. Upon learning of the pricing disparity, NYSE immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

In order to address the situation, the NYSE filed a proposal to interpret its existing clearly erroneous execution rule such that the trading in Depository Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted issuance information that resulted in severe price dislocation (the ''U.S. Bancorp Event'').[11] Because the Depository Shares were halted before the price of the Depository Shares ceased to be dislocated, and remain halted, the NYSE was able to review trading in Depository Shares and declare null and void all trading in the U.S. Bancorp Event before the security resumed trading.

Rather than filing a proposal in response to a similar event happening again, the Exchange proposes to add paragraph (j) in order to nullify transactions consistent with the description of the proposed Rule above.

Executions After a Trading Halt Has Been Declared

The Exchange proposes to add new paragraph (k) to Rule 11.13 to make clear that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt, the Exchange will nullify any transaction that occurs after the primary listing market for a security declares a trading halt and before such trading halt

[9] Securities Exchange Act RElease No. 62609 (July 30, 2010), 75 FR 47327 (August 5, 2010) (SR–NYSE–2010–55).

[10] *Id.*

[11] *Id.*

with respect to such security has officially ended according to the primary listing market. In addition, proposed paragraph (k) will make clear that in the event a trading halt is declared, then prematurely lifted in error and then re-instituted, the Exchange will nullify transactions that occur before the official, final end of the trading halt according to the primary listing market.

As with other provisions in Rule 11.13, including proposed paragraph (j) as discussed above, the authority to nullify transactions pursuant to paragraph (k) would be vested in an officer of the Exchange or other senior level employee designee, acting on his or her own motion. Any action taken in connection with paragraph (k) would be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of Regular Trading Hours [12] on the trading day following the date of execution(s) under review. The Exchange also proposes to specify that any action taken in connection with proposed paragraph (k) will be taken without regard to the Numerical Guidelines set forth in paragraph (c)(1) of Rule 11.13. The Exchange believes it is appropriate to act to nullify transactions pursuant to proposed paragraph (k) without regard to applicable Numerical Guidelines because in the situations covered by paragraph (k), such transactions should not have occurred in the first instance, and thus, their nullification does not put parties in any different position than they should have been. The Exchange also believes that the certainty that the proposed rule provides is critical in situations involving trading halts.

As it has proposed for paragraph (j), as described above, the Exchange also proposes to include a provision stating that each Member involved in a transaction subject to proposed paragraph (k) shall be notified as soon as practicable by the Exchange, and that the party aggrieved by the action may appeal such action in accordance with Exchange Rule 11.13(e)(2).

The Exchange notes that trading in a security is typically halted immediately on the Exchange when the primary listing market issues a trading halt in such security. However, in certain circumstances, due to a technical issue related to the transmission or receipt of the electronic message instituting such trading halt or due to other extraordinary circumstances, executions can occur on the Exchange following the declaration of such a trading halt. Similarly, although rare, the Exchange has witnessed scenarios where due to extraordinary circumstances a trading halt is declared, then prematurely lifted in error and then re-instituted. It is these types of extraordinary circumstances that the Exchange believes require certainty, and thus, the Exchange believes it necessary to make clear that in such a circumstance any transactions after a trading halt has been declared will be nullified. In the event that a trading halt is declared as of a future time (*i.e.,* if the primary listing exchange declares a trading halt as of a specific, future time in order to ensure coordination amongst market participants), the Exchange would only nullify transactions occurring after the time the trading halt was supposed to be in place until the official end of the trading halt according to the primary listing market.

The Exchange also notes that it currently has authority pursuant to paragraph (f) of Rule 11.13 to review and nullify transactions that arise during a disruption or malfunction in the operation of any electronic communications and trading facilities of the Exchange. Further, paragraph (f) of Rule 11.13 gives the Exchange authority to use a lower numerical guideline than is set forth in paragraph (c)(1) of the Rule when necessary to maintain a fair and orderly market and to protect investors and the public interest. Thus, while the Exchange believes that paragraph (f) does give the Exchange the authority to nullify transactions occurring when there is an Exchange technical issue related to the transmission or receipt of the electronic message instituting a trading halt or with respect to a technical issue related to a prematurely lifted trading halt, the Exchange believes that proposed paragraph (k) will provide appropriate authority for the Exchange to nullify all such transactions whether or not the systems problem occurs on the Exchange with respect to trading halts and explicit clarity for market participants that such transactions will be nullified. The Exchange believes that such authority is appropriate because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. Finally, the Exchange believes that such authority is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[13] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[14] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that it is appropriate to adopt a provision granting the Exchange authority to nullify trades that occur if an Event similar to the U.S. Bancorp Event occurs again. The Exchange believes that this provision will allow the Exchange to act in the event of such a severe valuation error, that such action would promote just and equitable principles of trade and that the proposal is therefore consistent with the Act. Similarly, the Exchange believes that adding a provision allowing the Exchange to nullify transactions that occur when a trading halt is declared, then prematurely lifted in error and then reinstituted, and providing that in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a trading halt the Exchange will nullify trades occurring after a trading halt has been declared by the primary listing market for the security will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. The Exchange further believes that the proposal is appropriate and consistent with the Act because when relied upon the Exchange will be cancelling trades that should not have occurred in the first instance. The Exchange also believes that the proposal is appropriate because a trading halt declared by the primary listing market is indicative of an issue with respect to the applicable security or a larger set of securities.

The Exchange believes that the proposal to update cross-references in existing paragraph (i) of Rule 11.13 to include new paragraphs (j) and (k) is

[12] Regular Trading Hours are defined in Exchange Rule 1.5(y) as the time between 9:30 a.m. to 4:00 p.m. E.T.

[13] 15 u.s.c. 78f(b).

[14] 15 u.s.c. 78f(b).5

consistent with the Act because, as is the case with respect to the current rule, this change makes clear that the provisions of paragraph (i) do not alter the application of other provisions of Rule 11.13.

The Exchange believes that the Financial Industry Regulatory Authority (''FINRA'') and other national securities exchanges are also filing similar proposals to add provisions similar to the provisions proposed by the Exchange above. Therefore, the proposal promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning treatment of transactions as clearly erroneous. The proposed rule change would also help to assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, as noted above, the Exchange believes FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2014–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2014–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 available publicly. All submissions should refer to File Number SR–EDGX–2014–12, and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10284 Filed 5–5–14; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72066; File No. SR–FINRA–2014–022]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Implementation Date of SR–FINRA–2013–046

May 1, 2014.

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 April 24, 2014, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to delay the implementation date of amendments pursuant to SR–FINRA–2013–046. The proposed rule change would not make any changes to the text of FINRA rules.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 13, 2013, FINRA filed a proposed rule change (SR–FINRA–2013–046) to amend the FINRA Rule 6700 Series and the Trade Reporting and Compliance Engine (''TRACE'') dissemination protocols to provide for dissemination of additional Asset-Backed Securities (''ABS'') transactions and to reduce the reporting period for such securities.[4] The proposed rule change also included amendments to: (1) Redefine the term ''Asset-Backed Security'' to accurately describe the securities for which FINRA will commence dissemination pursuant to the rule change; and (2) make other definitional, technical and conforming changes.[5]

The proposed rule change, as amended,[6] was approved by the Commission on February 24, 2014.[7]

FINRA is filing this proposed rule change to revise the time frame for implementation of SR–FINRA–2013–046 to provide additional time to complete the technological changes required for the dissemination of the additional securities. In SR–FINRA–2013–046, FINRA stated that it would announce the effective date of the rule change in a *Regulatory Notice* to be published no later than April 25, 2014, and that the effective date would be no later than 270 days following publication of the *Regulatory Notice.* However, FINRA has since discovered that the technology changes required to implement the rule change will require additional time and, therefore, is delaying the time frame both for the publication of the *Regulatory Notice* and the implementation of the amendments pursuant to SR–FINRA–2013–046. Specifically, FINRA will issue a *Regulatory Notice* announcing the implementation date of SR–FINRA–2013–046 no later than August 22, 2014. The implementation date of the amendments pursuant to SR–FINRA–2013–046 will be no later than 365 days following publication of the *Regulatory Notice.*

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes the proposed rule change is consistent with Section 15A(b)(6) of the Act in that it provides the required additional time to complete technological changes that will enable the dissemination of the additional securities, which will improve transparency for investors, including by facilitating the ability of investors to identify and negotiate fair and competitive prices for ABSs. Dissemination of ABS transactions also may assist both buy and sell-side market participants in price discovery when pricing and trading such securities. Thus, the proposed rule change is consistent with Section 15A(b)(6) of the Act,[9] in that it will provide adequate time for FINRA to properly implement the required technology changes such that the launch of the new functionality will operate effectively when dissemination is commenced.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Based on the characteristics of the market, FINRA believes that additional price transparency in the ABS market may enhance the ability of investors to identify and negotiate fair and competitive prices for these securities. In addition, dissemination may assist institutional and retail customers in determining the quality of executions provided to them, which should encourage broker-dealers to provide competitive executions in such securities.

Further, because the additional securities that are the subject of SR–FINRA–2013–046 currently are not being disseminated, the delay of the implementation does not change the status quo or involve any disparate treatment among affected parties. Finally, FINRA believes that providing adequate time to properly implement the required technology changes such that the launch of the new functionality operates effectively when dissemination is commenced will benefit all interested parties. Thus, FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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[10] and Rule 19b–4(f)(6) thereunder.[11]

FINRA has asked the Commission to waive the 30-day operative delay because the deadline set forth in SR–FINRA–2013–046 for publication of a *Regulatory Notice* announcing that filing's effective date would occur during the operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such action would implement the extension for FINRA's publication of a *Regulatory Notice* announcing SR–FINRA–2013–046's effective date before the current

[4] *See* Securities Exchange Act Release No. 70906 (November 20, 2013), 78 FR 70602 (November 26, 2013) (Notice of Filing of File No. SR–FINRA–2013–046) (''Proposing Release'').

[5] *See* Proposing Release.

[6] In response to comments received by the Commission, on February 14, 2014, FINRA filed Amendment No. 1 to, among other things, modify certain definitions in FINRA Rule 6710 (Definitions) to revise the types of products that are to be included in the additional ABS transactions that would be subject to dissemination under FINRA Rule 6750 (Dissemination of Transaction Information) and the reduced reporting times specified in FINRA Rule 6730 (Transaction Reporting).

[7] *See* Securities Exchange Act Release No. 71607 (February 24, 2014), 79 FR 11481 (February 28, 2014) (Order Approving File No. SR–FINRA–2013–046).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

deadline for such publication expires. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2014–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–022. 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 the filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2014–022 and should be submitted on or before May 27, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10359 Filed 5–5–14; 8:45 am]

BILLING CODE 8011–01–P

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13957 and # 13958]

Arkansas Disaster # AR–00070

AGENCY: U.S. Small Business Administration.

ACTION: Notice

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of ARKANSAS (FEMA–4174–DR), dated 04/29/2014.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/27/2014.

DATES: *Effective Date:* 04/29/2014.

Physical Loan Application Deadline Date: 06/30/2014.

Economic Injury (Eidl) Loan Application Deadline Date: 01/29/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/29/2014, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Faulkner,

Contiguous Counties (Economic Injury Loans Only):

Arkansas: Cleburne, Conway, Lonoke, Perry, Pulaski, Van Buren, White.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.375
Homeowners Without Credit Available Elsewhere	2.188
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 13957C and for economic injury is 139580.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–10244 Filed 5–5–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the location, date and time and agenda for the 4th quarter meetings of the National Small Business Development Center (SBDC) Advisory Board.

DATES: The meetings for the 4th quarter will be held on the following dates:

Tuesday, July 15, 2014 at 1:00 pm EST;

Tuesday, August 19, 2014 at 1:00 pm EST;

Tuesday, September 16, 2014 at 1:00 pm EST.

ADDRESSES: This meeting will be held via conference call.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of these meetings is to discuss following issues pertaining to the SBDC

Advisory Board

—SBA Update
—Annual Meetings
—Board Assignments
—Member Roundtable

FOR FURTHER INFORMATION CONTACT: The meetings are open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Monika Nixon by fax or email. Her contact information is Monika Nixon, Program Specialist, 409 Third Street SW., Washington, DC 20416, Phone 202–205–7310, Fax 202–481–5624, email, *monika.nixon@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Monika Nixon at the information above.

Diana Doukas,

Committee Management Officer.

[FR Doc. 2014–10273 Filed 5–5–14; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 8718]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Scandalous Art of James Ensor''

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 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''The Scandalous Art of James Ensor,'' 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 J. Paul Getty Museum, Los Angeles, California, from on or about June 10, 2014, until on or about September 7, 2014, at the Art Institute of Chicago, Chicago, Illinois, under the title ''Temptation: The Demons of James Ensor,'' from on or about November 23, 2014, until on or about January 25, 2015, 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 imported 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: April 28, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–10373 Filed 5–5–14; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 14–02]

Sunshine Act Meeting Notice

The TVA Board of Directors will hold a public meeting on May 8, 2014, in De La Salle Hall/University Theatre (650 East Parkway South) at Christian Brothers University in Memphis, Tennessee. The public may comment on any agenda item or subject at a *public listening session* which begins at 9 a.m. (CT). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 9 a.m. (CT). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

Status: Open.

Agenda

Chairman's Welcome

Old Business

Approval of minutes of February 13, 2014, Board Meeting

New Business

1. Chairman's Report
   A. Committee Assignments
2. Report from President and CEO
3. Report of the External Relations Committee
4. Report of the Audit, Risk, and Regulation Committee
   A. End-User Exemption under Dodd-Frank Act
5. Report of the Finance, Rates, and Portfolio Committee
   A. Financial Performance Update
   B. Supplement to maintenance and modifications contract with Day & Zimmermann NPS
   C. Combined Heat and Power Project
6. Report of the Nuclear Oversight Committee
7. Report of the People and Performance Committee

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: May 1, 2014.

Ralph E. Rodgers,

General Counsel and Secretary.

[FR Doc. 2014–10427 Filed 5–2–14; 11:15 am]

BILLING CODE 8120–08–P

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Notice of Partially Opened Meeting of the Industry Trade Advisory Committee on Small and Minority Business (ITAC 11)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of partially opened meeting.

SUMMARY: The Industry Trade Advisory Committee on Small and Minority Business (ITAC 11) will hold a meeting on Monday, May 19, 2014. The meeting will be open to the public from 3:00–4:00 p.m.

DATES: The meeting will be held on May 19, 2014.

ADDRESSES: The meeting will be held at the Ronald Reagan International Trade Center, 1300 Pennsylvania Ave. NW., Suite M800, Training Room C, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Laura Hellstem, Designated Federal Officer, Industry Trade Advisory Center (ITAC), U.S. Department of Commerce, 1401 Constitution Ave. NW., Room 4043, Washington, DC 20230; by Fax: (202) 482–3268; or by email: *Laura.Hellstem@trade.gov.*

SUPPLEMENTARY INFORMATION: The open portion of this ITAC 11 meeting will consist of an update on the Trade Promotion Authority by staff of the Senate Finance Committee and House Committee on Ways and Means.

Jewel James,

Assistant United State Trade Representative, for Intergovernmental Affairs and Public Engagement.

[FR Doc. 2014–10267 Filed 5–5–14; 8:45 am]

BILLING CODE 3290–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0109]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Accident Recordkeeping Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for approval and invites public comment. FMCSA requests approval to revise the ICR entitled ''*Accident Recordkeeping Requirements.*'' This ICR relates to Agency requirements that motor carriers maintain a record of certain accidents involving commercial motor vehicles (CMVs). Motor carriers are not required to report this data to FMCSA, but must produce it upon inquiry by authorized Federal, State or local officials.

DATES: Please send your comments by June 5, 2014. OMB must receive your comments by this date in order to act on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2014–0109. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–4325; email *tom.yager@dot.gov*. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Accident Recordkeeping Requirements.

OMB Control Number: 2126–0009.

Type of Request: Revision of a currently-approved information collection request.

Respondents: Motor Carriers.

Estimated Number of Respondents: 520,000 motor carriers.

Estimated Time per Response: 18 minutes.

Expiration Date: May 31, 2014.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 26,700 hours [89,000 motor carriers recording an accident × 18 minutes per response/60 minutes in an hour = 26,700].

Background: Title 49 of the Code of Federal Regulations, § 390.15(b), requires motor carriers to make certain specified records and information pertaining to CMV accidents available to an authorized representative or special agent of the FMCSA upon request or as part of an inquiry. Interstate motor carriers are required to maintain an ''accident register'' consisting of information concerning all ''accidents'' involving their CMVs (49 CFR 390.15(b) (see ''Definition: Accident'' below). Motor carriers must report accidents that occur in interstate and intrastate commerce. The following information must be recorded for each accident: Date, location, driver name, number of injuries, number of fatalities, and whether certain dangerous hazardous materials were released. In addition, motor carriers must maintain copies of all accident reports required by insurers or governmental entities. Motor carriers must maintain this information for three years after the date of the accident. Section 390.15 does not require motor carriers to submit any information or records to FMCSA or any other party.

This ICR supports the DOT strategic goal of safety. By requiring motor carriers to gather and record information concerning CMV accidents, FMCSA is strengthening its ability to assess the safety performance of motor carriers. This information is a valuable resource in Agency initiatives to prevent, and reduce the severity of, CMV crashes.

Public Comments: Two comments were received in response to this notice. The first respondent expressed concern about the lack of notification by the reporting officer at the crash scene to the driver and motor carrier. In a recent accident, he was not made aware the accident was a DOT Recordable Accident until it was reported by the officer on the police report. The respondent did not address the ICR burden of the Accident Register. The second respondent suggested that the Agency could better utilize the information contained in the Accident Register by improving Police Accident Reports (PARs). However, PARs are designed and used exclusively by State and local enforcement agencies; the FMCSA lacks authority to amend or otherwise improve PARs.

Definition: ''Accident'' is an occurrence involving a CMV operating on a public road which results in: (1) A fatality, (2) bodily injury to a person who, as a result of the injury, receives medical treatment away from the scene of the accident, or (3) one or more motor vehicles being towed from the scene (49 CFR 390.5).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: April 16, 2014.

G. Kelly Leone,

Associate Administrator, Office of Research and Information Technology and Chief Information Officer.

[FR Doc. 2014–10313 Filed 5–5–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2014–0002]

Notice of Buy America Waiver for a Cross-Connect Cabinet

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America Waiver.

SUMMARY: In response to the City of Cincinnati (Cincinnati) request for a Buy America waiver for a cross-connect cabinet, the Federal Transit Administration (FTA) hereby waives its Buy America requirements for the cross-connect cabinet needed for a Cincinnati Bell utility relocation associated with the Cincinnati Streetcar project. This waiver is limited to a single procurement for the cross-connect cabinet for the Cincinnati Streetcar project.

FOR FURTHER INFORMATION CONTACT: Mary J. Lee, FTA Attorney-Advisor, at (202) 366–0985 or *mary.j.lee@dot.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that the Federal Transit Administration (FTA) has granted a non-availability waiver for the procurement of a cross-connect cabinet that will be used in a utility relocation performed by Cincinnati Bell. This utility relocation will be performed in connection with the Cincinnati Streetcar project, which is an FTA-funded project.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

On September 30, 2013, the City of Cincinnati (Cincinnati) formally requested a non-availability waiver for the procurement of one cross-connect cabinet.[1] In its request, Cincinnati stated that the only known cross-connect cabinet that complies with Cincinnati Bell's network specifications and service protocols is the Tyco Electronics (TE) NGXC pad mount cross-connect cabinet. At this time, deviations from the use of this particular cross-connect cabinet would result in impacts that would cascade down from the installation, maintenance, and emergency repair aspects, to operational impacts due to hardware incompatibility.

On October 17, 2013, Cincinnati alerted FTA that Cincinnati Bell had installed the cross-connect cabinet in order to comply with its scheduling demands. Unfortunately, because almost all FTA employees were furloughed during this time due to a partial government shutdown, Cincinnati was unable to consult with FTA on how to proceed.

On February 18, 2014, FTA published a notice to request comments on the Cincinnati's waiver request for the cross-connect cabinet. The comment period closed on March 4, 2014. FTA did not receive any comments to the docket, docket number FTA–2014–0002.

Based upon Cincinnati Bell's assertions that it is unable to procure a U.S.-manufactured cross-connect cabinet at this time that is configured for Cincinnati Bell's telecommunications network and meets Cincinnati Bell's engineering standards, FTA hereby waives its Buy America requirement for manufactured products under 49 CFR 661.5(d) for the cross-connect cabinet. This waiver is limited to a single procurement for the cross-connect cabinet for the Cincinnati Streetcar project.

Dana C. Nifosi,

Deputy Chief Counsel.

[FR Doc. 2014–10305 Filed 5–5–14; 8:45 am]

BILLING CODE 4910–57–P

[1] This request was the result of several informal communications between FTA, Cincinnati, and Cincinnati Bell to work through all of the Buy America issues. The availability of a domestic cross-connect cabinet that meets Cincinnati Bell's specifications in order to conform to its telecommunications network is the only remaining issue.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2014–0041]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on an extension of a currently approved collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for Part 541 and Part 542 for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before July 7, 2014.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590 by any of the following methods.

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

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65FR 19477–78) or you may visit *http://Docket Info.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to the street address listed above. The internet access to the docket will be at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Deborah Mazyck, NHTSA, 1200 New Jersey Ave. SE., Room W43–443, NVS–131, Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–4139. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i.) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii.) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii.) How to enhance the quality, utility, and clarity of the information to be collected and;

(iv.) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Consolidated Federal Motor Vehicle Theft Prevention Standard and Procedures for Selecting Lines To Be Covered by the Theft Prevention Standard for 49 CFR Part 541 and 542 (OMB Clearance Number 2127–0539).

OMB Control Number: 2127–0539.

Affected Public: Vehicle manufacturers.

Form Number: The collection of this information uses no standard form.

Requested Expiration Date of Approval: Three years from approval date.

Abstract: For Parts 541 and 542.

Part 541

The Motor Vehicle Information and Cost Savings Act was amended by the Anti-Car Theft Act of 1992 (Pub. L. 102–519). The enacted Theft Act requires specified parts of high-theft vehicle to be marked with vehicle identification numbers. In a final rule published on April 6, 2004, the Federal Motor Vehicle Theft Prevention Standard was extended to include all passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, and to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles. Each major component part must be either labeled or affixed with the VIN and its replacement component part must be marked with the DOT symbol, the letter (R) and the manufacturers' logo. The final rule became effective September 1, 2006. Due to expansion of the Federal Motor Vehicle Theft Prevention Standard (Part 541), all passenger cars, and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, and light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles, are required to be parts marked.

Part 542

Manufacturers of light duty trucks must identify new model introductions that are likely to be high-theft lines as defined in 49 U.S.C. § 33104. In 1984, Congress enacted the Motor Vehicle Theft Law Enforcement Act (the 1984 Theft Act). As a means to prevent the theft of motor vehicles for their parts, the 1984 Theft Act required vehicle manufacturers to mark the major parts of ''high-theft'' passenger cars and the major replacement parts for those cars. The Anti Car Theft Act of 1992 (ACTA) amended the 1984 Theft Act to extend its provisions to multipurpose passenger vehicles (MPVs) and light duty trucks (LDTs).

The 1984 Theft Act, as amended by ACTA, requires NHTSA to promulgate a theft prevention standard for the designation of high-theft vehicle lines. The specific lines are to be selected by agreement between the manufacturer and the agency. If there is a disagreement of the selection, the statute states that the agency shall select such lines and parts, after notice to the manufacturer and an opportunity for written comment. NHTSA's procedures for selecting high theft vehicle lines are contained in 49 CFR Part 542.

In a final rule published on April 6, 2004, the Federal Motor Vehicle Theft Prevention Standard was extended to include all passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, regardless of whether they were likely to be high or low theft, and to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles. The final rule became effective September 1, 2006.

As a result of this amendment, determination of high theft status is required only for LDTs manufactured on or after that date. There are seven vehicle manufacturers who produce LDTs. Generally, these manufacturers would not introduce more than one new LDT line in any year. NHTSA estimates the maximum number of responses to be two.

Estimated Total Cost Burden and Annual Burden Hour

Part 541

To meet the Theft Prevention Standard, the agency estimates that the time to number and affix 14 labels to each vehicle is approximately 2 minutes. Approximately 8 million vehicles will be covered. NHTSA estimates the hourly burden for labeling 8 million motor vehicles would be 266,666 hours (8 million cars × 2 minutes per car/60 minutes in an hour).

The other option is to stamp the engine and transmission. The agency estimates that the time to stamp both the engine and transmission will take approximately 1 minute. Approximately 8 million vehicles will be covered; the total burden for stamping is estimated to total 133,333 hours (8 million cars × 1 minute per car/60 minutes in an hour). Please note that in this analysis each vehicle would either have its major parts labeled or stamped, but not both.

NHTSA will use the highest hour number in the hour burden estimate.

Each manufacturer of vehicles that are required to be parts-marked must submit reports of the target area locations for the labels or stamping. NHTSA estimates that the maximum number of submissions to be 30. The average time to prepare and submit the target area submissions will be 20 hours for each submission at a cost of $60 per hour. The burden hour for submissions will be 600 hours (30 submissions × 20 hours) with an annual estimated cost burden of $36,000.00 ($60.00 × 20 hours × 30 submissions).

The total burden hours equal 266,666 + 600 = 267,266. The estimated total cost associated with the burden hours is approximately $16,035,960 (267,266 × $60.00/hr).

NHTSA assumes that most manufacturers will use the less expensive method of labeling the major parts on vehicles, and not stamp the VINs onto major parts. NHTSA estimates that the average cost to label the 14 parts is $10.24 per vehicle, broken down into $5.33 for material and $4.91 for labor. At present, 8 million motor vehicles annually must have its major parts marked. At present, the total annual fleet costs are estimated at $81,920,000 for label identifiers ($10.24 × 8 million vehicles). NHTSA estimates the total annual cost of meeting Part 541 will be $81,920,000 (lable) + $36,000 (target area submission) = $81,956,000.00 (approximately $82 million).

Part 542

NHTSA estimates that the average hours per submittal are 45, for a total annual burden of 90 hours. NHTSA estimates that the cost associated with the burden hours is $36.00 per hour, for a total cost of approximately $3,234.

NHTSA estimates the total annual cost of meeting Part 542 require no additional costs to the respondents.

Therefore, NHTSA estimates the grand total cost for Part 541 and Part 542 will be $81,956,000.00 (approximately $82 million).

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Claude H. Harris,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2014–10330 Filed 5–5–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2014–0005]

Pipeline Safety: Information Collection Activities

ACTION: Notice and request for comments.

AGENCY: Pipeline and Hazardous Materials Safety Administration

SUMMARY: On January 29, 2014, in accordance with the Paperwork Reduction Act of 1995, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice in the **Federal Register** notifying the public of its intent to request an extension with no change for the pipeline reporting information collections identified by Office of Management and Budget (OMB) control numbers 2137–0578, 2137–0584, and 2137–0601. In addition, PHMSA also intends to revise the information collection identified under OMB control number 2137–0618 to include the information currently collected under OMB control number 2137–0601.

PHMSA received no comments in response to that notice. PHMSA is publishing this notice to provide the public with an additional 30 days to comment on both the renewal and the revision of the information collections referenced above and announce that the Information Collections will be submitted to OMB for approval.

DATES: Comments on this notice must be received by June 5, 2014 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2014–0005 by any of the following methods:

- *Fax:* 1–202–395–5806.
- *Mail:* Office of Information and Regulatory Affairs (OIRA), Records Management Center, Room 10102 NEOB, 725 17th Street NW., Washington, DC 20503,

ATTN: Desk Officer for the U.S. Department of Transportation\PHMSA.

- *Email:* Office of Information and Regulatory Affairs, OMB, at the following email address: *OIRA_Submission@omb.eop.gov.*

Requests for a copy of the Information Collection should be directed to Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, by email at *Angela.Dow1@dot.gov*, or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies certain information collection requests that PHMSA will submit to OMB for renewal. The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. PHMSA will request a three-year term of approval for each information collection activity. PHMSA requests comments on the following information collections:

1. Title: Reporting Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities.

OMB Control Number: 2137–0578.

Current Expiration Date: 5/31/2014.

Type of Request: Renewal of a currently approved information collection.

Abstract: In accordance with 49 CFR Parts 191 and 195, each pipeline facility operator (except master meter operators) must submit to DOT a written report on any safety-related condition that causes or has caused a significant change or restriction in the operation of a pipeline facility or a condition that is a hazard to life, property or the environment.

Affected Public: Operators of pipeline facilities (except master meter operators).

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 142.

Estimated annual burden hours: 852.

Frequency of collection: On occasion.

2. Title: Gas Pipeline Safety Program Certification and Hazardous Liquid Pipeline Safety Program Certification.

OMB Control Number: 2137–0584.

Current Expiration Date: 7/31/2014.

Type of Request: Renewal of a currently approved information collection.

Abstract: A state must submit an annual certification to assume responsibility for regulating intrastate pipelines, and certain records must be maintained to demonstrate that the state safety program complies with the certification. PHMSA uses the information to evaluate a state's eligibility for Federal grants.

Affected Public: State and local governments.

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 67.

Estimated annual burden hours: 3,920.

Frequency of Collection: Annually.

3. Title: Pipeline Safety: Report of Abandoned Underwater Pipelines.

OMB Control Number: 2137–0601.

Current Expiration Date: 5/31/2014.

Type of Request: Renewal of a currently approved information collection.

Abstract: In accordance with 49 CFR Parts 192 and 195, upon abandonment of a facility, pipeline operators are required to report certain information about the abandoned underwater pipelines to PHMSA (49 CFR 195.59 and 192.727) including pipe attributes and the date and method of abandonment.

Affected Public: Operators of underwater pipelines.

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 10.

Estimated annual burden hours: 60.

Frequency of collection: Upon abandonment of affected facility.

4. Title: Pipeline Safety: Periodic Underwater Inspections.

OMB Control Number: 2137–0618.

Current Expiration Date: 6/30/2014.

Type of Request: Revision of a currently approved information collection.

Abstract: In accordance with 49 CFR Parts 192 and 195, pipeline operators are required to conduct underwater inspections in the Gulf of Mexico. If an operator finds that its pipeline is exposed on the seabed floor or constitutes a hazard to navigation, the operator must contact the National Response Center by telephone within 24 hours of discovery to report the location of the exposed pipeline. This package is being revised to include the collection of information currently under 2137–0601 which requires operators to report certain information about underwater pipelines to PHMSA (49 CFR 192.612 and 195.413). This information aids Federal and state pipeline safety inspectors in conducting compliance inspections and investigating incidents. Once this revised information collection is approved, PHMSA will discontinue the collection identified under OMB control number 2137–0601.

Affected Public: Operators of underwater pipeline facilities.

Estimated number of responses: 92.

Estimated annual burden hours: 1,372.

Frequency of collection: On occasion.

Comments are invited on:

(a) The need for the renewal and revision of these collections of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on April 30, 2014.

John A. Gale,

Director, Office of Standards and Rulemaking.

[FR Doc. 2014–10249 Filed 5–5–14; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permit

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before May 21, 2014.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHI–1–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53 (b)).

Issued in Washington, DC, on April 23, 2014.

Donald Burger,

Chief, General Approvals and Permits.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
6263–M		Amtrol, Inc., West Warwick, RI.	49 CFR 173.302(a)(1)	To modify the special permit to provide relief from § 173.306(g).
11650–M		Autoliv ASP, Inc., Ogden, UT.	49 CFR 173.301(a)(1), and 173.302a(a).	To modify the special permit to authorize an increase to the maximum service pressure.
11770–M		Gas Cylinder Technologies, Inc., Lakeshore Ontario.	49 CFR 173.302a, and 173.304a.	To modify the special permit to authorize cargo and passenger aircraft as additional modes of transportation.
12412–M		Chemquest, Inc., Lakeville, MN.	49 CFR 177.834(h), 172.203(a), and 172.302(c).	To modify the special permit to allow residue to remain in during transportation.
13127–M		American Pacific Corporation, Cedar City UT.	49 CFR 172.101 Column 7, Special Provision IB6 and 172.102(c)(4), Table 1.—IBC CODES, IBC Code IB6.	To modify the special permit to authorize cargo vessel as an additional mode of transportation.
13359–M		BASF Corporation, Florham Park, NJ.	49 CFR 173.301(f)(6), and 173.302a.	To modify the special permit to authorize a UN certified pressure vessel.
14506–M		SLR International Corporation, Bothell, WA.	49 CFR 173.4(a)(1)(i), 173.4a(c) and (d).	To modify the special permit to authorize inner packagings without the removable closure secured in place, and to authorize small deviations in packaging.
14617–M		Western International Gas & Cylinders, Inc., Bellville, TX.	49 CFR 172.203(a), 172.301(c), and 180.205(f).	To modify the special permit to add certain DOT 3AL seamless aluminum cylinders manufactured of, aluminum alloy 6351, DOT 313N, and cylinders manufactured in accordance with DOT–SP 9001, 9370, 9421, 9706, 9791, 9909, 10047, 10869 and 11692.
15860–M		Apple Inc., Cupertino, CA	49 CFR 173.185(a)	To modify the special permit to authorize cargo aircraft as an additional mode of transportation.
15866–M		Saft America Inc., Jacksonville, FL.	49 CFR 173.185	To modify the special permit to authorize lithium metal batteries.
15869–M		Mercedes-Benz USA, LLC (MBUSA), Montvale, NJ.	49 CFR 172.102, Special provision A54.	To modify the special permit to authorize additional battery types.

[FR Doc. 2014–10071 Filed 5–5–14; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 5, 2014.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov*.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 23, 2014.

Donald Burger,

Chief, General Approvals and Permits.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
16114–N		Global Nuclear Fuel-Americas, LLC, Wilmington, NC.	49 CFR 173.410 and 173.417.	To authorize the transportation in commerce of fissile uranium hexafluoride in alternative packaging shipped pursuant to US DOT CoC USA/0411/AF for repairs. (mode 1).

NEW SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
16116–N		Commercial Body & Rigging, Dallas, TX.	49 CFR 173.202, 173.203, 173.241, 173.242.	To authorize the manufacture, marking, and sale, and use of non-DOT specification containers, manifolded together within a frame and securely mounted on a truck chassis, for the transportation in commerce of Class 3, Division 6.1, and Class 8 materials. (mode 1).
16118–N		Toyota Motor Sales, U.S.A., Inc., Torrance, CA.	49 CFR 173.301(a)(1)	To authorize the transportation in commerce of Hydrogen, compressed in non-DOT specification pressure containers. (modes 1, 2, 3, 4).
16119–N		Pathfinder Aviation, Inc., Homer, AK.	49 CFR § 172.101 Column (9B), § 172.204(c)(3), § 173.27(b)(2), § 175.30(a)(1), §§ 172.200, 172300, 172.400, 173.302(f)(3) and § 175.75.	To transport in commerce of certain hazardous materials by cargo aircraft including 14CFR Part 133 Rotorcraft External Load operations, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4).
16121–N		U.S. Department of Defense (DOD), Scott AFB, IL.	49 CFR 171.23(a) Packaging Instruction 200 of ICAO and P200 of IMDG.	To authorize the and transportation in commerce of certain composite fiberglass wrapped stainless steel high pressure cylinders containing argon, compressed. (modes 1, 2, 3, 4, 5).
16122–N		ATK, Corinne, UT	49 CFR 172.320, 173.54(a), 173,56(b), 175.57, 173.58 and 173.60.	To authorizes the transportation in commerce of not more than 25 grams of Division 1.4 materials and pyrotechnic materials in a special shipping container. (modes 1, 3, 4).
16126–N		Raytheon Missile Systems, Tucson, AZ.	49 CFR 173.62	To authorize the transportation in commerce of certain Cartridges, power device in UN50B large packaging. (mode 1).
16128–N		L–3/Mustang Technology, Plano, TX.	49 CFR § 172.320, 173.54(a), 173.56(b), 173.57, 173.58 and § 173.60.	To authorize the transportation in domestic and foreign commerce of not more than 25 grams of solid explosive or pyrotechnic material, including waste containing explosives that has energy density not significantly greater than that of pentaerythritol tetranitrate, classed as Division 1.4E, when packed in a special shipping container. (modes 1, 2, 3, 4).
16129–N		Ryan Air Inc., Anchorage, AK.	49 CFR 172.101 Column (9B) and § 172.62(c).	To authorize the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft Within the State of Alaska when other Means of transportation are impracticable or not available. (mode 4).
16130–N		The Federal Bureau of Investigation (FBI), Quantico, VA.	49 CFR 173.21(i)	To authorize the transportation in commerce of lighters without LA approvals for law enforcement purposes. (modes 1, 4).
16133–N		Cryovat International BV (The Rootselaar Group).	49 CFR 178.274(b) and 178.277(b)(1).	To authorize the manufacture, marking, sale and use of UN portable tanks conforming to portable tank code T75 that have been designed, constructed and stamped in accordance with the latest edition of Section VIII, Division 1 of the AWE Code With a design margin of 3.5:1 (modes 1, 2, 3).
16140–N		ERA Helicopters LLC, Lake Charles, LA.	49 CFR 172.101 Table Column (9A).	To authorize the transportation in commerce of certain hazardous materials which exceed the authorized quantity limitations for passenger-carrying aircraft. (mode 5).

[FR Doc. 2014–10073 Filed 5–5–14; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

List of Special Permit Applications Delayed More Than 180 Days

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

R—Renewal Request

P—Party To Exemption Request

Issued in Washington, DC, on April 23, 2014.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
MODFICATION TO SPECIAL PERMITS			
15577–M	Olin Corporation, Oxford, MS	4	05–31–2014
15642–M	Praxair Distribution, Inc., Danbury, CT	4	05–31–2014
12184–M	Weldship Corporation, Bethlehem, PA	4	05–31–2014
11373–M	Marlin Company, Inc., Lenoir, NC	4	05–31–2014
14313–M	Airgas USA, LLC., Tulsa, OK	4	06–30–2014
9610–M	ATK Small Caliber Systems, Independece, MO	4	05–31–2014
15448–M	U.S. Department of Defense, Scott AFB, IL	4	06–30–2014
15854–M	Colmac Coil Manufacturing, Inc., Colville, WA	4	05–31–2014
NEW SPECIAL PERMIT APPLICATIONS			
15767–N	Union Pacific Railroad Company, Omaha, NE	1	05–31–2014
15863–N	Baker Hughes, Oilfield Operations Inc., Houston, TX	3	05–31–2014
15882–N	Ryan Air, Anchorage, AK	4	05–31–2014
15973–N	Codman & Shurtleff, Inc., Raynharn, MA	4	07–31–2014
15955–N	Thompson Tank, Inc., Lakewood, CA	4	05–31–2014
15962–N	U.S. Department of Defense, (DOD) Scott AFB, IL	4	05–31–2014
15997–N	Chemring Energetic Devices, Inc., Torrance, CA	4	07–31–2014
15991–N	Dockweiler, Neustadt-Glewe, Germany	4	07–31–2014
16011–N	Americase, Waxahache, TX	4	06–30–2014
16021–N	U.S. Department of Defense, (DOD), Scott AFB, IL	4	07–31–2014
15998–N	U.S. Department of Defense, (DOD), Scott AFB, IL	4	07–31–2014
15999–N	National Aeronautics and Space Administration, (NASA), Washington, DC	4	07–31–2014
16001–N	VELTEK, Malvern, PA	4	07–31–2014
16120–N	Pacific Helicopter Tours, Inc.	4	05–31–2014
RENEWAL SPECIAL PERMITS APPLICATIONS			
14267–R	LATA Environmental Services, of Kentucky, LLC, (LATA Kentucky), Kevil, KY	3	05–31–2014
8971–R	Baker Hughes Oilfield Operations Inc., Houston, TX	4	05–31–2014
11602–R	East Tennessee Iron & Metal, Inc., Rogersville, TN	4	05–31–2014
9874–R	The Dow Chemical Company, Philadelphia, PA	4	05–31–2014
11373–R	Chem-Way Corporation, Columbia, SC	4	05–31–2014

[FR Doc. 2014–10069 Filed 5–5–14; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2014–0020]

Pipeline Safety: Lessons Learned From the Release at Marshall, Michigan

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: PHMSA is issuing an advisory bulletin to inform all pipeline owners and operators of the deficiencies identified in Enbridge's integrity management (IM) program that contributed to the release of hazardous liquid near Marshall, Michigan, on July 25, 2010. Pipeline owners and operators are encouraged to review their own IM programs for similar deficiencies and to take corrective action. Operators should also consider training their control room staff as teams to recognize and respond to emergencies or unexpected conditions. Further, the advisory encourages operators to evaluate their leak detection capabilities to ensure adequate leak detection coverage during transient operations and assess the performance of their leak detection systems following a product release to identify and implement improvements as appropriate. Additionally, operators are encouraged to review the effectiveness of their public awareness programs and whether local emergency response teams are adequately prepared to identify and respond to early indications of ruptures. Finally, this advisory reminds all pipeline owners and operators to review National Transportation Safety Board recommendations following accident investigations. Owners and operators should evaluate and implement recommendations that are applicable to their programs.

FOR FURTHER INFORMATION CONTACT: Linda Daugherty by phone at 816–329–3821 or by email at *linda.daugherty@dot.gov*. Information about PHMSA may be found at *http://phmsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 25, 2010, at 5:58 p.m. eastern daylight time, a segment of a 30-inch-

diameter pipeline (Line 6B), owned and operated by Enbridge Incorporated (Enbridge), ruptured in a wetland near Marshall, Michigan. The rupture was not discovered or addressed for over 17 hours. During that time period, Enbridge twice pumped additional oil (81 percent of the total release) into Line 6B during two startups. The total release was estimated to be 843,444 gallons of crude oil. The oil saturated the surrounding wetlands and flowed into Talmadge Creek and the Kalamazoo River. Local residents self-evacuated from their homes, and serious environmental damage required long-term remediation. About 320 people reported symptoms consistent with crude oil exposure. No fatalities were reported. Cleanup and remediation continues, and costs have exceeded $1 billion.

The National Transportation Safety Board (NTSB) determined that the probable cause of the pipeline rupture was stress corrosion cracking that grew and coalesced from crack and corrosion defects under disbonded polyethylene tape coating. The NTSB also determined the rupture and prolonged release were caused by pervasive organizational failures at Enbridge that included: (1) Deficient integrity management (IM) procedures, which allowed well-documented crack defects in corroded areas to propagate until the pipeline failed; (2) inadequate training of control center personnel, which resulted in Enbridge's failure to recognize the rupture for 17 hours and through two re-starts of the pipeline; and (3) insufficient public awareness and education, which allowed the release to continue for nearly 14 hours after the first notification of an odor to local emergency response agencies.

PHMSA IM Regulations

Subpart O of 49 CFR part 192 and § 195.452, also known as the IM regulations, require operators of gas transmission and hazardous liquid pipelines to institute a continual process for evaluation of pipeline integrity (see also: Guidance in Advisory Bulletin ADB–2012–10, ''Using Meaningful Metrics in Conducting Integrity Management Program Evaluations,'' 77 FR 72435, December 5, 2012). Specifically, §§ 192.937 and 195.453(j) require that an operator have a continual process for the evaluation of pipeline integrity. The evaluation must consider the results of integrity assessments, data collection and integration, remediation, and preventative and mitigative actions in evaluating pipeline integrity. The operator must use the results from this evaluation to identify the threats specific to each pipeline segment that could impact a High Consequence Area (HCA) and the risk represented by those threats. The operator must perform assessments that are specific to those threats and then identify and implement appropriate remedial, preventative and mitigative measures. Sections 192.945 and 195.452(k) require that an operator have methods to measure the effectiveness of their integrity management programs.

An operator's IM program must include the results of past and present integrity assessments, risk assessment information and data integrated from throughout the pipeline system. This information and its analysis must be taken into account when making decisions about remediation, preventive and mitigative actions.

The ability to integrate and analyze threat and integrity related data from many sources is essential for sustaining and continually improving safety performance and a proactive IM program. Operators must use the results from this integrated evaluation to identify the threats specific to each pipeline segment that could impact a HCA. The operator must then perform assessments that are specific to the identified threats and implement remedial, preventive and mitigative measures, as appropriate.

The IM regulations supplement PHMSA's prescriptive safety regulations with requirements that are more performance-based and process-oriented. One of the fundamental tenets of the IM program is that each individual pipeline has a unique risk profile that is dependent on factors including the pipeline's physical attributes, its geographical location, its design, its operating environment and the commodity it transports. Pipeline operators use this risk profile to identify appropriate assessment tools, set the schedule for performing integrity assessments and identify the need for additional preventive and mitigative measures such as lowering operating pressures, installing automatic or remote control shut-off valves and installing additional right-of-way markers, among other safety measures. If this risk profile information is unknown, unknowable, or uncertain, the pipeline should be operated more conservatively.

Deficiencies Found in Enbridge's IM Program

The following facts illustrate the ways in which Enbridge failed to institute and maintain an adequate IM program:

In 2007, Enbridge experienced a release on its Line 3 in Glenavon, Saskatchewan. Following the Transportation Safety Board of Canada's investigation and issuance of a report, Enbridge changed its assessment process to account for tool tolerances when performing engineering assessments. However, Enbridge did not retroactively apply these changes to the 2005 in-line inspection (ILI) data assessments performed on the line that ruptured near Marshall, Michigan. In its investigation of this incident, the NTSB found that Enbridge's IM program did not incorporate a process of continuous reassessment to all pipeline engineering assessments, and it neglected to apply the revised crack assessment methods to Line 6B. The NTSB also found a lack of data integration was a significant contributor to the consequences of the Marshall, Michigan incident.

The NTSB further concluded:

- Enbridge's response to past IM-related accidents focused only on the proximate cause, without a systematic examination of company actions, policies and procedures.
- Enbridge's IM program consistently chose a less-than-conservative approach to pipeline safety margins for crack features.
- In preparing the risk analysis, Enbridge failed to consider all relevant risk factors associated with the determination of the amount of product that could be released from a rupture on Line 6B.
- The results of multiple ILI assessments on Line 6B were evaluated independently and the information from these assessments was not properly integrated to assure pipeline integrity.
- Enbridge used a lower safety margin when evaluating crack defects versus corrosion defects. Enbridge's criterion for excavating and remediating a crack defect was when the predicted failure pressure was less than the hydrostatic test pressure (1.25 times maximum operating pressure). Enbridge's criterion for excavating and remediating a corrosion defect was when the predicted failure pressure was less than the specified minimum yield strength (1.39 times maximum operating pressure).
- Enbridge used the maximum depth reported in a 2005 UltraScan Crack Detection (USCD) ILI tool run without accounting for tool accuracy or performance specifications. Further, Enbridge did not compare the 2005 USCD-reported wall thickness to a 2004 UltraScan Wall Measurement tool run that measured local wall thicknesses. Enbridge used the thicker, incorrect measurement in determining the predicted failure pressure and crack growth calculations.

• Enbridge did not account for the interaction between corrosion and cracking. Assessments for corrosion in 2004 and for cracks in 2005 showed areas of overlap. Using the crack depth measurements alone likely resulted in an underestimation of the total wall loss.

• The ILI vendor's junior analyst classified certain features from the 2005 USCD ILI tool run as ''crack-field'' features, but the ILI vendor supervisor re-classified them as ''crack-like'' features in the report to Enbridge. Enbridge policies allowed longer ''crack-like'' features to persist without further evaluation than ''crack-field'' features. The post-accident investigation determined that the features were in fact ''crack-field'' features. Although the excavation threshold for ''crack-field'' features was 2.5 inches, the misclassified features measured 3.5 inches and were not examined further.

• The Enbridge crack management group used a fatigue-crack growth model to predict the remaining life of the pipeline. In 2011, an independent consultant determined that the ''environmentally assisted cracking mechanism that is most prevalent along Enbridge's liquid pipeline system is either near-neutral pH SCC (stress corrosion cracking) or corrosion fatigue.'' The growth rates of environmentally assisted cracks can be exponentially greater than nominal fatigue-crack growth rates.

PHMSA Control Center Operations and Training Regulations

Sections 192.631 and 195.446 contain the requirements for gas transmission and hazardous liquid control room management, respectively, which establish roles and responsibilities, tools and procedures that allow operators to perform their duties, alarm management and training. The requirements address many of the deficiencies NTSB noted that led to the prolonged release of crude oil in Marshall, Michigan (see also: Guidance in Advisory Bulletins ADB–2005–06; ''Countermeasures to Prevent Human Fatigue in the Control Room;'' 70 FR 46917; August 11, 2005, and ADB–2010–01; ''Leak Detection on Hazardous Liquid Pipelines;'' 75 FR 4134; January 26, 2010).

Deficiencies Found in Enbridge's Control Center Operations and Training

With respect to Enbridge's control center operations and training, the NTSB concluded:

• Due to the rapid growth of Enbridge's pipeline system, Enbridge hired additional control center staff without objectively assessing whether that growth in personnel would affect safe operations.

• The leak detection process was prone to misinterpretation, and control center analysts and operators were not adequately trained in how to recognize or address leaks, especially during startup and shutdown. Therefore, low-pressure alarms, material balance system alarms and sudden and complete loss of pump station discharge pressure were mistakenly attributed to column separation rather than a pipeline rupture. Furthermore, the control center ignored warnings from field and operations personnel that there was a possible leak. In post-accident interviews, control center personnel attributed its disinclination to believe a rupture had occurred to the absence of external leak detection notifications, despite known limitations of the leak detection system.

• Control room personnel did not follow the established procedure to shut the pipeline down if column separation couldn't be resolved within 10 minutes.

• Enbridge failed to train the control center staff in team performance, which resulted in poor communication and lack of leadership.

PHMSA's Public Awareness/Public Education Regulations

Sections 192.616 and 195.440 contain the requirements for gas transmission and hazardous liquid operators' public awareness programs (PAP), respectively. These regulations incorporate the American Petroleum Institute's (API) Recommended Practice (RP) 1162, ''Public Awareness Programs for Pipeline Operators,'' and require that operators notify affected municipalities, school districts, businesses and residents of the location of pipelines and pipeline facilities (see also: guidance in ADB–2010–08; ''Emergency Preparedness Communications;'' 75 FR 67807; November 3, 2010, and ADB–2012–09; ''Communication During Emergency Situations;'' 77 FR 61826; October 11, 2012). Section 8 of API RP 1162 contains guidance for communicating with emergency responders, periodic evaluation of an operator's PAP, and measuring the effectiveness of an operator's PAP (see also: guidance in ADB–2003–04; ''Pipeline Industry Implementation of Effective Public Awareness Programs;'' 68 FR 52816; September 5, 2003, and ADB–2003–08; ''Self-Assessment of Pipeline Operator Public Education Programs;'' 68 FR 66155; November 25, 2003).

Deficiencies Found in Enbridge's Public Awareness/Public Education Program

The NTSB identified several deficiencies in Enbridge's PAP, including:

• Enbridge's PAP failed to effectively inform the affected public, including citizens and emergency response agencies about the location of the pipeline, how to identify a pipeline release and how to report suspected product releases.

• Enbridge's review of its public awareness program was ineffective in identifying and correcting deficiencies.

• An effective public awareness program would have better prepared local emergency response agencies to identify and respond to early indications of a rupture, which, once communicated to Enbridge, would have prevented the restart of the line.

II. Advisory Bulletin (ADB–2014–02)

To: Owners and Operators of Natural Gas and Hazardous Liquid Pipeline Systems.

Subject: Integrity Management Lessons Learned from the Marshall, Michigan, Release.

Advisory: To strengthen the Department's safety efforts, PHMSA is issuing this advisory bulletin to notify pipeline owners and operators they should evaluate their safety programs and implement any changes to eliminate deficiencies similar to the ones the National Transportation Safety Board (NTSB) found when it investigated Enbridge's July 25, 2010, crude oil release in Marshall, Michigan. Specifically, the NTSB investigation into the circumstances leading up to and following the release identified specific deficiencies in three Enbridge programs: integrity management (IM), control center operations and public awareness. Had existing regulations, guidance, advisories and recommendations regarding these programs been properly acted upon, the consequences of that incident could have been prevented, or at the very least, mitigated.

Integrity Management

A fundamental tenet of the IM program is that pipeline operators must be aware of the physical attributes of their pipelines, the threats and risks posed by and to their pipelines, and the environments which their pipelines transverse. Operator IM programs should reflect the recognition that each pipeline is unique and has its own specific risk profile that is dependent upon the pipeline's attributes, geographical location, design, operating

environment, and commodity it transports, among other factors. It is vital for operators to compile and integrate this information into their IM programs to effectively identify and evaluate risk. If this information is unknown, unknowable or uncertain, operators need to take a more conservative approach to operations.

As part of a robust IM program, an operator will match and use the right tools for the threats being investigated, set the proper schedule for pipeline segment integrity assessments and identify the need for additional preventative and mitigative measures that protect pipeline integrity, including lower operating pressures, automatic shutoff or remotely controlled valves and additional right-of-way markers.

However, an operator's IM program must go beyond simply assessing pipeline segments and repairing defects—in fact, American Petroleum Institute (API) Standard 1160, ''Managing System Integrity for Hazardous Liquid Pipelines,'' defines pipeline risk assessment as a continuous process and defines risk analysis as a continuous reassessment process. Continual improvement of IM programs (including improvements in the analytical processes involved in analyzing assessment results, identifying threats, responding to risks, the application and implementation of assessments and the development of preventative and mitigative measures) is a key aspect and critical objective of an effective IM program.

Occasionally, accident investigations or other events cause changes in how operators analyze assessment data, including analytical procedures, algorithms, software, acceptance criteria or how anomalies are classified. For instance, a change in how an anomaly is classified could impact remediation time frames, assessment intervals, decisions regarding preventative and mitigative measures and the overall perception of the integrity of the pipeline. The NTSB noted that Enbridge accounted for changed tool tolerances when re-analyzing its Line 3 data after an incident, but this change in tool tolerances was not applied to the assessments performed on Line 6B. Operators should evaluate any changes in how assessment data is analyzed to determine if those changes will alter the results of any previously performed integrity assessments. If so, operators should apply those changes to any previously performed integrity assessments as appropriate.

To assist in evaluating possible assessment data analysis changes, operators should ensure that in-line inspection (ILI) vendors communicate any changes in their analytical processes that might require previous assessments to be re-analyzed. Improvements to vendor analytical processes may change anomaly classifications in previous assessments, and while vendors typically apply these changes to future assessments, it is rare for vendors to re-analyze previously performed assessments. Re-analyzing integrity assessments when analytical changes occur is critical for ensuring safety based on the best available data and expertise.

The ability to analyze and integrate threat- and integrity-related data from many sources is essential for operators to continually improve and sustain safety performance and proactive IM programs. However, some operators are not sufficiently aware of their pipeline attributes, are not adequately or consistently assessing threats and risks and are not effectively integrating data as a part of their IM programs. A lack of data integration was a significant contributor to the incident at Marshall, MI.

When performing self-assessments of IM programs, operators should compare their performance measures and program evaluations against the guidance of ADB–2012–10, ''Using Meaningful Metrics in Conducting Integrity Management Program Evaluations'' (77 FR 72435, December 5, 2012).

Control Center Operations

Sections 192.631 and 195.446 contain the requirements for gas transmission and hazardous liquid control room management, respectively. These requirements address many of the deficiencies the NTSB noted during their investigation of the incident at Marshall, MI.

PHMSA advises operators to regularly train their control room teams and consider establishing a program to train control center staff as teams in the recognition of and response to emergency and unexpected conditions that include supervisory control and data acquisition indications and leak detection software. Operators should perform periodic evaluations of their leak detection capabilities to ensure that adequate leak detection coverage is maintained during transient operations, including pipeline shutdown, pipeline startup and column separation. PHMSA previously issued ADB 10–01, ''Leak Detection on Hazardous Liquid Pipelines,'' (75 FR 4134; January 26, 2010) to provide guidance on this issue. If an operator suffers an unexplained loss of product, the operator should shut down the affected pipeline until the problem is resolved. Operators should additionally assess the performance of their leak detection system following a product release and identify and implement improvements as appropriate.

Pipeline owners and operators are also reminded to evaluate their control room personnel scheduling policies and practices against the guidance of ADB 05–06, ''Countermeasures to Prevent Human Fatigue in the Control Room'' (70 FR 46917; August 11, 2005).

Public Awareness Programs

PHMSA advises operators to analyze and evaluate the effectiveness of their public awareness programs and whether local emergency response agencies are prepared to identify and respond to early indications of a rupture. Strong public awareness and education programs can help shorten incident response times and improve overall incident response.

Pipeline owners and operators should perform periodic self-assessments of their public awareness programs against their written public awareness program plans and API Recommended Practice 1162. PHMSA previously issued guidance for these self-assessments under ADB 03–04, ''Pipeline Industry Implementation of Effective Public Awareness Programs'' (68 FR 52816; September 5, 2003) and ADB 03–08, ''Self-Assessment of Pipeline Operator Public Education Programs'' (68 FR 66155; November 25, 2003). Further, operators are encouraged to review their procedures for communicating during emergency situations to ensure compliance with the guidance previously issued in ADB 10–08, ''Emergency Preparedness Communications'' (75 FR 67807; November 3, 2010) and ADB 12–09, ''Communication During Emergency Situations'' (77 FR 61826; October 11, 2012).

Proactive Self-Assessment

PHMSA strongly encourages operators to review past and future NTSB recommendations that the NTSB provides to pipeline operators following incident investigations. Operators should proactively implement improvements to their pipeline safety programs based on these observations and recommendations so that the entire industry can benefit from the mistakes of one operator.

Authority: 49 U.S.C. chapter 601: 49 CFR 1.53.

Issued in Washington, DC on April 30, 2014.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2014–10248 Filed 5–5–14; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Special Permit Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on Special Permit Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, Subpart B), notice is hereby given of the actions on special permits applications in (March to March 2014). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on April 23, 2014.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
		MODIFICATION SPECIAL PERMIT GRANTED	
11993–M	Key Safety Systems, Lakeland, FL.	49 CFR 173.301(a)(1), and 173.302a.	To modify the special permit to add a Division 2.2 material.
10427–M	Astrotech Space Operations, Inc., Titusville, FL.	49 CFR 173.61(a), 173.301(g), 173.302(a), 173.336, and 177.848(d).	To modify the special permit to authorize additional launch vehicles and increase the amount of Anhydrous ammonia to 120 pounds.
10232–M	ITW Sexton, Decatur, AL	49 CFR 173.304(d) and 173.306(a)(3).	To modify the special permit to authorize a Division 2.1 material.
10832–M	Autoliv ASP, Inc., Ogden, UT	49 CFR 173.56(b), and 173.61(a).	To modify the special permit to remove the inner packaging requirements, remove the requirement for trays in outer packaging, and update locations where the permit may be used.
15865–M	HeliStream Inc., Costa Mesa, CA.	49 CFR 172.101 Column(9B), 172.301(c), 175.30, 175.33, Part 178, and 175.75.	To modify the special permit to authorize Class 1, 2, 4, 8, 9, and additional Class 3 materials.
14392–M	U.S. Department of Defense, Scott AFB, IL.	49 CFR 172.101 Column (10B), 176.83(a),(b) and (g), 176.84(c)(2), 176.136, 176.144(a), 172.203(a), and 172.302(c).	To modify the special permit to authorize all Government owned Maritime Prepostioning Ships to use alternative stowage.
		NEW SPECIAL PERMIT GRANTED	
15853–N	Praxair, Inc., Danbury, CT	49 CFR 176.83	To authorize the transportation in commerce of certain DOT Specification or UN certified packaging containing Division 2.1, 2.2, 2.3, 4.3, 5.1, 6.1, and Class 3 and Class 8 materials in a single Container Transport Unit (CTU) consisting of multiple compartments in lieu of segregation when transported by cargo vessel. (mode 3)
15954–N	Rooney Oilfield Services, Odessa, TX.	49 CFR 173.202, 173.203, 173.241, 173.242 and 173.243.	To authorize the manufacture, mark, and and sale of non-UN standard containers that are manifolded together within a frame and securely mounted on a truck chassis for transportation by motor vehicle. (mode 1)
15972–N	Heil Trailer International, Co., Athens, TN.	49 CFR 178.345–2, 178.346–2, 178.347–2, 178.348–2 and 178.345–3.	To authorize the manufacture, marking, sale and use of and non-DOT specification cargo tanks meeting all requirements for DOT 400 series cargo tanks except for the use of UNS S32101 (LDX 2101) as a material of construction and the head and shell thicknesses are less than required. (mode 1)
15980–N	Windward Aviation, Inc., Peunene, HI.	49 CFR 175.9(a)	To authorize the transportation in commerce of aviation turbine engine fuel by external load. (mode 4)
16016–N	iSi Automotive Austria GmbH, Vienna.	49 CFR 173.301, 173.302a and 173.305.	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders for use in automobile safety systems. (modes 1, 2, 3, 4, 5)
16031–N	Air Rescue Systems , Ashland, OR.	49 CFR § 172.101 Column (9B), § 172.204(c)(3), § 173.27(b)(2), § 175.30(a)(1),§§ 172.200 and 172.301(c), Part 178 and § 175.75.	To authorize the transportation in commerce of certain hazardous materials by cargo aircraft including by external load in remote areas of the US without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (mode 4)

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
EMERGENCY SPECIAL PERMIT GRANTED			
15968–M	BNSF Railway, Fort Worth, TX	49 CFR 173.318	To authorize the transportation in commerce of liquefied natural gas in a non-specification package (tender car) ≤attached to a locomotive but not feeding the fuel to the locomotive from one testing location to another. (mode 2)
16089–N	Atlas Air, Inc., Miami, FL	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27, and 175.30(a)(1).	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4)
NEW SPECIAL PERMIT WITHDRAWN			
15992–N	Ledwell & Son, Enterprises, Inc., Texarkana, TX.	49 CFR 178.345–3	To authorize the Enterprises, Inc. transportation in Texarkana, TX commerce of certain cargo tank motor vehicles that have had an appurtenance welded to the cargo tank wall without meeting the requirements of 49 CFR 178.345–3. (mode 1)
DENIED			
15880–N	Request by Viking Packing Specialist Catoosa, OK, March 26, 2014. Authorizes the transportation in commerce of not more than 5 grams of Division 1.4C materials in a special shipping container.		

[FR Doc. 2014–10070 Filed 5–5–14; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: List of Data (A) and List of Data (B)

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 a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the form ''List of Data (A) and List of Data (B)''.

DATES: Written comments should be received on or before June 30, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Melvin Saunders, Program Manager, Surety Bonds, 3700 East West Highway, Room 632F, Hyattsville, MD 20782, (202) 874–5283.

SUPPLEMENTARY INFORMATION:

Title: List of Data (A) and List of Data (B).

OMB Number: 1510–0047.

Form Number: TFS 2211.

Abstract: This information is collected from insurance companies to assist the Treasury Department in determining acceptability of the companies applying for a Certificate of Authority to write or reinsure Federal surety bonds.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Time per Respondent: 18 hours.

Estimated Total Annual Burden Hours: 540.

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.

Dated: April 24, 2014.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2014–10250 Filed 5–5–14; 8:45 am]
BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Schedule of Excess Risks

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 a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the form ''Schedule of Excess Risks''.

DATES: Written comments should be received on or before June 30, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Melvin

Saunders, Program Manager, Surety Bonds, 3700 East West Highway, Room 632F, Hyattsville, MD 20782, (202) 874–5283.

SUPPLEMENTARY INFORMATION:

Title: Schedule of Excess Risks.

OMB Number: 1510–0004.

Form Number: FMS 285–A.

Abstract: This information is collected from insurance companies to assist the Treasury Department in determining whether a certified or applicant company is solvent and able to carry out its contracts, and whether the company is in compliance with Treasury excess risk regulations for writing Federal surety bonds.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,066 (with 30 apps).

Estimated Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 5,780.

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.

Dated: April 24, 2014.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2014–10247 Filed 5–5–14; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking One Entity Pursuant to Executive Order 13599

SUB-AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one entity whose property and interests in property have been unblocked pursuant to Executive Order 13599 of February 5, 2012, ''Blocking Property of the Government of Iran and Iranian Financial Institutions.''

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the entity identified in this notice, pursuant to Executive Order 13599, was effective on April 29, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On February 5, 2012, the President issued Executive Order 13599, ''Blocking Property of the Government of Iran and Iranian Financial Institutions'' (the ''Order''). Section 1(a) of the Order blocks, with certain exceptions, all property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch. Section 7(d) of the Order defines the term ''Government of Iran'' to mean the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran.

On March 14, 2013, the Director of OFAC identified the entity listed below as meeting the definition of the Government of Iran and blocked the property and interests in property of the entity pursuant to section 1(a) of the Order.

On April 29, 2014, the Acting Director of OFAC, in consultation with the State Department, determined that circumstances no longer warrant the blocking of the entity listed below pursuant to Executive Order 13599 and, accordingly, unblocked and removed this entity from the SDN List.

Entity

LIBRA SHIPPING SA (a.k.a. LIBRA SHIPPING), 3, Xanthou Street, Glyfada 16674, Greece; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN].

Dated: April 29, 2014.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2014–10320 Filed 5–5–14; 8:45 am]

BILLING CODE 4810–AL–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of (1) submission to Congress of amendments to the sentencing guidelines effective November 1, 2014; and (2) request for comment.

SUMMARY: The United States Sentencing Commission hereby gives notice of the following actions:

(1) Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index. This notice sets forth the amendments and the reason for each amendment.

(2) Amendment 3, pertaining to drug offenses, has the effect of lowering guideline ranges. The Commission requests comment regarding whether that amendment, or any part thereof, should be included in subsection (c) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants. This notice sets forth the request for comment.

DATES: The Commission has specified an effective date of November 1, 2014, for the amendments set forth in this notice. Public comment regarding whether Amendment 3, pertaining to drug offenses, should be included as an amendment that may be applied retroactively to previously sentenced defendants should be received on or before July 7, 2014.

ADDRESSES: Public comment should be sent to the Commission by electronic mail or regular mail. The email address

for public comment is *Public_Comment@ussc.gov.* The regular mail address for public comment is United States Sentencing Commission, One Columbus Circle NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs-Retroactivity Public Comment.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Public Affairs Officer, (202) 502–4502, *jdoherty@ussc.gov.* The amendments and the request for comment set forth in this notice also may be accessed through the Commission's Web site at *www.ussc.gov.*

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

(1) Submission to Congress of Amendments to the Sentencing Guidelines

Notice of proposed amendments was published in the **Federal Register** on January 17, 2014 (*see* 79 FR 3279–300). The Commission held public hearings on the proposed amendments in Washington, DC, on February 13, 2014, and March 13, 2014. On April 30, 2014, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2014.

(2) Request for Comment on Amendment 3, Pertaining to Drug Offenses

Section 3582(c)(2) of title 18, United States Code, provides that ''in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.''

The Commission lists in § 1B1.10(c) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The background commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(c). To the extent practicable, public comment should address each of these factors, in addition to other matters suggested in the request for comment below.

Authority: 28 U.S.C. 994(a), (o), (p), and (u); USSC Rules of Practice and Procedure 4.1, 4.3.

Patti B. Saris,
Chair.

(1) Submission to Congress of Amendments to the Sentencing Guidelines

1. *Amendment:* Section 1B1.10 is amended in each of subsections (a)(1), (a)(2)(A), (a)(2)(B), and (b)(1) by striking ''subsection (c)'' each place such term appears and inserting ''subsection (d)''; by redesignating subsection (c) as subsection (d); and by inserting after subsection (b) the following new subsection (c):

''(c) *Cases Involving Mandatory Minimum Sentences and Substantial Assistance.*—If the case involves a statutorily required minimum sentence and the court had the authority to impose a sentence below the statutorily required minimum sentence pursuant to a government motion to reflect the defendant's substantial assistance to authorities, then for purposes of this policy statement the amended guideline range shall be determined without regard to the operation of § 5G1.1 (Sentencing on a Single Count of Conviction) and § 5G1.2 (Sentencing on Multiple Counts of Conviction).''.

The Commentary to § 1B1.10 captioned ''Application Notes'' is amended in Notes 1(A), 2, and 4 by striking ''subsection (c)'' each place such term appears and inserting ''subsection (d)''; by redesignating Notes 4 through 6 as Notes 5 through 7, respectively; and by inserting after Note 3 the following new Note 4:

''4. *Application of Subsection (c).*—As stated in subsection (c), if the case involves a statutorily required minimum sentence and the court had the authority to impose a sentence below the statutorily required minimum sentence pursuant to a government motion to reflect the defendant's substantial assistance to authorities, then for purposes of this policy statement the amended guideline range shall be determined without regard to the operation of § 5G1.1 (Sentencing on a Single Count of Conviction) and § 5G1.2 (Sentencing on Multiple Counts of Conviction). For example:

(A) Defendant A is subject to a mandatory minimum term of imprisonment of 120 months. The original guideline range at the time of sentencing was 135 to 168 months, which is entirely above the mandatory minimum, and the court imposed a sentence of 101 months pursuant to a government motion to reflect the defendant's substantial assistance to authorities. The court determines that the amended guideline range as calculated on the Sentencing Table is 108 to 135 months. Ordinarily, § 5G1.1 would operate to restrict the amended guideline range to 120 to 135 months, to reflect the mandatory minimum term of imprisonment. For purposes of this policy statement, however, the amended guideline range remains 108 to 135 months.

To the extent the court considers it appropriate to provide a reduction comparably less than the amended guideline range pursuant to subsection (b)(2)(B), Defendant A's original sentence of 101 months amounted to a reduction of approximately 25 percent below the minimum of the original guideline range of 135 months. Therefore, an amended sentence of 81 months (representing a reduction of approximately 25 percent below the minimum of the amended guideline range of 108 months) would amount to a comparable reduction and may be appropriate.

(B) Defendant B is subject to a mandatory minimum term of imprisonment of 120 months. The original guideline range at the time of sentencing (as calculated on the Sentencing Table) was 108 to 135 months, which was restricted by operation of § 5G1.1 to a range of 120 to 135 months. *See* § 5G1.1(c)(2). The court imposed a sentence of 90 months pursuant to a government motion to reflect the defendant's substantial assistance to authorities. The court determines that the amended guideline range as calculated on the Sentencing Table is 87 to 108 months. Ordinarily, § 5G1.1 would operate to restrict the amended guideline range to precisely

120 months, to reflect the mandatory minimum term of imprisonment. *See* § 5G1.1(b). For purposes of this policy statement, however, the amended guideline range is considered to be 87 to 108 months (*i.e.,* unrestricted by operation of § 5G1.1 and the statutory minimum of 120 months).

To the extent the court considers it appropriate to provide a reduction comparably less than the amended guideline range pursuant to subsection (b)(2)(B), Defendant B's original sentence of 90 months amounted to a reduction of approximately 25 percent below the original guideline range of 120 months. Therefore, an amended sentence of 65 months (representing a reduction of approximately 25 percent below the minimum of the amended guideline range of 87 months) would amount to a comparable reduction and may be appropriate.''.

The Commentary to § 1B1.10 captioned ''Background'' is amended by striking ''subsection (c)'' both places such term appears and inserting ''subsection (d)''.

Reason for Amendment: This amendment clarifies an application issue that has arisen with respect to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) (Policy Statement). Circuits have conflicting interpretations of when, if at all, § 1B1.10 provides that a statutory minimum continues to limit the amount by which a defendant's sentence may be reduced under 18 U.S.C. § 3582(c)(2) when the defendant's original sentence was below the statutory minimum due to substantial assistance.

This issue arises in two situations. First, there are cases in which the defendant's original guideline range was above the mandatory minimum but the defendant received a sentence below the mandatory minimum pursuant to a government motion for substantial assistance. For example, consider a case in which the mandatory minimum was 240 months, the original guideline range was 262 to 327 months, and the defendant's original sentence was 160 months, representing a 39 percent reduction for substantial assistance below the bottom of the guideline range. In a sentence reduction proceeding pursuant to Amendment 750, the amended guideline range as determined on the Sentencing Table is 168 to 210 months, but after application of the ''trumping'' mechanism in § 5G1.1 (Sentencing on a Single Count of Conviction), the mandatory minimum sentence of 240 months is the guideline sentence. *See* § 5G1.1(b). Section 1B1.10(b)(2)(B) provides that such a defendant may receive a comparable 39 percent reduction from the bottom of the amended guideline range, but circuits are split over what to use as the bottom of the range.

The Eighth Circuit has taken the view that the bottom of the amended guideline range in such a case would be 240 months, *i.e.,* the guideline sentence that results after application of the ''trumping'' mechanism in § 5G1.1. *See United States* v. *Golden,* 709 F.3d 1229, 1231–33 (8th Cir. 2013). In contrast, the Seventh Circuit has taken the view that the bottom of the amended guideline range in such a case would be 168 months, *i.e.,* the bottom of the amended range as determined by the Sentencing Table, without application of the ''trumping'' mechanism in § 5G1.1. *See United States* v. *Wren,* 706 F.3d 861, 863 (7th Cir. 2013). Each circuit found support for its view in an Eleventh Circuit decision, *United States* v. *Liberse,* 688 F.3d 1198 (11th Cir. 2012), which also discussed this issue.

Second, there are cases in which the defendant's original guideline range as determined by the Sentencing Table was, at least in part, below the mandatory minimum, and the defendant received a sentence below the mandatory minimum pursuant to a government motion for substantial assistance. In these cases, the ''trumping'' mechanism in § 5G1.1 operated at the original sentence to restrict the guideline range to be no less than the mandatory minimum. For example, consider a case in which the original Sentencing Table guideline range was 140 to 175 months but the mandatory minimum was 240 months, resulting (after operation of § 5G1.1) in a guideline sentence of 240 months. The defendant's original sentence was 96 months, representing a 60 percent reduction for substantial assistance below the statutory and guideline minimum. In a sentence reduction proceeding, the amended Sentencing Table guideline range is 110 to 137 months, resulting (after operation of § 5G1.1) in a guideline sentence of 240 months. Section 1B1.10(b)(2)(B) provides that such a defendant may receive a reduction from the bottom of the amended guideline range, but circuits are split over what to use as the bottom of the range.

The Eleventh Circuit, the Sixth Circuit, and the Second Circuit have taken the view that the bottom of the amended range in such a case would remain 240 months, *i.e.,* the guideline sentence that results after application of the ''trumping'' mechanism in § 5G1.1. *See United States* v. *Glover,* 686 F.3d 1203, 1208 (11th Cir. 2012); *United States* v. *Joiner,* 727 F.3d 601 (6th Cir. 2013); *United States* v. *Johnson,* 732 F.3d 109 (2d Cir. 2013). Under these decisions, the defendant in the example would have an original range of 240 months and an amended range of 240 months, and would not be eligible for any reduction because the range has not been lowered. In contrast, the Third Circuit and the District of Columbia Circuit have taken the view that the bottom of the amended range in such a case would be 110 months, *i.e.,* the bottom of the Sentencing Table guideline range. *See United States* v. *Savani,* 733 F.3d 56, 66–7 (3d Cir. 2013); *In re Sealed Case,* 722 F.3d 361, 369–70 (D.C. Cir. 2013).

The amendment generally adopts the approach of the Third Circuit in *Savani* and the District of Columbia Circuit in *In re Sealed Case.* It amends § 1B1.10 to specify that, if the case involves a statutorily required minimum sentence and the court had the authority to impose a sentence below the statutorily required minimum sentence pursuant to a government motion to reflect the defendant's substantial assistance to authorities, then for purposes of § 1B1.10 the amended guideline range shall be determined without regard to the operation of § 5G1.1 and § 5G1.2. The amendment also adds a new application note with examples.

This clarification ensures that defendants who provide substantial assistance to the government in the investigation and prosecution of others have the opportunity to receive the full benefit of a reduction that accounts for that assistance. *See* USSG App. C. Amend 759 (Reason for Amendment). As the Commission noted in the reason for that amendment: ''The guidelines and the relevant statutes have long recognized that defendants who provide substantial assistance are differently situated than other defendants and should be considered for a sentence below a guideline or statutory minimum even when defendants who are otherwise similar (but did not provide substantial assistance) are subject to a guideline or statutory minimum. Applying this principle when the guideline range has been reduced and made available for retroactive application under section 3582(c)(2) appropriately maintains this distinction and furthers the purposes of sentencing.'' *Id.*

2. *Amendment:* Section 2A2.2(b) is amended by redesignating paragraphs (4) through (6) as paragraphs (5) through (7), respectively; and by inserting after paragraph (3) the following new paragraph (4):

''(4) If the offense involved strangling, suffocating, or attempting to strangle or suffocate a spouse, intimate partner, or dating partner, increase by 3 levels.

However, the cumulative adjustments from application of subdivisions (2), (3), and (4) shall not exceed 12 levels.''.

The Commentary to § 2A2.2 captioned ''Statutory Provisions'' is amended by inserting after ''113(a)(2), (3), (6),'' the following: ''(8),''.

The Commentary to § 2A2.2 captioned ''Application Notes'' is amended in Note 1 by striking ''or (C)'' and inserting ''(C) strangling, suffocating, or attempting to strangle or suffocate; or (D)''; and by adding at the end the following new paragraphs:

'' 'Strangling' and 'suffocating' have the meaning given those terms in 18 U.S.C. § 113.

'Spouse,' 'intimate partner,' and 'dating partner' have the meaning given those terms in 18 U.S.C. § 2266.'';

and in Note 4 by striking ''(b)(6)'' and inserting ''(b)(7)''.

The Commentary to § 2A2.2 captioned ''Background'' is amended in the first paragraph by striking ''minor assaults'' and inserting ''other assaults''; by striking the comma after ''serious bodily injury'' and inserting a semicolon; and by striking the comma after ''cause bodily injury'' and inserting ''; strangling, suffocating, or attempting to strangle or suffocate;'';

and in the paragraph that begins ''Subsection'' by striking ''(b)(6)'' both places it appears and inserting ''(b)(7)''.

Section 2A2.3 is amended in the heading by striking ''Minor Assault'' and inserting ''Assault''.

Section 2A2.3(b)(1) is amended by inserting after ''substantial bodily injury to'' the following: ''a spouse, intimate partner, or dating partner, or''.

The Commentary to § 2A2.3 captioned ''Statutory Provisions'' is amended by inserting after ''112,'' the following: ''113(a)(4), (5), (7),''.

The Commentary to § 2A2.3 captioned ''Application Notes'' is amended in Note 1 by striking the paragraph that begins '' 'Minor assault' means'' and inserting the following new paragraph:

'' 'Spouse,' 'intimate partner,' and 'dating partner' have the meaning given those terms in 18 U.S.C. § 2266.''.

The Commentary to § 2A2.3 captioned ''Background'' is amended by striking ''Minor assault and battery are covered by this section.'' and inserting the following: ''This section applies to misdemeanor assault and battery and to any felonious assault not covered by § 2A2.2 (Aggravated Assault).''.

Section 2A6.2(b)(1) is amended by striking ''(C)'' and inserting ''(C) strangling, suffocating, or attempting to strangle or suffocate; (D)''; by striking ''(D) a pattern'' and inserting ''(E) a pattern''; and by striking ''these aggravating factors'' and inserting ''subdivisions (A), (B), (C), (D), or (E)''.

The Commentary to § 2A6.2 captioned ''Application Notes'' is amended in Note 1 by striking the paragraph that begins ''Stalking' means'' and inserting the following new paragraph:

'' 'Stalking' means conduct described in 18 U.S.C. § 2261A.'';

and by adding at the end of Note 1 the following new paragraph:

'' 'Strangling' and 'suffocating' have the meaning given those terms in 18 U.S.C. § 113.'';

and in Notes 3 and 4 by striking ''(b)(1)(D)'' each place such term appears and inserting ''(b)(1)(E)''.

The Commentary to § 2B1.5 captioned ''Statutory Provisions'' is amended by striking ''1152–1153,''.

The Commentary to § 2B2.1 captioned ''Statutory Provisions'' is amended by striking ''1153,''.

The Commentary to § 2H3.1 captioned ''Statutory Provisions'' is amended by striking ''1375a(d)(3)(C), (d)(5)(B);'' and inserting ''1375a(d)(5)(B)(i), (ii);''.

The Commentary to § 2K1.4 captioned ''Statutory Provisions'' is amended by striking ''1153,''.

The Commentary to § 5D1.1 captioned ''Application Notes'' is amended in Note 3 by adding at the end the following:

''(D) *Domestic Violence.*—If the defendant is convicted for the first time of a domestic violence crime as defined in 18 U.S.C. § 3561(b), a term of supervised release is required by statute. *See* 18 U.S.C. § 3583(a). Such a defendant is also required by statute to attend an approved rehabilitation program, if available within a 50-mile radius of the legal residence of the defendant. *See* 18 U.S.C. § 3583(d); § 5D1.3(a)(3). In any other case involving domestic violence or stalking in which the defendant is sentenced to imprisonment, it is highly recommended that a term of supervised release also be imposed.''

Appendix A (Statutory Index) is amended by striking the line referenced to 8 U.S.C. § 1375a(d)(3)(C), (d)(5)(B) and inserting the following new line references:

''8 U.S.C. § 1375a(d)(5)(B)(i) 2H3.1
8 U.S.C. § 1375a(d)(5)(B)(ii) 2H3.1
8 U.S.C. § 1375a(d)(5)(B)(iii) 2B1.1'';

in the line referenced to 18 U.S.C. 113(a)(1) by adding '', 2A3.1'' at the end;

in the line referenced to 18 U.S.C. 113(a)(2) by adding '', 2A3.2, 2A3.3, 2A3.4'' at the end;

after the line referenced to 18 U.S.C. 113(a)(3) by inserting the following new line reference:

''18 U.S.C. § 113(a)(4) 2A2.3'';

after the line referenced to 18 U.S.C. 113(a)(7) by inserting the following new line reference:

''18 U.S.C. § 113(a)(8) 2A2.2'';

by striking the lines referenced to 18 U.S.C. §§ 1152 and 1153;

by inserting after the line referenced to 18 U.S.C. 1593A the following new line reference:

''18 U.S.C. § 1597 2X5.2''; and

by striking the lines referenced to 18 U.S.C. 2423(a) and (b) and inserting the following new line reference:

''18 U.S.C. § 2423(a)–(d) 2G1.3''.

Reason for Amendment: This amendment responds to recent statutory changes made by the Violence Against Women Reauthorization Act of 2013 (the ''Act''), Public Law 113–4 (March 7, 2013), which provided new and expanded criminal offenses and increased penalties for certain crimes pertaining to assault, sexual abuse, stalking, domestic violence, and human trafficking.

The Act established new assault offenses and enhanced existing assault offenses at 18 U.S.C. 113 (Assaults within maritime and territorial jurisdiction). In general, section 113 sets forth a range of penalties for assaults within the special maritime and territorial jurisdiction of the United States. The legislative history of the Act indicates that Congress intended many of these changes to allow federal prosecutors to address domestic violence against Native American women more effectively. Such violence often occurs in a series of incidents of escalating seriousness.

First, the amendment responds to changes in sections 113(a)(1) and (a)(2). Section 113(a)(1) prohibits assault with intent to commit murder, and the Act amended it to also prohibit assault with intent to commit a violation of 18 U.S.C. 2241 (Aggravated sexual abuse) or 2242 (Sexual abuse), with a statutory maximum term of imprisonment of 20 years. Section 113(a)(2) prohibits assault with intent to commit any felony except murder, and prior to the Act had also excluded assault with intent to commit a violation of Chapter 109A, including sections 2241, 2242, 2243 (Sexual abuse of a minor or ward) and 2244 (Abusive sexual contact), with a statutory maximum term of imprisonment of 10 years. The Act amended section 113(a)(2) to prohibit assault with intent to commit any felony except murder or a violation of section 2241 or 2242. The effect of the statutory change is that an assault with intent to commit a violation

of section 2243 or 2244 may now be prosecuted under section 113(a)(2). Offenses under section 2241 and 2242 are referenced to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse), and offenses under section 2243 and 2244 are referenced to §§ 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts); 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts); and 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact).

The amendment amends Appendix A (Statutory Index) to reference the expanded offense conduct prohibited by 18 U.S.C. 113(a)(1) to 2A3.1 and to reference the expanded offense conduct prohibited by 18 U.S.C. 113(a)(2) to 2A3.2, 2A3.3, and 2A3.4. The Commission concluded that an assault offense committed with the intent to commit a sexual abuse offense is analogous to, and in some cases more serious than, an attempted sexual abuse offense under Chapter 109A, and the criminal sexual abuse guidelines which apply to attempted sexual abuse offenses were therefore appropriate for this conduct.

Second, the Act increased the statutory maximum penalty for violations of 18 U.S.C. 113(a)(4) from six months to one year of imprisonment. Section 113(a)(4) prohibits an assault by striking, beating, or wounding. Because the crime had been categorized as a Class B misdemeanor, Appendix A did not previously include a reference for section 113(a)(4). The amendment adds such a reference to § 2A2.3 (Assault). The Commission determined that § 2A2.3 will provide appropriate punishment that is consistent with the statutory maximum term of imprisonment, while sufficiently addressing the possible levels of bodily harm that may result to victims in individual cases of assault by striking, beating, or wounding.

Third, the Act expanded 18 U.S.C. 113(a)(7), which prohibits assaults resulting in substantial bodily injury to an individual who has not attained the age of sixteen years, to also apply to assaults resulting in substantial bodily injury to a spouse, intimate partner, or dating partner, and provides a statutory maximum term of imprisonment of five years. Offenses under section 113(a)(7) are referenced in Appendix A to § 2A2.3 (Assault). The amendment broadened the scope of § 2A2.3(b)(1)(B), which provides a 4-level enhancement if the offense resulted in substantial bodily injury to an individual under the age of sixteen years, to also provide a 4-level enhancement if the offense resulted in substantial bodily injury to a spouse, intimate partner, or dating partner. The Commission determined that because the expanded assaultive conduct of a victim of domestic violence has the same statutory maximum term of imprisonment, the same enhancement was warranted as for assaults of individuals under the age of sixteen resulting in substantial bodily injury.

Fourth, the Act created a new section 113(a)(8) in title 18, which prohibits the assault of a spouse, intimate partner, or dating partner by strangulation, suffocation, or attempting to strangle or suffocate, with a statutory maximum term of imprisonment of ten years. After reviewing legislative history, public comment, testimony at a public hearing on February 13, 2014, and data, the Commission determined that strangulation and suffocation of a spouse, intimate partner, or dating partner represents a significant harm not addressed by existing guidelines and specific offense characteristics.

Comment and testimony that the Commission received indicated that strangulation and suffocation in the domestic violence context is serious conduct that warrants enhanced punishment regardless of whether it results in a provable injury that would lead to a bodily injury enhancement; this conduct harms victims physically and psychologically and can be a predictor of future serious or lethal violence. Testimony and data also indicated that cases of strangulation and suffocation often involve other bodily injury to a victim separate from the strangulation and suffocation. Congress specifically addressed strangulation and suffocation in the domestic violence context, and testimony and data indicated that almost all cases involving this conduct occur in that context and that strangulation and suffocation is most harmful in such cases.

Accordingly, the amendment amends Appendix A to reference section 113(a)(8) to § 2A2.2 (Aggravated Assault) and amends the Commentary to § 2A2.2 to provide that the term ''aggravated assault'' includes an assault involving strangulation, suffocation, or an attempt to strangle or suffocate. The amendment amends § 2A2.2 to provide a 3-level enhancement at § 2A2.2(b)(4) for strangling, suffocating, or attempting to strangle or suffocate a spouse, intimate partner, or dating partner. The amendment also provides that the cumulative impact of the enhancement for use of a weapon at § 2A2.2(b)(2), bodily injury at § 2A2.2(b)(3), and strangulation or suffocation at § 2A2.2(b)(4) is capped at 12 levels. The Commission determined that the cap would assure that these three specific offense characteristics, which data suggests co-occur frequently, will enhance the ultimate sentence without leading to an excessively severe result.

Although the amendment refers section 113(a)(8) offenses to § 2A2.2, it also amends § 2A6.2 (Stalking or Domestic Violence) to address cases involving strangulation, suffocation, or attempting to strangle or suffocate, as a conforming change. The amendment adds strangulation and suffocation as a new aggravating factor at § 2A6.2(b)(1), which results in a 2-level enhancement, or in a 4-level enhancement if it applies in conjunction with another aggravating factor such as bodily injury or the use of a weapon.

Fifth, the amendment removes the term ''minor assault'' from the *Guidelines Manual.* Misdemeanor assaults and other felonious assaults are referenced to § 2A2.3, which prior to this amendment was titled ''Minor Assault.'' Informed by public comment, the Commission determined that use of the term ''minor'' is inconsistent with the severity of the underlying crimes and does a disservice to the victims and communities affected. Therefore, the amendment changes the title of § 2A2.3 to ''Assault,'' and it removes other references to ''minor assault'' from the Background and Commentary sections of §§ 2A2.2 and 2A2.3. This is a stylistic change that does not affect the application of § 2A2.3.

Sixth, the amendment amended the Commentary to § 5D1.1 (Imposition of a Term of Supervised Release) to provide additional guidance on the imposition of supervised release for domestic violence and stalking offenders. The amendment describes the statutory requirements pursuant to 18 U.S.C. 3583(a) if a defendant is convicted for the first time of a domestic violence offense as defined in 18 U.S.C. 3561(b). Under section 3583, a term of supervised release is required, and the defendant is also required to attend an approved rehabilitation program if one is available within a 50-mile radius from the defendant's residence.

The Commission received public comment and testimony that supervised release should be recommended in every case of domestic violence and stalking, and the Commission's sentencing data showed that in more than ninety percent of the cases sentenced under § 2A6.2, supervised release was imposed. Based on this comment, testimony, and data, the amendment amends the Commentary to § 5D1.1 to provide that in any other case

involving either a domestic violence or a stalking offense, it is ''highly recommended'' that a term of supervised release be imposed.

Seventh, the amendment responds to changes made by the Act amending the federal statutes related to stalking and domestic violence. For the crimes of interstate domestic violence (18 U.S.C. 2261), stalking (18 U.S.C. 2261A), and interstate violation of a protective order (18 U.S.C. 2262), the Act expanded the scope of each offense to provide that a defendant's mere presence in a special maritime or territorial jurisdiction is sufficient for purposes of satisfying the jurisdictional element of the crimes. The Act also revised the prohibited conduct set forth in section 2261A to now include stalking with intent to ''intimidate'' the victim, and it added the use of an ''electronic communication service'' or ''electronic communication system'' as prohibited means of committing the crime.

The amendment updates the definition of ''stalking'' in § 2A6.2 to reflect these changes by tying the definition to the conduct described in 18 U.S.C. 2261A. The Commission determined that such a change would simplify the application of § 2A6.2, while also ensuring that the definition of stalking remains consistent with any future statutory changes.

Eighth, the Act amended 8 U.S.C. 1375a (Regulation of international marriage brokers) by reorganizing existing offenses and increasing the statutory maximum term of imprisonment for knowing violations of the regulations concerning marriage brokers from one year to five years. The Act also added a new criminal provision for ''knowingly and with intent to defraud another person outside of the United States in order to recruit, solicit, entice, or induce that person into entering a dating or matrimonial relationship,'' making false or fraudulent representations regarding the background information required to be provided to an international marriage brokers. The new offense has a statutory maximum term of imprisonment of one year. The amendment referenced this new offense in Appendix A to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). The Commission concluded that § 2B1.1 is the appropriate guideline because the elements of the new offense include fraud and deceit. The amendment also amended Appendix A by revising the other criminal subsections, which continue to be referred to § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information), to accord with the reorganization of the statute.

Ninth, the Trafficking Victims Protection Reauthorization Act, passed as part of the Act, included a provision expanding subsection (c) of 18 U.S.C. 2423 (Transportation of minors), which had previously prohibited U.S. citizens or permanent residents who traveled abroad from engaging in illicit sexual conduct. After the Act, the same prohibition now also applies to those individuals who reside temporarily or permanently in a foreign country and engage in such conduct. Section 2423 contains four offenses, set forth in subsections (a) through (d), each of which prohibits sexual conduct with minors. Prior to the amendment, Appendix A referenced sections 2423(a) and 2423(b) to § 2G1.3 (Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors; Travel to Engage in Commercial Sex or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children), but provided no reference for sections 2423(c) or 2423(d), which prohibits arranging, inducing, procuring, or facilitating the travel of a person for illicit sexual conduct, for the purpose of commercial advantage or financial gain. Both subsections (c) and (d) provide a 30 year statutory maximum term of imprisonment.

The amendment adds references in Appendix A for 18 U.S.C. 2423(c) and (d). Based on the seriousness of the prohibited conduct, the severity of the penalties, and the vulnerability of the victims involved, the Commission concluded that 18 U.S.C. 2423(c) and (d) should also be referenced in Appendix A to § 2G1.3.

Tenth, the Act created a new Class A misdemeanor offense at 18 U.S.C. 1597 prohibiting the knowing destruction, concealment, confiscation or possession of an actual or purported passport or other immigration documents of another individual if done in the course of violating or with the intent to violate 18 U.S.C. 1351, relating to fraud in foreign labor contracting, or 8 U.S.C. 1324, relating to bringing in or harboring certain aliens. The new offense also prohibits this conduct if it is done in order to, without lawful authority, maintain, prevent, or restrict the labor or services of the individual, and the knowing obstruction, attempt to obstruct, or interference with or prevention of the enforcement of section 1597. Section 1597 has a statutory maximum term of imprisonment of one year.

The amendment references this misdemeanor offense to § 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)). This reference comports with the Commission's intent when it promulgated § 2X5.2, as stated in Amendment 685 (effective November 1, 2006), that the Commission will reference new Class A misdemeanor offenses either to § 2X5.2 or to another, more specific Chapter Two guideline, if appropriate. The Commission determined that with a base offense level of 6, § 2X5.2 covers the range of sentencing possibilities that are available for defendants convicted of this offense, regardless of their criminal history. The Commission may consider referencing section 1597 to another substantive guideline in the future after more information becomes available regarding the type of conduct that constitutes the typical violation and the aggravating or mitigating factors that may apply.

Finally, the amendment removes from Appendix A the guideline references for two jurisdictional statutes in title 18 related to crimes committed within Indian country. Section 1152, also known as the General Crimes Act, grants federal jurisdiction for federal offenses committed by non-Indians within Indian country. Section 1153, also known as the Major Crimes Act, grants federal jurisdiction over Indians who commit certain enumerated offenses within Indian country. The Act expanded section 1153 to include any felony assault under section 113. Because sections 1152 and 1153 are simply jurisdictional statutes that do not provide substantive offenses, the Commission determined there is no need for Appendix A to provide a guidelines reference for those statutes.

3. *Amendment:* Section 2D1.1(c) is amended by striking paragraph (17); by redesignating paragraphs (1) through (16) as paragraphs (2) through (17), respectively; and by inserting before paragraph (2) (as so redesignated) the following new paragraph (1):

''(1) • 90 KG or more of Heroin; Level 38

• 450 KG or more of Cocaine;

• 25.2 KG or more of Cocaine Base;

• 90 KG or more of PCP, or 9 KG or more of PCP (actual);

• 45 KG or more of Methamphetamine, or 4.5 KG or more of Methamphetamine (actual), or 4.5 KG or more of 'Ice';

• 45 KG or more of Amphetamine, or 4.5 KG or more of Amphetamine (actual);
• 900 G or more of LSD;
• 36 KG or more of Fentanyl;
• 9 KG or more of a Fentanyl Analogue;
• 90,000 KG or more of Marihuana;
• 18,000 KG or more of Hashish;
• 1,800 KG or more of Hashish Oil;
• 90,000,000 units or more of Ketamine;
• 90,000,000 units or more of Schedule I or II Depressants;
• 5,625,000 units or more of Flunitrazepam.''.

Section 2D1.1(c)(2) (as so redesignated) is amended to read as follows:

''(2) • At least 30 KG but less than 90 KG of Heroin; Level 36
• At least 150 KG but less than 450 KG of Cocaine;
• At least 8.4 KG but less than 25.2 KG of Cocaine Base;
• At least 30 KG but less than 90 KG of PCP, or at least 3 KG but less than 9 KG of PCP (actual);
• At least 15 KG but less than 45 KG of Methamphetamine, or at least 1.5 KG but less than 4.5 KG of Methamphetamine (actual), or at least 1.5 KG but less than 4.5 KG of 'Ice';
• At least 15 KG but less than 45 KG of Amphetamine, or at least 1.5 KG but less than 4.5 KG of Amphetamine (actual);
• At least 300 G but less than 900 G of LSD;
• At least 12 KG but less than 36 KG of Fentanyl;
• At least 3 KG but less than 9 KG of a Fentanyl Analogue;
• At least 30,000 KG but less than 90,000 KG of Marihuana;
• At least 6,000 KG but less than 18,000 KG of Hashish;
• At least 600 KG but less than 1,800 KG of Hashish Oil;
• At least 30,000,000 units but less than 90,000,000 units of Ketamine;
• At least 30,000,000 units but less than 90,000,000 units of Schedule I or II Depressants;
• At least 1,875,000 units but less than 5,625,000 units of Flunitrazepam.''.

Section 2D1.1(c)(3) (as so redesignated) is amended by striking ''Level 36'' and inserting ''Level 34''.

Section 2D1.1(c)(4) (as so redesignated) is amended by striking ''Level 34'' and inserting ''Level 32''.

Section 2D1.1(c)(5) (as so redesignated) is amended by striking ''Level 32'' and inserting ''Level 30''; and by inserting before the line referenced to Flunitrazepam the following:

''• 1,000,000 units or more of Schedule III Hydrocodone;''.

Section 2D1.1(c)(6) (as so redesignated) is amended by striking ''Level 30'' and inserting ''Level 28''; and in the line referenced to Schedule III Hydrocode by striking ''700,000 or more'' and inserting ''At least 700,000 but less than 1,000,000''.

Section 2D1.1(c)(7) (as so redesignated) is amended by striking ''Level 28'' and inserting ''Level 26''.

Section 2D1.1(c)(8) (as so redesignated) is amended by striking ''Level 26'' and inserting ''Level 24''.

Section 2D1.1(c)(9) (as so redesignated) is amended by striking ''Level 24'' and inserting ''Level 22''.

Section 2D1.1(c)(10) (as so redesignated) is amended by striking ''Level 22'' and inserting ''Level 20''; and by inserting before the line referenced to Flunitrazepam the following:

''• 60,000 units or more of Schedule III substances (except Ketamine or Hydrocodone);''.

Section 2D1.1(c)(11) (as so redesignated) is amended by striking ''Level 20'' and inserting ''Level 18''; and in the line referenced to Schedule III substances (except Ketamine or Hydrocodone) by striking ''40,000 or more'' and inserting ''At least 40,000 but less than 60,000''.

Section 2D1.1(c)(12) (as so redesignated) is amended by striking ''Level 18'' and inserting ''Level 16''.

Section 2D1.1(c)(13) (as so redesignated) is amended by striking ''Level 16'' and inserting ''Level 14''.

Section 2D1.1(c)(14) (as so redesignated) is amended by striking ''Level 14'' and inserting ''Level 12''; by striking the line referenced to Heroin and all that follows through the line referenced to Fentanyl Analogue and inserting the following:

''(14) • Less than 10 G of Heroin; Level 12
• Less than 50 G of Cocaine;
• Less than 2.8 G of Cocaine Base;
• Less than 10 G of PCP, or less than 1 G of PCP (actual);
• Less than 5 G of Methamphetamine, or less than 500 MG of Methamphetamine (actual), or less than 500 MG of 'Ice';
• Less than 5 G of Amphetamine, or less than 500 MG of Amphetamine (actual);
• Less than 100 MG of LSD;
• Less than 4 G of Fentanyl;
• Less than 1 G of a Fentanyl Analogue;'';

by striking the period at the end of the line referenced to Flunitrazepam and inserting a semicolon; and by adding at the end the following:

''• 80,000 units or more of Schedule IV substances (except Flunitrazepam).''.

Section 2D1.1(c)(15) (as so redesignated) is amended by striking ''Level 12'' and inserting ''Level 10''; by striking the line referenced to Heroin and all that follows through the line referenced to Fentanyl Analogue; and in the line referenced to Schedule IV substances (except Flunitrazepam) by striking ''40,000 or more'' and inserting ''At least 40,000 but less than 80,000''.

Section 2D1.1(c)(16) (as so redesignated) is amended by striking ''Level 10'' and inserting ''Level 8''; in the line referenced to Flunitrazepam by striking ''At least 62 but less'' and inserting ''Less''; by striking the period at the end of the line referenced to Schedule IV substances (except Flunitrazepam) and inserting a semicolon; and by adding at the end the following:

''• 160,000 units or more of Schedule V substances.''.

Section 2D1.1(c)(17) (as so redesignated) is amended to read as follows:

''(17) • Less than 1 KG of Marihuana; Level 6
• Less than 200 G of Hashish;
• Less than 20 G of Hashish Oil;
• Less than 1,000 units of Ketamine;
• Less than 1,000 units of Schedule I or II Depressants;
• Less than 1,000 units of Schedule III Hydrocodone;
• Less than 1,000 units of Schedule III substances (except Ketamine or Hydrocodone);
• Less than 16,000 units of Schedule IV substances (except Flunitrazepam);
• Less than 160,000 units of Schedule V substances.''.

The annotation to § 2D1.1(c) captioned ''Notes to Drug Quantity Table'' is amended in Note (E) by striking ''100 G'' and inserting ''100 grams''; in Note (F) by striking ''0.5 ml'' and ''25 mg'' and inserting ''0.5 milliliters'' and ''25 milligrams'', respectively; and in Note (G) by striking ''0.4 mg'' and inserting ''0.4 milligrams''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 8(A) by striking ''1 gm'', ''5 kg'', ''100 gm'', and ''500 kg'' and inserting ''1 gram'', ''5 kilograms'', ''100 grams'', and ''500 kilograms'', respectively, and by striking ''28'' and inserting ''26'';

in Note 8(B) by striking ''999 grams'' and inserting ''2.49 kilograms'';

in Note 8(C)(i) by striking ''22'' and inserting ''20'', by striking ''18'' and inserting ''16'', and by striking ''24'' and inserting ''22'';

in Note 8(C)(ii) by striking ''8'' both places such term appears and inserting ''6'', by striking ''five kilograms'' and inserting ''10,000 units'', and by striking ''10'' and inserting ''8'';

in Note 8(C)(iii) by striking ''16'' and inserting ''14'', by striking ''14'' and inserting ''12'', and by striking ''18'' and inserting ''16'';

in Note 8(C)(iv) by striking ''56,000'' and inserting ''76,000'', by striking ''100,000'' and inserting ''200,000'', by striking ''200,000'' and inserting ''600,000'', by striking ''56'' and inserting ''76'', by striking ''59.99'' and inserting ''79.99'', by striking ''4.99'' and inserting ''9.99'', by striking ''6.25'' and inserting ''12.5'', by striking ''999 grams'' and inserting ''2.49 kilograms'', by striking ''1.25'' and inserting ''3.75'', by striking ''59.99'' and inserting ''79.99'', and by striking ''61.99 (56 + 4.99 + .999)'' and inserting ''88.48 (76 + 9.99 + 2.49)'';

in Note 8(D), under the heading relating to Schedule III Substances (except ketamine and hydrocodone), by striking ''59.99'' and inserting ''79.99''; under the heading relating to Schedule III Hydrocodone, by striking ''999.99'' and inserting ''2,999.99''; under the heading relating to Schedule IV Substances (except flunitrazepam) by striking ''4.99'' and inserting ''9.99''; and under the heading relating to Schedule V Substances by striking ''999 grams'' and inserting ''2.49 kilograms'';

and in Note 9 by striking ''500 mg'' and ''50 gms'' and inserting ''500 milligrams'' and ''50 grams'', respectively.

The Commentary to § 2D1.1 captioned ''Background'' is amended in the paragraph that begins ''The base offense levels in § 2D1.1'' by striking ''32 and 26'' and inserting ''30 and 24''; and by striking the paragraph that begins ''The base offense levels at levels 26 and 32'' and inserting the following new paragraph:

''The base offense levels at levels 24 and 30 establish guideline ranges such that the statutory minimum falls within the range; *e.g.,* level 30 ranges from 97 to 121 months, where the statutory minimum term is ten years or 120 months.''.

The Commentary to § 2D1.2 captioned ''Application Note'' is amended in Note 1 by striking ''16'' and inserting ''14''; and by striking ''17'' and inserting ''15''.

Section 2D1.11(d) is amended by striking paragraph (14); by redesignating paragraphs (1) through (13) as paragraphs (2) through (14), respectively; and by inserting before paragraph (2) (as so redesignated) the following new paragraph (1):

''(1) 9 KG or more of Ephedrine; Level 38

9 KG or more of Phenylpropanolamine;

9 KG or more of Pseudoephedrine.''.

Section 2D1.11(d)(2) (as so redesignated) is amended by striking ''Level 38'' and inserting ''Level 36''; and by striking ''3 KG or more'' each place such term appears and inserting ''At least 3 KG but less than 9 KG''.

Section 2D1.11(d)(3) (as so redesignated) is amended by striking ''Level 36'' and inserting ''Level 34''.

Section 2D1.11(d)(4) (as so redesignated) is amended by striking ''Level 34'' and inserting ''Level 32''.

Section 2D1.11(d)(5) (as so redesignated) is amended by striking ''Level 32'' and inserting ''Level 30''.

Section 2D1.11(d)(6) (as so redesignated) is amended by striking ''Level 30'' and inserting ''Level 28''.

Section 2D1.11(d)(7) (as so redesignated) is amended by striking ''Level 28'' and inserting ''Level 26''.

Section 2D1.11(d)(8) (as so redesignated) is amended by striking ''Level 26'' and inserting ''Level 24''.

Section 2D1.11(d)(9) (as so redesignated) is amended by striking ''Level 24'' and inserting ''Level 22''.

Section 2D1.11(d)(10) (as so redesignated) is amended by striking ''Level 22'' and inserting ''Level 20''.

Section 2D1.11(d)(11) (as so redesignated) is amended by striking ''Level 20'' and inserting ''Level 18''.

Section 2D1.11(d)(12) (as so redesignated) is amended by striking ''Level 18'' and inserting ''Level 16''.

Section 2D1.11(d)(13) (as so redesignated) is amended by striking ''Level 16'' and inserting ''Level 14''.

Section 2D1.11(d)(14) (as so redesignated) is amended by striking ''Level 14'' and inserting ''Level 12''; and by striking ''At least 500 MG but less'' each place such term appears and inserting ''Less''.

Section 2D1.11(e) is amended by striking paragraph (10); by redesignating paragraphs (1) through (9) as paragraphs (2) through (10), respectively; and by inserting before paragraph (2) (as so redesignated) the following new paragraph (1):

''(1) *List I Chemicals* Level 30

2.7 KG or more of Benzaldehyde;

60 KG or more of Benzyl Cyanide;

600 G or more of Ergonovine;

1.2 KG or more of Ergotamine;

60 KG or more of Ethylamine;

6.6 KG or more of Hydriodic Acid;

3.9 KG or more of Iodine;

960 KG or more of Isosafrole;

600 G or more of Methylamine;

1500 KG or more of N-Methylephedrine;

1500 KG or more of N-Methylpseudoephedrine;

1.9 KG or more of Nitroethane;

30 KG or more of Norpseudoephedrine;

60 KG or more of Phenylacetic Acid;

30 KG or more of Piperidine;

960 KG or more of Piperonal;

4.8 KG or more of Propionic Anhydride;

960 KG or more of Safrole;

1200 KG or more of 3, 4-Methylenedioxyphenyl-2-propanone;

3406.5 L or more of Gamma-butyrolactone;

2.1 KG or more of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid.''.

Section 2D1.11(e)(2) (as so redesignated) is amended to read as follows:

''(2) *List I Chemicals* Level 28

At least 890 G but less than 2.7 KG of Benzaldehyde;

At least 20 KG but less than 60 KG of Benzyl Cyanide;

At least 200 G but less than 600 G of Ergonovine;

At least 400 G but less than 1.2 KG of Ergotamine;

At least 20 KG but less than 60 KG of Ethylamine;

At least 2.2 KG but less than 6.6 KG of Hydriodic Acid;

At least 1.3 KG but less than 3.9 KG of Iodine;

At least 320 KG but less than 960 KG of Isosafrole;

At least 200 G but less than 600 G of Methylamine;

At least 500 KG but less than 1500 KG of N-Methylephedrine;

At least 500 KG but less than 1500 KG of N-Methylpseudoephedrine;

At least 625 G but less than 1.9 KG of Nitroethane;

At least 10 KG but less than 30 KG of Norpseudoephedrine;

At least 20 KG but less than 60 KG of Phenylacetic Acid;

At least 10 KG but less than 30 KG of Piperidine;

At least 320 KG but less than 960 KG of Piperonal;

At least 1.6 KG but less than 4.8 KG of Propionic Anhydride;

At least 320 KG but less than 960 KG of Safrole;

At least 400 KG but less than 1200 KG of 3, 4-Methylenedioxyphenyl-2-propanone;

At least 1135.5 L but less than 3406.5 L of Gamma-butyrolactone;

At least 714 G but less than 2.1 KG of Red Phosphorus, White Phosphorus, or Hypophosphorous Acid.

List II Chemicals

33 KG or more of Acetic Anhydride;

3525 KG or more of Acetone;

60 KG or more of Benzyl Chloride;

3225 KG or more of Ethyl Ether;

3600 KG or more of Methyl Ethyl Ketone;

30 KG or more of Potassium Permanganate;

3900 KG or more of Toluene.''.

Section 2D1.11(e)(3) (as so redesignated) is amended by striking ''Level 28'' and inserting ''Level 26''; and, under the heading relating to List II Chemicals, by striking the line referenced to Acetic Anhydride and all that follows through the line referenced to Toluene and inserting the following:

''At least 11 KG but less than 33 KG of Acetic Anhydride;

At least 1175 KG but less than 3525 KG of Acetone;

At least 20 KG but less than 60 KG of Benzyl Chloride;

At least 1075 KG but less than 3225 KG of Ethyl Ether;

At least 1200 KG but less than 3600 KG of Methyl Ethyl Ketone;

At least 10 KG but less than 30 KG of Potassium Permanganate;

At least 1300 KG but less than 3900 KG of Toluene.''.

Section 2D1.11(e)(4) (as so redesignated) is amended by striking ''Level 26'' and inserting ''Level 24''.

Section 2D1.11(e)(5) (as so redesignated) is amended by striking ''Level 24'' and inserting ''Level 22''.

Section 2D1.11(e)(6) (as so redesignated) is amended by striking ''Level 22'' and inserting ''Level 20''.

Section 2D1.11(e)(7) (as so redesignated) is amended by striking ''Level 20'' and inserting ''Level 18''.

Section 2D1.11(e)(8) (as so redesignated) is amended by striking ''Level 18'' and inserting ''Level 16''.

Section 2D1.11(e)(9) (as so redesignated) is amended by striking ''Level 16'' and inserting ''Level 14''.

Section 2D1.11(e)(10) (as so redesignated) is amended by striking ''Level 14'' and inserting ''Level 12''; and in each line by striking ''At least'' and all that follows through ''but less'' and inserting ''Less''.

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended in Note 1(A) by striking ''38'' both places such term appears and inserting ''36'', and by striking ''26'' and inserting ''24''; and in Note 1(B) by striking ''32'' and inserting ''30''.

The Commentary to § 3B1.2 captioned ''Application Notes'' is amended in Note 3(B) by striking ''14'' and inserting ''12''.

The Commentary following § 3D1.5 captioned ''Illustrations of the Operation of the Multiple-Count Rules'' is amended in Example 2 by striking ''26'' and inserting ''24''; and by striking ''28'' each place such term appears and inserting ''26''.

The Commentary to § 5G1.3 captioned ''Application Notes'' is amended in Note 2(D) by striking ''40'' and inserting ''90''; by striking ''15'' and inserting ''25''; and by striking ''55'' and inserting ''115''.

Reason for Amendment: This amendment revises the guidelines applicable to drug trafficking offenses by changing how the base offense levels in the Drug Quantity Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) incorporate the statutory mandatory minimum penalties for such offenses.

When Congress passed the Anti-Drug Abuse Act of 1986, Public Law 99–570, the Commission responded by generally incorporating the statutory mandatory minimum sentences into the guidelines and extrapolating upward and downward to set guideline sentencing ranges for all drug quantities. The quantity thresholds in the Drug Quantity Table were set so as to provide base offense levels corresponding to guideline ranges that were slightly above the statutory mandatory minimum penalties. Accordingly, offenses involving drug quantities that trigger a five-year statutory minimum were assigned a base offense level (level 26) corresponding to a sentencing guideline range of 63 to 78 months for a defendant in Criminal History Category I (a guideline range that exceeds the five-year statutory minimum for such offenses by at least three months). Similarly, offenses that trigger a ten-year statutory minimum were assigned a base offense level (level 32) corresponding to a sentencing guideline range of 121 to 151 months for a defendant in Criminal History Category I (a guideline range that exceeds the ten-year statutory minimum for such offenses by at least one month). The base offense levels for drug quantities above and below the mandatory minimum threshold quantities were extrapolated upward and downward to set guideline sentencing ranges for all drug quantities, *see* § 2D1.1, comment. (backg'd.), with a minimum base offense level of 6 and a maximum base offense level of 38 for most drug types.

This amendment changes how the applicable statutory mandatory minimum penalties are incorporated into the Drug Quantity Table while maintaining consistency with such penalties. *See* 28 U.S.C. 994(b)(1) (providing that each sentencing range must be ''consistent with all pertinent provisions of title 18, United States Code''); *see also* 28 U.S.C. 994(a) (providing that the Commission shall promulgate guidelines and policy statements ''consistent with all pertinent provisions of any Federal statute'').

Specifically, the amendment reduces by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties, resulting in corresponding guideline ranges that include the mandatory minimum penalties. Accordingly, offenses involving drug quantities that trigger a five-year statutory minimum are assigned a base offense level of 24 (51 to 63 months at Criminal History Category I, which includes the five-year (60 month) statutory minimum for such offenses), and offenses involving drug quantities that trigger a ten-year statutory minimum are assigned a base offense level of 30 (97 to 121 months at Criminal History Category I, which includes the ten-year (120 month) statutory minimum for such offenses). Offense levels for quantities above and below the mandatory minimum threshold quantities similarly are adjusted downward by two levels, except that the minimum base offense level of 6 and the maximum base offense level of 38 for most drug types is retained, as are previously existing minimum and maximum base offense levels for particular drug types.

The amendment also makes parallel changes to the quantity tables in § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), which apply to offenses involving chemical precursors of controlled substances. Section 2D1.11 is generally structured to provide offense levels that are tied to, but less severe than, the base offense levels in § 2D1.1 for offenses involving the final product.

In considering this amendment, the Commission held a hearing on March 13, 2014, and heard expert testimony from the Executive Branch, including the Attorney General and the Director of the Federal Bureau of Prisons, defense practitioners, state and local law enforcement, and interested community representatives. The Commission also received substantial written public comment, including from the Federal judiciary, members of Congress, academicians, community organizations, law enforcement groups, and individual members of the public.

The Commission determined that setting the base offense levels slightly above the mandatory minimum penalties is no longer necessary to achieve its stated purpose. Previously, the Commission has stated that ''[t]he base offense levels are set at guideline ranges slightly higher than the

mandatory minimum levels [levels 26 and 32] to permit some downward adjustment for defendants who plead guilty or otherwise cooperate with authorities.'' However, changes in the law and recent experience with similar reductions in base offense levels for crack cocaine offenses indicate that setting the base offense levels above the mandatory minimum penalties is no longer necessary to provide adequate incentives to plead guilty or otherwise cooperate with authorities.

In 1994, after the initial selection of levels 26 and 32, Congress enacted the ''safety valve'' provision, which applies to certain non-violent drug defendants and allows the court, without a government motion, to impose a sentence below a statutory mandatory minimum penalty if the court finds, among other things, that the defendant ''has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.'' *See* 18 U.S.C. § 3553(f). The guidelines incorporate the ''safety valve'' at § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) and, furthermore, provide a 2-level reduction if the defendant meets the ''safety valve'' criteria. *See* §§ 2D1.1(b)(16).

These statutory and guideline provisions, which are unrelated to the guideline range's relationship to the mandatory minimum, provide adequate incentive to plead guilty. Commission data indicate that defendants charged with a mandatory minimum penalty in fact are more likely to plead guilty if they qualify for the ''safety valve'' than if they do not. In fiscal year 2012, drug trafficking defendants charged with a mandatory minimum penalty had a plea rate of 99.6 percent if they qualified for the ''safety valve'' and a plea rate of 93.9 percent if they did not.

Recent experience with similar reductions in the base offense levels for crack cocaine offenses indicates that the amendment should not negatively affect the rates at which offenders plead guilty or otherwise cooperate with authorities. Similar to this amendment, the Commission in 2007 amended the Drug Quantity Table for cocaine base (''crack'' cocaine) so that the quantities that trigger mandatory minimum penalties were assigned base offense levels 24 and 30, rather than 26 and 32. *See* USSG App. C, Amendment 706 (effective November 1, 2007). In 2010, in implementing the emergency directive in section 8 of the Fair Sentencing Act of 2010, Public Law 111–220, the Commission moved crack cocaine offenses back to a guideline penalty structure based on levels 26 and 32.

During the period when crack cocaine offenses had a guideline penalty structure based on levels 24 and 30, the overall rates at which crack cocaine defendants pled guilty remained stable. Specifically, in the fiscal year before the 2007 amendment took effect, the plea rate for crack cocaine defendants was 93.1 percent. In the two fiscal years after the 2007 amendment took effect, the plea rates for such defendants were 95.2 percent and 94.0 percent, respectively. For those same fiscal years, the overall rates at which crack cocaine defendants received substantial assistance departures under § 5K1.1 (Substantial Assistance to Authorities) were 27.8 percent in the fiscal year before the 2007 amendment took effect and 25.3 percent and 25.6 percent in the two fiscal years after the 2007 amendment took effect. This recent experience indicates that this amendment, which is similar in nature to the 2007 crack cocaine amendment, should not negatively affect the willingness of defendants to plead guilty or otherwise cooperate with authorities. *See* 28 U.S.C. 991(b) (specifying that sentencing policies are to ''reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process'').

The amendment also reflects the fact that the guidelines now more adequately differentiate among drug trafficking offenders than when the Drug Quantity Table was initially established. Since the initial selection of offense levels 26 and 32, the guidelines have been amended many times—often in response to congressional directives—to provide a greater emphasis on the defendant's conduct and role in the offense rather than on drug quantity. The version of § 2D1.1 in the original 1987 *Guidelines Manual* contained a single specific offense characteristic: a 2-level enhancement if a firearm or other dangerous weapon was possessed. Section 2D1.1 in effect at the time of this amendment contains fourteen enhancements and three downward adjustments (including the ''mitigating role cap'' provided in subsection (a)(5)). These numerous adjustments, both increasing and decreasing offense levels based on specific conduct, reduce the need to rely on drug quantity in setting the guideline penalties for drug trafficking offenders as a proxy for culpability, and the amendment permits these adjustments to differentiate among offenders more effectively.

The amendment was also motived by the significant overcapacity and costs of the Federal Bureau of Prisons. The Sentencing Reform Act directs the Commission to ensure that the sentencing guidelines are ''formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons.'' *See* 28 U.S.C. § 994(g). Reducing the federal prison population and the costs of incarceration has become an urgent consideration. The Commission observed that the federal prisons are now 32 percent overcapacity, and drug trafficking offenders account for approximately 50 percent of the federal prison population (100,114 of 199,810 inmates as of October 26, 2013, for whom the Commission could determine the offense of conviction). Spending on federal prisons exceeds $6 billion a year, or more than 25 percent of the entire budget for the Department of Justice. The Commission received testimony from the Department of Justice and others that spending on federal prisons is now crowding out resources available for federal prosecutors and law enforcement, aid to state and local law enforcement, crime victim services, and crime prevention programs, all of which promote public safety.

In response to these concerns, the Commission considered the amendment an appropriate step toward alleviating the overcapacity of the federal prisons. Based on an analysis of the 24,968 offenders sentenced under § 2D1.1 in fiscal year 2012, the Commission estimates the amendment will affect the sentences of 17,457—or 69.9 percent—of drug trafficking offenders sentenced under § 2D1.1, and their average sentence will be reduced by 11 months—or 17.7 percent—from 62 months to 51 months. The Commission estimates these sentence reductions will correspond to a reduction in the federal prison population of approximately 6,500 inmates within five years after its effective date.

The Commission carefully weighed public safety concerns and, based on past experience, existing statutory and guideline enhancements, and expert testimony, concluded that the amendment should not jeopardize public safety. In particular, the Commission was informed by its studies that compared the recidivism rates for offenders who were released early as a result of retroactive application of the Commission's 2007 crack cocaine amendment with a control group of offenders who served their full terms of imprisonment. *See* USSG App. C, Amendment 713 (effective March 3, 2008). The Commission detected no statistically significant difference in the rates of recidivism for the two groups of

offenders after two years, and again after five years. This study suggests that modest reductions in drug penalties such as those provided by the amendment will not increase the risk of recidivism.

Furthermore, existing statutory enhancements, such as those available under 18 U.S.C. 924(c), and guideline enhancements for offenders who possess firearms, use violence, have an aggravating role in the offense, or are repeat or career offenders, ensure that the most dangerous or serious offenders will continue to receive appropriately severe sentences. In addition, the Drug Quantity Table as amended still provides a base offense level of 38 for offenders who traffic the greatest quantities of most drug types and, therefore, sentences for these offenders will not be reduced. Similarly, the Drug Quantity Table as amended maintains minimum base offense levels that preclude sentences of straight probation for drug trafficking offenders with small quantities of most drug types.

Finally, the Commission relied on testimony from the Department of Justice that the amendment would not undermine public safety or law enforcement initiatives. To the contrary, the Commission received testimony from several stakeholders that the amendment would permit resources otherwise dedicated to housing prisoners to be used to reduce overcrowding, enhance programming designed to reduce the risk of recidivism, and to increase law enforcement and crime prevention efforts, thereby enhancing public safety.

4. *Amendment:* Section 2D1.1(b) is amended by redesignating paragraphs (14) through (16) as paragraphs (15) through (17), respectively; and by inserting after paragraph (13) the following new paragraph (14):

''(14) If (A) the offense involved the cultivation of marihuana on state or federal land or while trespassing on tribal or private land; and (B) the defendant receives an adjustment under § 3B1.1 (Aggravating Role), increase by 2 levels.''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 16 by striking ''(b)(14)(D)'' and inserting ''(b)(15)(D)''; by redesignating Notes 19 through 26 as Notes 20 through 27, respectively; and by inserting after Note 18 the following new Note 19:

''19. *Application of Subsection (b)(14).*—Subsection (b)(14) applies to offenses that involve the cultivation of marihuana on state or federal land or while trespassing on tribal or private land. Such offenses interfere with the ability of others to safely access and use the area and also pose or risk a range of other harms, such as harms to the environment.

The enhancements in subsection (b)(13)(A) and (b)(14) may be applied cumulatively (added together), as is generally the case when two or more specific offense characteristics each apply. *See* § 1B1.1 (Application Instructions), Application Note 4(A).'';

in the heading of Note 20 (as so redesignated) by striking ''(b)(14)'' and inserting ''(b)(15)'';

in Note 20(A) (as so redesignated) by striking ''(b)(14)(B)'' both places such term appears and inserting ''(b)(15)(B)'';

in Note 20(B) (as so redesignated) by striking ''(b)(14)(C)'' each place such term appears and inserting ''(b)(15)(C)'';

in Note 20(C) (as so redesignated) by striking ''(b)(14)(E)'' both places such term appears and inserting ''(b)(15)(E)''; and

in Note 21 (as so redesignated) by striking ''(b)(16)'' each place such term appears and inserting ''(b)(17)''.

The Commentary to § 2D1.1 captioned ''Background'' is amended by striking ''(b)(14)'' and inserting ''(b)(15)''; and by striking ''(b)(15)'' and inserting ''(b)(16)''.

Section 2D1.14(a)(1) is amended by striking ''(b)(16)'' and inserting ''(b)(17)''.

The Commentary to § 3B1.4 captioned ''Application Notes'' is amended in Note 2 by striking ''(b)(14)(B)'' and inserting ''(b)(15)(B)''.

The Commentary to § 3C1.1 captioned ''Application Notes'' is amended in Note 7 by striking ''(b)(14)(D)'' and inserting ''(b)(15)(D)''.

Reason for Amendment: This amendment provides increased punishment for certain defendants involved in marihuana cultivation operations on state or federal land or while trespassing on tribal or private land. The amendment adds a new specific offense characteristic at subsection (b)(14) of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy). The new specific offense characteristic provides an increase of two levels if the defendant receives an adjustment under § 3B1.1 (Aggravating Role) and the offense involved the cultivation of marihuana on state or federal land or while trespassing on tribal or private land.

The amendment responds to concerns raised by federal and local elected officials, law enforcement groups, trade groups, environmental advocacy groups and others, especially in areas of the country where unlawful outdoor marihuana cultivation is occurring with increasing frequency. The concerns included the fact that such operations typically involve acts such as clearing existing vegetation, diverting natural water sources for irrigation, using potentially harmful chemicals, killing wild animals, and leaving trash and debris at the site. The concerns also included the risk to public safety of marihuana cultivation operations on federal or state land or while trespassing on tribal or private land. Additionally, when an operation is located on public land or on private land without the owner's permission, the operation deprives the public or the owner of lawful access to and use of the land.

Accordingly, this amendment provides an increase of two levels when a marihuana cultivation operation is located on state or federal land or while trespassing on tribal or private land, but only applies to defendants who received an adjustment under § 3B1.1 (Aggravating Role). These defendants are more culpable and have greater decision-making authority in the operation. The amendment also adds commentary in § 2D1.1 at Application Note 19 clarifying that, consistent with ordinary guideline operation, the new increase may be applied cumulatively with the existing enhancement at subsection (b)(13)(A) of § 2D1.1, which applies if an offense involved certain conduct relating to hazardous or toxic substances or waste.

5. *Amendment:* Section 2K2.1(c)(1) is amended by inserting after ''firearm or ammunition'' both places it appears the following: ''cited in the offense of conviction''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended in Note 14 by striking '' *'In Connection With'.*—'' and inserting ''*Application of Subsections (b)(6)(B) and (c)(1).*—'';

in Note 14(A) by adding at the end the following: ''However, subsection (c)(1) contains the additional requirement that the firearm or ammunition be cited in the offense of conviction.'';

in Note 14(B) by striking ''application of subsections (b)(6)(B) and (c)(1)'' and inserting ''application of subsections (b)(6)(B) and, if the firearm was cited in the offense of conviction, (c)(1)'';

and by adding at the end of Note 14 the following:

''(E) *Relationship Between the Instant Offense and the Other Offense.*—In determining whether subsections (b)(6)(B) and (c)(1) apply, the court must consider the relationship between the instant offense and the other offense, consistent with relevant conduct principles. *See* § 1B1.3(a)(1)–(4) and accompanying commentary.

In determining whether subsection (c)(1) applies, the court must also consider whether the firearm used in the other offense was a firearm cited in the offense of conviction.

For example:

(i) *Firearm Cited in the Offense of Conviction.* Defendant A's offense of conviction is for unlawfully possessing a shotgun on October 15. The court determines that, on the preceding February 10, Defendant A used the shotgun in connection with a robbery. Ordinarily, under these circumstances, subsection (b)(6)(B) applies, and the cross reference in subsection (c)(1) also applies if it results in a greater offense level.

Ordinarily, the unlawful possession of the shotgun on February 10 will be 'part of the same course of conduct or common scheme or plan' as the unlawful possession of the same shotgun on October 15. *See* § 1B1.3(a)(2) and accompanying commentary (including, in particular, the factors discussed in Application Note 9 to § 1B1.3). The use of the shotgun 'in connection with' the robbery is relevant conduct because it is a factor specified in subsections (b)(6)(B) and (c)(1). *See* § 1B1.3(a)(4) ('any other information specified in the applicable guideline').

(ii) *Firearm Not Cited in the Offense of Conviction.* Defendant B's offense of conviction is for unlawfully possessing a shotgun on October 15. The court determines that, on the preceding February 10, Defendant B unlawfully possessed a handgun (not cited in the offense of conviction) and used the handgun in connection with a robbery.

Subsection (b)(6)(B). In determining whether subsection (b)(6)(B) applies, the threshold question for the court is whether the two unlawful possession offenses (the shotgun on October 15 and the handgun on February 10) were 'part of the same course of conduct or common scheme or plan'. *See* § 1B1.3(a)(2) and accompanying commentary (including, in particular, the factors discussed in Application Note 9 to § 1B1.3).

If they were, then the handgun possession offense is relevant conduct to the shotgun possession offense, and the use of the handgun 'in connection with' the robbery is relevant conduct because it is a factor specified in subsection (b)(6)(B). *See* § 1B1.3(a)(4) ('any other information specified in the applicable guideline'). Accordingly, subsection (b)(6)(B) applies.

On the other hand, if the court determines that the two unlawful possession offenses were not 'part of the same course of conduct or common scheme or plan,' then the handgun possession offense is not relevant conduct to the shotgun possession offense and subsection (b)(6)(B) does not apply.

Subsection (c)(1). Under these circumstances, the cross reference in subsection (c)(1) does not apply, because the handgun was not cited in the offense of conviction.''.

Reason for Amendment: This amendment addresses cases in which the defendant is convicted of a firearms offense (in particular, being a felon in possession of a firearm) and also possessed a firearm in connection with another offense, such as robbery or attempted murder.

In such a case, the defendant is sentenced under the firearms guideline, § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition). If the defendant possessed any firearm in connection with another felony offense, subsection (b)(6)(B) provides a 4-level enhancement and a minimum offense level of 18. If the defendant possessed any firearm in connection with another offense, subsection (c)(1) provides a cross reference to the offense guideline applicable to the other offense, if it results in a higher offense level. (For example, if the defendant possessed any firearm in connection with a robbery, a cross reference to the robbery guideline may apply.)

This amendment is a result of the Commission's review of the operation of subsections (b)(6)(B) and (c)(1). The review was prompted in part because circuits have been following a range of approaches in determining whether these provisions apply. Several circuits have taken the view that subsections (b)(6)(B) and (c)(1) apply only if the other offense is a ''groupable'' offense under § 3D1.2(d). *See, e.g., United States* v. *Horton,* 693 F.3d 463, 478–79 (4th Cir. 2012) (felon in possession used a firearm in connection with a murder, but the cross reference does not apply because murder is not ''groupable''); *United States* v. *Settle,* 414 F.3d 629, 632–33 (6th Cir. 2005) (attempted murder); *United States* v. *Jones,* 313 F.3d 1019, 1023 n.3 (7th Cir. 2002) (murder); *United States* v. *Williams,* 431 F.3d 767, 772–73 & n.9 (11th Cir. 2005) (aggravated assault). *But see United States* v. *Kulick,* 629 F.3d 165, 170 (3d Cir. 2010) (felon in possession used a firearm in connection with extortion; the cross reference may apply even though extortion is not ''groupable''); *United States* v. *Gonzales,* 996 F.2d 88, 92 n.6 (5th Cir. 1993) (relevant conduct principles do not restrict the application of subsection (b)(6)(B)); *United States* v. *Outley,* 348 F.3d 476 (5th Cir. 2003) (relevant conduct principles do not restrict the application of subsection (c)(1)).

The amendment clarifies how relevant conduct principles operate in determining whether subsections (b)(6)(B) and (c)(1) apply. Subsections (b)(6)(B) and (c)(1) are not intended to apply only when the other felony offense is a ''groupable'' offense. Such an approach would result in unwarranted disparities, with defendants who possess a firearm in connection with a ''groupable'' offense (such as a drug offense) being subject to higher penalties than defendants who possess a firearm in connection with a ''non-groupable'' offense (such as murder or robbery). Instead, the central question for the court in these cases is whether the defendant's two firearms offenses—the firearms offense of conviction, and his unlawful possession of a firearm in connection with the other felony offense—were ''part of the same course of conduct or common scheme or plan''. *See* § 1B1.3(a)(2). The amendment adds examples to the commentary to clarify how relevant conduct principles are intended to operate in this context.

The amendment also responds to concerns regarding the impact of subsection (c)(1), particularly in cases in which the defendant was convicted of unlawfully possessing a firearm on one occasion but was found to have possessed a different firearm on another occasion in connection with another, more serious, offense. Because unlawfully possessing a firearm is an offense based on a status (*i.e.,* being a felon) that can continue for many years, the cross reference at subsection (c)(1) may, in effect, expose such a defendant to the highest offense level of any crime he may have committed at any time, regardless of its connection to the instant offense.

While relevant conduct principles provide a limitation on the scope of subsection (c)(1) (and, as discussed above, this amendment clarifies how those principles operate in this context), the Commission determined that a further limitation on the scope of subsection (c)(1) is appropriate. Specifically, the instant offense and the other offense must be related to each other by, at a minimum, having an identifiable firearm in common. Accordingly, the amendment revises the cross reference so that it applies only to the particular firearm or firearms cited in the offense of conviction.

6. *Amendment:* The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 5 after ''vehicle'' by

striking the comma and inserting a semicolon; after ''vessel'' by striking '', or'' and inserting a semicolon; and after ''inhumane condition'' by inserting the following: ''; or guiding persons through, or abandoning persons in, a dangerous or remote geographic area without adequate food, water, clothing, or protection from the elements''.

Reason for Amendment: This amendment accounts for the risks of death, injury, starvation, dehydration, or exposure that aliens potentially face when transported through dangerous and remote geographical areas, *e.g.,* along the southern border of the United States.

Section 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) currently has an enhancement at subsection (b)(6), which provides for a 2-level increase and a minimum offense level of 18, for intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person. The Commentary for subsection (b)(6), Application Note 5, explains that § 2L1.1(b)(6) may apply to a ''wide variety of conduct'' and provides as examples ''transporting persons in the trunk or engine compartment of a motor vehicle, carrying substantially more passengers than the rated capacity of a motor vehicle or vessel, or harboring persons in a crowded, dangerous, or inhumane condition.''

One case that illustrates the concerns addressed in this amendment is *United States* v. *Mateo Garza,* 541 F.3d 290 (5th Cir. 2008), in which the Fifth Circuit held that the reckless endangerment enhancement at § 2L1.1(b)(6) does not *per se* apply to transporting aliens through the South Texas brush country, and must instead be applied based on the specific facts presented to the court. The Fifth Circuit emphasized that it is not enough to say, as the district court had, that traversing an entire geographical region is inherently dangerous, but that it must be dangerous on the facts presented to and used by the district court. The Fifth Circuit identified such pertinent facts from its prior case law as the length of the journey, the temperature, whether the aliens were provided food and water and allowed rest periods, and whether the aliens suffered injuries and death. *See, e.g., United States* v. *Garcia-Guerrero,* 313 F.3d 892 (5th Cir. 2002). Additional facts that have supported the enhancement include: whether the aliens were abandoned en route, the time of year during which the journey took place, the distance traveled, and whether the aliens were adequately clothed for the journey. *See, e.g., United States* v. *Chapa,* 362 Fed. App'x 411 (5th Cir. 2010); *United States* v. *De Jesus-Ojeda,* 515 F.3d 434 (5th Cir. 2008); *United States* v. *Hernandez-Pena,* 267 Fed. App'x 367 (5th Cir. 2008); *United States* v. *Rodriguez-Cruz,* 255 F.3d 1054 (9th Cir. 2001).

The amendment adds to Application Note 5 the following new example of the conduct to which § 2L1.1(b)(6) could apply: ''or guiding persons through, or abandoning persons in, a dangerous or remote geographic area without adequate food, water, clothing, or protection from the elements.'' The Commission determined that this new example will clarify application of subsection (b)(6), highlight the potential risks in these types of cases, provide guidance for the courts to determine whether to apply the enhancement, and promote uniformity in sentencing by providing factors to consider when determining whether to apply § 2L1.1(b)(6).

7. *Amendment:* The Commentary to § 5D1.2 captioned ''Application Notes'' is amended in Note 1, in the paragraph that begins ''Sex offense' means'', in subparagraph (A), by striking ''(ii) chapter 109B of such title;'', and by redesignating clauses (iii) through (vi) as clauses (ii) through (v), respectively; in subparagraph (B) by striking ''(vi)'' and inserting ''(v)''; and by adding at the end as the last sentence the following: ''Such term does not include an offense under 18 U.S.C. § 2250 (Failure to register).''.

The Commentary to § 5D1.2 captioned ''Application Notes'' is amended by adding at the end the following new Note 6:

''6. *Application of Subsection (c).*—Subsection (c) specifies how a statutorily required minimum term of supervised release may affect the minimum term of supervised release provided by the guidelines.

For example, if subsection (a) provides a range of two years to five years, but the relevant statute requires a minimum term of supervised release of three years and a maximum term of life, the term of supervised release provided by the guidelines is restricted by subsection (c) to three years to five years. Similarly, if subsection (a) provides a range of two years to five years, but the relevant statute requires a minimum term of supervised release of five years and a maximum term of life, the term of supervised release provided by the guidelines is five years.

The following example illustrates the interaction of subsections (a) and (c) when subsection (b) is also involved. In this example, subsection (a) provides a range of two years to five years; the relevant statute requires a minimum term of supervised release of five years and a maximum term of life; and the offense is a sex offense under subsection (b). The effect of subsection (b) is to raise the maximum term of supervised release from five years (as provided by subsection (a)) to life, yielding a range of two years to life. The term of supervised release provided by the guidelines is then restricted by subsection (c) to five years to life. In this example, a term of supervised release of more than five years would be a guideline sentence. In addition, subsection (b) contains a policy statement recommending that the maximum—a life term of supervised release—be imposed.''.

Reason for Amendment: This amendment resolves a circuit conflict and a related guideline application issue about the calculation of terms of supervised release. The circuit conflict involves defendants sentenced under statutes providing for mandatory minimum terms of supervised release, while the application issue relates specifically to defendants convicted of failure to register as a sex offender, in violation of 18 U.S.C. § 2250.

The guideline term of supervised release is determined by § 5D1.2 (Term of Supervised Release). Section 5D1.2(a) sets forth general rules for determining the guideline term of supervised release, based on the statutory classification of the offense. *See* § 5D1.2(a)(1)–(3); 18 U.S.C. § 3559 (sentencing classification of offenses). For certain terrorism-related and sex offenses, § 5D1.2(b) operates to replace the top end of the guideline term calculated under subsection (a) with a life term of supervised release. In the case of a ''sex offense,'' as defined by Application Note 1 to § 5D1.2, a policy statement recommends that a life term of supervised release be imposed. *See* § 5D1.2(b), p.s. Finally, § 5D1.2(c) states that ''the term of supervised release imposed shall be not less than any statutorily required term of supervised release.''

When a Statutory Minimum Term of Supervised Release Applies

First, there appear to be differences among the circuits in how to calculate the guideline term of supervised release when there is a statutory minimum term of supervised release. These cases involve the meaning of subsection (c) and its interaction with subsection (a).

The Seventh Circuit has held that when there is a statutory minimum term of supervised release, the statutory minimum term becomes the bottom of the guideline range (replacing the bottom of the term provided by (a)) and, if the statutory minimum equals or

exceeds the top of the guideline term provided by subsection (a), the guideline ''range'' becomes a single point at the statutory minimum. *United States* v. *Gibbs,* 578 F.3d 694, 695 (7th Cir. 2009). Thus, if subsection (a) provides a range of three to five years, but the statute provides a range of five years to life, the ''range'' is precisely five years. *Gibbs* involved a drug offense for which 21 U.S.C. 841(b) required a supervised release term of five years to life. *See also United States* v. *Goodwin,* 717 F.3d 511, 519–20 (7th Cir. 2013) (applying *Gibbs* to a case involving a failure to register for which 18 U.S.C. § 3583(k) required a supervised release term of five years to life).

These cases are in tension with the approach of the Eighth Circuit in *United States* v. *Deans,* 590 F.3d 907, 911 (8th Cir. 2010). In *Deans,* the range calculated under subsection (a) was two to three years of supervised release. However, the relevant statute, 21 U.S.C. 841(b)(1)(C), provided a range of three years to life. Under the Seventh Circuit's approach in *Gibbs,* the guideline ''range'' would be precisely three years. Without reference to *Gibbs,* the Eighth Circuit in *Deans* indicated that the statutory requirement ''trumps'' subsection (a), and the guideline range becomes the statutory range—three years to life. 590 F.3d at 911. Thus, the district court's imposition of five years of supervised release ''was neither an upward departure nor procedural error.'' *Id.*

The amendment adopts the approach of the Seventh Circuit in *Gibbs* and *Goodwin.* The amendment provides a new Application Note and examples explaining that, under subsection (c), a statutorily required minimum term of supervised release operates to restrict the low end of the guideline term of supervised release.

The Commission determined that this resolution was most consistent with its statutory obligation to determine the ''appropriate length'' of supervised release terms, and with how a statutory minimum term of imprisonment operates to restrict the range of imprisonment provided by the guidelines. *See* 28 U.S.C. 994(a)(1)(c); USSG § 5G1.1(a). This outcome is also consistent with the Commission's 2010 report on supervised release, which found that most supervised release violations occur in the first year after release from incarceration. *See* U.S. Sentencing Comm'n, *Federal Offenders Sentenced to Supervised Release,* at 63 & n. 265 (July 2010). If an offender shows non-compliance during the initial term of supervised release, the court may extend the term of supervision up to the statutory maximum, pursuant to 18 U.S.C. 3583(e)(2).

When the Defendant is Convicted of Failure to Register as a Sex Offender

Second, there are differences among the circuits over how to calculate the guideline range of supervised release when a defendant is convicted, under 18 U.S.C. 2250, of failing to register as a sex offender. That offense carries a statutory minimum term of supervised release of at least five years, with a term up to life permitted. *See* 18 U.S.C. 3583(k).

There is an application issue about when, if at all, such an offense is a ''sex offense'' for purposes of subsection (b) of § 5D1.2. If a failure to register is a sex offense, then subsection (b) specifically provides for a term of supervised release of anywhere from the minimum provided by subsection (a) to the maximum provided by statute (*i.e.,* life), and a policy statement contained within subsection (b) recommends that the maximum be imposed. *See* § 5D1.2(b), p.s. Another effect of the determination is that, if failure to register is a ''sex offense,'' the guidelines recommend that special conditions of supervised release also be imposed, such as participating in a sex offender monitoring program and submitting to warrantless searches. *See* § 5D1.3(d)(7).

Application Note 1 defines ''sex offense'' to mean, among other things, ''an offense, perpetrated against a minor, under'' chapter 109B of title 18 (the only section of which is Section 2250). Circuits have reached different conclusions about the effect of this definition.

The Seventh Circuit has held that a failure to register can never be a ''sex offense'' within the meaning of Note 1. *United States* v. *Goodwin,* 717 F.3d 511, 518–20 (7th Cir. 2013); *see also United States* v. *Segura,* No. 12–11262, __F.3d __, 2014 WL 1282759, at *4 (5th Cir. Mar. 31, 2014) (agreeing with *Goodwin*). The court in *Goodwin* reasoned that there is no specific victim of a failure to register, and therefore a failure to register is never ''perpetrated against a minor'' and can never be a ''sex offense''—rendering the definition's inclusion of offenses under chapter 109B ''surplusage.'' 717 F.3d at 518. In an unpublished opinion, the Second Circuit has determined that a failure to register was not a ''sex offense.'' *See United States* v. *Herbert,* 428 Fed. App'x 37 (2d Cir. 2011). In both cases, the government argued for these outcomes, confessing error below.

There are unpublished decisions in other circuits that have reached different results, without discussion. In those cases, the defendant had a prior sex offense against a minor, and the circuit court determined that the failure to register was a ''sex offense.'' *See United States* v. *Zeiders,* 440 Fed. App'x 699, 701 (11th Cir. 2011); *United States* v. *Nelson,* 400 Fed. App'x 781 (4th Cir. 2010).

The Commission agrees with the Seventh Circuit that failure to register is not an offense that is ''perpetrated against a minor.'' In addition, expert testimony and research reviewed by the Commission indicated that commission of a failure-to-register offense is not correlated with sex offense recidivism. The amendment resolves the application issue by amending the commentary to § 5D1.2 to clarify that offenses under Section 2250 are not ''sex offenses.''

8. *Amendment:* The Commentary to § 2L1.2 captioned ''Application Notes'' is amended by redesignating Note 8 as Note 9 and by inserting after Note 7 the following new Note 8:

''8. *Departure Based on Time Served in State Custody.*—In a case in which the defendant is located by immigration authorities while the defendant is serving time in state custody, whether pre- or post-conviction, for a state offense, the time served is not covered by an adjustment under § 5G1.3(b) and, accordingly, is not covered by a departure under § 5K2.23 (Discharged Terms of Imprisonment). *See* § 5G1.3(a). In such a case, the court may consider whether a departure is appropriate to reflect all or part of the time served in state custody, from the time immigration authorities locate the defendant until the service of the federal sentence commences, that the court determines will not be credited to the federal sentence by the Bureau of Prisons. Any such departure should be fashioned to achieve a reasonable punishment for the instant offense.

Such a departure should be considered only in cases where the departure is not likely to increase the risk to the public from further crimes of the defendant. In determining whether such a departure is appropriate, the court should consider, among other things, (A) whether the defendant engaged in additional criminal activity after illegally reentering the United States; (B) the seriousness of any such additional criminal activity, including (1) whether the defendant used violence or credible threats of violence or possessed a firearm or other dangerous weapon (or induced another person to do so) in connection with the criminal activity, (2) whether the criminal activity resulted in death or serious

bodily injury to any person, and (3) whether the defendant was an organizer, leader, manager, or supervisor of others in the criminal activity; and (C) the seriousness of the defendant's other criminal history.''.

The Commentary to § 2X5.1 captioned ''Application Notes'' is amended in Note 1 by inserting after ''§ 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment'' the following: ''or Anticipated State Term of Imprisonment''.

Section 5G1.3 is amended in the heading by inserting after ''Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment'' the following: ''or Anticipated State Term of Imprisonment''.

Section 5G1.3 is amended in subsection (b) by striking ''and that was the basis for an increase in the offense level for the instant offense under Chapter Two (Offense Conduct) or Chapter Three (Adjustments)''; by redesignating subsection (c) as (d); and by inserting after subsection (b) the following new subsection (c):

''(c) If subsection (a) does not apply, and a state term of imprisonment is anticipated to result from another offense that is relevant conduct to the instant offense of conviction under the provisions of subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct), the sentence for the instant offense shall be imposed to run concurrently to the anticipated term of imprisonment.''.

The Commentary to § 5G1.3 captioned ''Application Notes'' is amended in Note 2(A) by striking ''(i)'' and by striking ''; and (ii) has resulted in an increase in the Chapter Two or Three offense level for the instant offense'';

in Note 2(B) by striking ''increased the Chapter Two or Three offense level for the instant offense but'';

by redesignating Notes 3 and 4 as Notes 4 and 5, respectively, and inserting after Note 2 the following new Note 3:

''3. *Application of Subsection (c).*—Subsection (c) applies to cases in which the federal court anticipates that, after the federal sentence is imposed, the defendant will be sentenced in state court and serve a state sentence before being transferred to federal custody for federal imprisonment. In such a case, where the other offense is relevant conduct to the instant offense of conviction under the provisions of subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct), the sentence for the instant offense shall be imposed to run concurrently to the anticipated term of imprisonment.'';

and in Note 4 (as so redesignated), in the heading, by striking ''(c)'' and inserting ''(d)''; in each of subparagraphs (A), (B), (C), and (D) by striking ''(c)'' each place such term appears and inserting ''(d)''; and in subparagraph (E) by striking ''subsection (c)'' both places such term appears and inserting ''subsection (d)'', and by striking ''§ 5G1.3 (c)'' and inserting ''§ 5G1.3(d)''.

Section 5K2.23 is amended by inserting after ''Imposition of a Sentence on a Defendant Subject to Undischarged Term of Imprisonment'' the following: ''or Anticipated Term of Imprisonment''.

Reason for Amendment: This multi-part amendment addresses certain cases in which the defendant is subject to another term of imprisonment, such as an undischarged term of imprisonment or an anticipated term of imprisonment. The guideline generally applicable to undischarged terms of imprisonment is § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment).

Section 5G1.3 identifies three categories of cases in which a federal defendant is also subject to an undischarged term of imprisonment. First, there are cases in which the federal offense was committed while the defendant was serving the undischarged term of imprisonment (including work release, furlough, or escape status). In these cases, the federal sentence is to be imposed consecutively to the remainder of the undischarged term of imprisonment. *See* § 5G1.3(a). Second, assuming subsection (a) does not apply, there are cases in which the conduct involved in the undischarged term of imprisonment is related to the conduct involved in the federal offense—specifically, the offense for which the defendant is serving an undischarged term of imprisonment is relevant conduct under subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct)—and was the basis for an increase in the offense level under Chapter Two or Chapter Three. In these cases, the court is directed to adjust the federal sentence to account for the time already served on the undischarged term of imprisonment (if the Bureau of Prisons will not itself provide credit for that time already served) and is further directed to run the federal sentence concurrently with the remainder of the sentence for the undischarged term of imprisonment. *See* § 5G1.3(b). Finally, in all other cases involving an undischarged state term of imprisonment, the court may impose the federal sentence concurrently, partially concurrently, or consecutively, to achieve a reasonable punishment for the federal offense. *See* § 5G1.3(c), p.s.

Within the category of cases covered by subsection (b), where the conduct involved in the undischarged term of imprisonment is related to the federal offense conduct, the Commission considered whether the benefit of subsection (b) should continue to be limited to cases in which the offense conduct related to the undischarged term of imprisonment resulted in a Chapter Two or Three increase. The Commission determined that this limitation added complexity to the guidelines and may lead to unwarranted disparities. For example, a federal drug trafficking defendant who is serving an undischarged state term of imprisonment for a small amount of a controlled substance that is relevant conduct to the federal offense may not receive the benefit of subsection (b) because the amount of the controlled substance may not be sufficient to increase the offense level under Chapter Two. In contrast, a federal drug trafficking defendant who is serving an undischarged state term of imprisonment for a large amount of a controlled substance that is relevant conduct to the federal offense may be more likely to receive the benefit of subsection (b) because the amount of the controlled substance may be more likely to increase the offense level under Chapter Two. The amendment amends § 5G1.3(b) to require a court to adjust the sentence and impose concurrent sentences in any case in which the prior offense is relevant conduct under the provisions of § 1B1.3(a)(1), (a)(2), or (a)(3), regardless of whether the conduct from the prior offense formed the basis for a Chapter Two or Chapter Three increase. The Commission determined that this amendment will simplify the operation of § 5G1.3(b) and will also address concerns that the requirement that the relevant conduct increase the offense level under Chapters Two or Three is somewhat arbitrary.

Second, the amendment addresses cases in which there is an anticipated, but not yet imposed, state term of imprisonment that is relevant conduct to the instant offense of conviction under the provisions of subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct). This amendment creates a new subsection (c) at § 5G1.3 that directs the court to impose the sentence for the instant federal offense to run concurrently with the anticipated but not yet imposed period of imprisonment if § 5G1.3(a) does not apply.

This amendment is a further response to the Supreme Court's decision in

Setser v. *United States,* 132 S. Ct. 1463 (2012). Last year, the Commission amended the Background Commentary to § 5G1.3 to provide heightened awareness of the court's authority under *Setser. See* USSG App. C, Amend. 776 (effective November 1, 2013). In *Setser,* the Supreme Court held that a federal sentencing court has the authority to order that a federal term of imprisonment run concurrent with, or consecutive to, an anticipated but not yet imposed state sentence. This amendment reflects the Commission's determination that the concurrent sentence benefits of subsection (b) of § 5G1.3 should be available not only in cases in which the state sentence has already been imposed at the time of federal sentencing (as subsection (b) provides), but also in cases in which the state sentence is anticipated but has not yet been imposed, as long as the other criteria in subsection (b) are satisfied (*i.e.,* the state offense is relevant conduct under subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3, and subsection (a) of § 5G1.3 does not apply). By requiring courts to impose a concurrent sentence in these cases, the amendment reduces disparities between defendants whose state sentences have already been imposed and those whose state sentences have not yet been imposed. The amendment also promotes certainty and consistency.

Third, the amendment addresses certain cases in which the defendant is an alien and is subject to an undischarged term of imprisonment. The amendment provides a new departure provision in § 2L1.2 (Unlawfully Entering or Remaining in the United States) for cases in which the defendant is located by immigration authorities while the defendant is in state custody, whether pre- or post-conviction, for a state offense unrelated to the federal illegal reentry offense. In such a case, the time served is not covered by an adjustment under § 5G1.3(b) and, accordingly, is not covered by a departure under § 5K2.23 (Discharged Terms of Imprisonment). The new departure provision states that, in such a case, the court may consider whether a departure is appropriate to reflect all or part of the time served in state custody for the unrelated offense, from the time federal immigration authorities locate the defendant until the service of the federal sentence commences, that the court determines will not be credited to the federal sentence by the Bureau of Prisons. The new departure provision also sets forth factors for the court to consider in determining whether to provide such a departure, and states that a departure should be considered only if the departure will not increase the risk to the public from further crimes of the defendant.

This amendment addresses concerns that the amount of time a defendant serves in state custody after being located by immigration authorities may be somewhat arbitrary. Several courts have recognized a downward departure to account for the delay between when the defendant is ''found'' by immigration authorities and when the defendant is brought into federal custody. *See, e.g., United States* v. *Sanchez-Rodriguez,* 161 F.3d 556, 563–64 (9th Cir. 1998) (affirming downward departure on the basis that, because of the delay in proceeding with the illegal reentry case, the defendant lost the opportunity to serve a greater portion of his state sentence concurrently with his illegal reentry sentence); *United States* v. *Barrera-Saucedo,* 385 F.3d 533, 537 (5th Cir. 2004) (holding that ''it is permissible for a sentencing court to grant a downward departure to an illegal alien for all or part of time served in state custody from the time immigration authorities locate the defendant until he is taken into federal custody''); *see also United States* v. *Los Santos,* 283 F.3d 422, 428–29 (2d Cir. 2002) (departure appropriate if the delay was either in bad faith or unreasonable). The amendment provides guidance to the courts in the determination of an appropriate sentence in such a case.

(2) Request for Comment on Amendment 3, Pertaining to Drug Offenses

On April 30, 2014, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2014, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the **Federal Register**.

Amendment 3, pertaining to drug offenses, has the effect of lowering guideline ranges. Pursuant to 28 U.S.C. 994(u), ''[i]f the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.''

The Commission intends to consider whether, pursuant to 18 U.S.C. 3582(c)(2) and 28 U.S.C. 994(u), this amendment, or any part thereof, should be included in subsection (c) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants. In considering whether to do so, the Commission will consider, among other things, a retroactivity impact analysis and public comment. Accordingly, the Commission seeks public comment on whether it should make this amendment available for retroactive application. To help inform public comment, the retroactivity impact analysis will be made available to the public as soon as practicable.

Among the factors that have been considered in the past by the Commission in selecting the amendments included in subsection (c) of § 1B1.10 were the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range. *See* § 1B1.10, comment. (backg'd.).

Part-by-Part Consideration of Amendment

The Commission seeks comment on whether it should list the entire amendment, or one or more parts of the amendment, in subsection (c) of § 1B1.10 as an amendment that may be applied retroactively to previously sentenced defendants. For example, one part of the amendment changes the Drug Quantity Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) across drug types. This has the effect of lowering guideline ranges for certain defendants for offenses involving drugs. Another part of the amendment changes the quantity tables in § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) across chemical types. This has the effect of lowering guideline ranges for certain defendants for offenses involving chemical precursors. For each of these parts, the Commission requests comment on whether that part should be listed in subsection (c) of § 1B1.10 as an amendment that may be applied retroactively.

Other Guidance or Limitations for the Amendment Pertaining to Drug Offenses

If the Commission does list the entire amendment, or one part of the amendment, in subsection (c) of § 1B1.10 as an amendment that may be applied retroactively to previously sentenced defendants, should the Commission provide further guidance or

limitations regarding the circumstances in which and the amount by which sentences may be reduced?

For example, should the Commission limit retroactivity only to a particular category or categories of defendants, such as (A) defendants who received an adjustment under the guidelines' ''safety valve'' provision (currently § 2D1.1(b)(16)), or (B) defendants sentenced before *United States* v. *Booker,* 543 U.S. 220 (2005)?

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revision of Critical Habitat for Salt Creek Tiger Beetle; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2013–0068; 4500030114]

RIN 1018–AY56

Endangered and Threatened Wildlife and Plants; Revision of Critical Habitat for Salt Creek Tiger Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), revise the critical habitat designation for the Salt Creek tiger beetle *(Cicindela nevadica lincolniana)* under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,110 acres (ac) (449 hectares (ha)) in Lancaster and Saunders Counties, Nebraska, fall within the boundaries of our revised critical habitat designation. Publication of this final rule fulfills our obligations under a settlement agreement. The effect of this regulation is to conserve the Salt Creek tiger beetle and its habitat under the Act.

DATES: This rule is effective on June 5, 2014.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov,* at *http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/,* and at the Nebraska Ecological Services Field Office. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office, 203 West Second Street, Federal Building, Grand Island, NE 68801; telephone 308–382–6468; facsimile 308–384–8835.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0068, at *http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/,* and at the Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eliza Hines, Acting Field Supervisor, U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office, 203 West Second Street, Federal Building, Grand Island, NE 68801; telephone 308–382–6468; facsimile 308–384–8835. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This document is a final rule to designate revised critical habitat for the endangered Salt Creek tiger beetle. This final rule fulfills the terms of a settlement agreement reached on June 7, 2011 (see Previous Federal Actions). Under the Endangered Species Act (Act), any species that is determined to be endangered or threatened requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

The basis for our action. We listed the Salt Creek tiger beetle as an endangered species on October 6, 2005 (70 FR 58335), and we designated critical habitat for the subspecies on April 6, 2010 (75 FR 17466). On June 4, 2013, we published in the **Federal Register** a proposed revision to the critical habitat designation for the Salt Creek tiger beetle (78 FR 33282). Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. No areas have been excluded from the critical habitat designation.

This final rule will designate critical habitat for the endangered Salt Creek tiger beetle. The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the Salt Creek tiger beetle. In total, we are designating 1,110 ac (449 ha) as critical habitat for the Salt Creek tiger beetle in Lancaster and Saunders Counties in Nebraska. This critical habitat designation includes saline wetlands and streams associated with Little Salt Creek and encompasses all three habitat areas occupied by the subspecies at the time of listing. It also includes saline wetlands and streams associated with Rock Creek and Oak Creek that are currently unoccupied, but supported the subspecies less than 20 years ago. Our designation also includes segments of Haines Branch Creek because this area has the potential to provide suitable habitat for the Salt Creek tiger beetle and its inclusion will reduce the risk of the subspecies' extinction by providing redundancy in available habitat throughout multiple creeks. Due to the presence of suitable habitat, we believe that the Salt Creek tiger beetle occurred in Haines Branch Creek historically; however, they have not been documented in this location due to minimal survey effort relative to the annual surveys done at Little Salt, Rock, and Oak Creeks.

Peer review and public comment. We sought comments from appropriate and independent specialists to ensure that our designation is based on scientifically sound data and analyses. We obtained opinions from four knowledgeable individuals with scientific expertise to review our technical assumptions and analysis, and whether or not we had used the best available information. These peer reviewers supported the redundancy of habitat proposed for designation, but were concerned about the viability of existing Salt Creek tiger beetle populations, small size of units proposed for designation, and potential for the subspecies' recovery. Peer reviewers also provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final revised designation. We also considered all comments and information we received from the public during both comment periods.

We prepared an economic analysis of the designation of critical habitat. In order to consider economic impacts, we prepared an analysis of the economic impacts of the critical habitat designation for the Salt Creek tiger beetle and related factors. We announced the availability of the draft

economic analysis (DEA) in the **Federal Register** on March 13, 2014 (79 FR 14206), allowing the public to provide comments on our analysis. We have incorporated the comments and have completed the final economic analysis concurrently with this final determination.

Previous Federal Actions

The final rule to list the Salt Creek tiger beetle as endangered was published on October 6, 2005 (70 FR 58335). At that time, we stated that critical habitat was prudent and determinable; however, we did not designate critical habitat because we were in the process of identifying the physical and biological features essential to the conservation of the subspecies. We published a proposed rule to designate critical habitat on December 12, 2007 (72 FR 70716). On June 3, 2008, we published a notice in the **Federal Register** to reopen the comment period and announce a public hearing (73 FR 31665). On April 28, 2009, we published a revised proposed rule to designate critical habitat (74 FR 19167). A final rule designating approximately 1,933 ac (782 ha) of critical habitat was published on April 6, 2010 (75 FR 17466). The Center for Native Ecosystems, the Center for Biological Diversity, and the Xerces Society (plaintiffs) filed a complaint on February 23, 2011, regarding designation of critical habitat for the subspecies. The plaintiffs asserted that we failed to designate sufficient critical habitat to conserve and recover the subspecies. A settlement agreement between the plaintiffs and the Service was reached on June 7, 2011, and we agreed to reevaluate our designation of critical habitat. Accordingly, we published a proposed rule to revise the critical habitat designation for the Salt Creek tiger beetle on June 4, 2013 (78 FR 33282). On March 13, 2014, we published a document in the **Federal Register** (79 FR 14206) reopening the public comment period on the proposed rule to revise critical habitat for the Salt Creek tiger beetle and making available the draft economic analysis and draft environmental assessment for the action. This rule finalizes our revisions to the critical habitat designation for the Salt Creek tiger beetle.

Background

It is our intent to discuss below only those topics directly relevant to revisions to the critical habitat designation for the Salt Creek tiger beetle. For more detailed information regarding the subspecies and the listing of the subspecies, refer to the final rule to list the subspecies as endangered published on October 6, 2005 (70 FR 58335).

Taxonomy and Subspecies Description

The Salt Creek tiger beetle (*Cicindela nevadica lincolniana*) is a subspecies in the class Insecta, order Coleoptera, and family Carabidae (Integrated Taxonomic Information System 2012, p. 1). At least 85 species of tiger beetles and more than 200 subspecies exist in the United States; 26 species and 6 subspecies are known from Nebraska (Carter 1989, p. 8). Tiger beetles are fast-moving, predaceous insects (Carter 1989, p. 9). The Salt Creek tiger beetle's average length is 0.4 inches (in) (10 millimeters (mm)), and its color is dark brown shading to green (Carter 1989, pp. 12 and 17).

Distribution, Abundance, and Trends

The Salt Creek tiger beetle is endemic to saline wetlands associated with the Salt Creek watershed and some of its tributaries in Lancaster and southern Saunders Counties in eastern Nebraska (Allgeier 2005, p. 18). Historical estimates of the extent of these saline wetlands vary. Fowler (2012, p. 41) estimates that approximately 65,000 ac (26,000 ha) of saline wetlands occurred historically within the Salt Creek watershed. LaGrange et al. (2003, p. 3) estimated that more than 20,000 ac (8,100 ha) occurred historically. Farrar and Gersib (1991, p. 20) cite a report from 1862 that estimated there were 16,000 ac (6,480 ha) of saline wetlands in four basins near the present-day town of Lincoln. It is not clear which four basins they are describing, but these basins were likely only a portion of the entire eastern Nebraska saline wetland complex. Historically, the Salt Creek tiger beetle was probably widely distributed throughout the eastern saline wetlands of Nebraska, especially at the type locality of Capitol Beach (Allgeier 2005, p. 41) along Oak Creek. However, in the past 150 years, approximately 90 percent of these wetlands have been degraded or lost due to urbanization, agriculture, and drainage (LaGrange et al. 2003, p. 1; Allgeier 2005, p. 41).

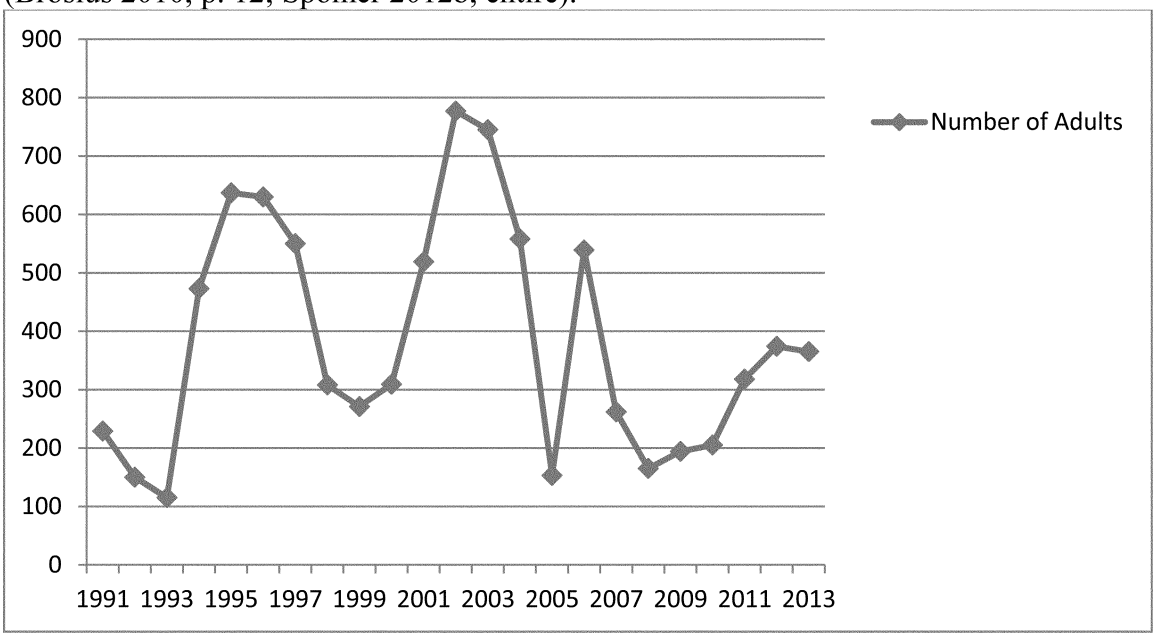
The most complete recent inventory, conducted in 1992 and 1993, identified 3,244 ac (1,314 ha) of ''Category 1'' wetlands remaining in Lancaster and Saunders Counties (Gilbert and Stutheit 1994, p. 10). The authors define Category 1 wetlands as high-value saline wetlands or saline wetlands with the potential to be restored to high value (Gilbert and Stutheit 1994, p. 6). High-value wetlands were defined as meeting one or more of the following criteria: (1) The presence of Salt Creek tiger beetles; (2) the presence of one or more rare or restricted halophytes (salt-tolerant plants); (3) historical significance as identified by the Nebraska State Historical Society; (4) the presence of plants characteristic of saline wetlands and not highly degraded, or the potential for saline wetland characteristics after enhancement or restoration; and (5) high potential for restoration of the historical salt source. Other categories of wetlands described in the inventory, including Categories 2, 3, and 4, were thought to provide limited or no saline wetland functions. At that time, it was thought that these wetland types had little or no potential for reestablishing the salt source and hydrology needed to restore and maintain saline conditions (Gilbert and Stutheit 1994, p. 7). Since 1994, however, techniques involving removal of excess sediment and restoration of saline water through installation of wells has made restoration of Categories 1, 2, and 3 feasible. Removal of sediment has exposed saline seeps and restored Salt Creek tiger beetle habitat along Little Salt Creek to the extent that the subspecies now uses some of the restored areas (Harms 2013, pers. comm.). Category 2, 3, and 4 wetlands can also protect Category 1 saline wetlands from negative impacts associated with sediment transport and freshwater dilution of salinity. Without adjacent Category 2, 3, and 4 wetlands, Category 1 saline wetlands can degrade and cease providing saline wetland functions (USFWS 2005, p. 11; LaGrange 2005, pers. comm.; Stutheit 2005, pers. comm.). The Service completed a detailed assessment of wetlands prior to listing the Salt Creek tiger beetle in 2005, and concluded that, following years of degradation in the Salt Creek watershed, approximately 35 ac (14 ha) of barren salt flats and saline stream edges contain the entire habitat currently occupied by the Salt Creek tiger beetle, which is not sufficient to sustain the subspecies.

Visual surveys of Salt Creek tiger beetles, using consistent methods, timing, and intensity, have been conducted by University of Nebraska at Lincoln since 1991 (Spomer 2012a, pers. comm.). Over the past 22 years, the total number of Salt Creek tiger beetle adults counted during visual surveys has ranged from 115 (in 1993) to 777 (in 2002) individuals (Figure 1). The most recent count was 365 adults in 2013. A 2-year mark-recapture study indicated that visual surveys may underestimate the subspecies' population by approximately 40–50 percent, and

recommended that a 2X correction factor be applied (Allgeier et al. 2003, p. 6; Allgeier et al. 2004, p. 3; Allgeier 2005, p. 40). However, these mark-recapture efforts were conducted on a small population that may have experienced immigration or emigration during the sampling period; therefore, all assumptions may not have been met (Spomer 2012b, pers. comm.) and use of these results to make a population estimate may not be appropriate. Additionally, mark-recapture requires handling beetles and may interfere with egg-laying (Allgeier 2004, p. 3). Therefore, visual studies are preferred since they are more economical and less intrusive (Allgeier et al. 2003, p. 6; Allgeier et al. 2004, p. 3; Allgeier 2005, p. 53); however, visual studies do not provide the same precision as do mark-recapture studies.

Insects typically show greater population variability than many other animal species (Thomas 1990, p. 326), and their annual population numbers are generally cyclic. A very small population size indicates a vulnerability to extinction (Thomas 1990, pp. 325–326; Shaffer 1981, p. 131; Lande 1993, pp. 911–912; Primack 1998, p. 179) because when numbers decline, the population can become locally extirpated. The long-term data show a fluctuating, but very small population size for Salt Creek tiger beetles.

Figure 1. Adult Salt Creek tiger beetles counted during visual surveys 1991-2013 (Brosius 2010, p. 12; Spomer 2012b, entire).



In addition to the number of individuals, the number of populations is critical when considering distribution, abundance, and trends. Salt Creek tiger beetles have been located at 14 sites since surveys began in 1991 (Brosius 2010, p. 12). We consider these 14 sites to represent 6 different populations based upon documented dispersal distances and presence of discrete suitable habitat for the subspecies (70 FR 58336, October 6, 2005). Three of these populations have been extirpated since surveys began in 1991: The Capitol Beach population along Oak Creek, the Upper Little Salt Creek-South population on Little Salt Creek, and the Jack Sinn Wildlife Management Area (WMA) population on Rock Creek. For these populations, surveys showed that the number of individuals declined and then completely disappeared, leaving us to conclude that the population had become locally extirpated. The three remaining populations, Upper Little Salt Creek-North, Arbor Lake, and Little Salt Creek-Roper, all occur in the Little Salt Creek watershed, along a stream reach of approximately 7 miles (mi) (11 kilometers (km)) (Fowler 2012, p. 41).

Habitat

The Salt Creek tiger beetle has very specific habitat requirements. It occurs in remnant saline wetlands on exposed mudflats and along the banks of streams and seeps that contain salt deposits (Carter 1989, p. 17; Spomer and Higley 1993, p. 394; LaGrange et al. 2003, p. 4). Soil moisture and soil salinity are critically important in habitat selection (Allgeier et al. 2004, p. 6) for foraging, where the female lays eggs, and for larval habitat. The subspecies uses soil moisture and soil salinity to partition habitat between other collocated species of tiger beetles (Allgeier 2005, p. 64). Moist, saline, open flats are needed for thermoregulation, reproduction, and foraging.

Nebraska's eastern saline wetlands are maintained through groundwater discharge that originates in Pennsylvanian and/or Permian formations as it passes through a salt source likely located in north-central Kansas. This system occurs in the flood plains of Salt Creek and flows in a general pattern from southwest to northeast of Lincoln, Nebraska, in Lancaster and southern Saunders Counties (Harvey et al. 2007, p. 738). From the perspective of the larger Nebraska Eastern Saline Wetlands ecosystem, little is known about the connections between the surface water and the underlying groundwater and dissolved salts, or about the extent of the flow systems that feed the wetlands. From a local perspective, especially when making decisions about land management actions, it can be difficult to make informed management decisions about wetland protection or the impact of future development (Harvey et al. 2007, p. 738). However, the eastern saline wetlands are dependent upon a regional-scale groundwater flow system and may not be replenished indefinitely (Harvey et

al. 2007, p. 750). Subsurface geology, geomorphic features (including manmade features), and topographic characteristics all affect the hydrology of the wetlands, resulting in variability between each wetland (Kelly 2011, pp. 97–99).

Life History

The Salt Creek tiger beetle typically has a 2-year life cycle of egg, larval, and adult stages (Ratcliffe and Spomer 2002, unpaginated; Allgeier 2005, pp. 3–4). Adult females lay eggs in moist, saline mudflats along the banks of seeps and in saline wetland habitats when soil moisture and saline levels are appropriate. Upon hatching, each larva excavates a burrow where it lives for the next 2 years; the burrow is enlarged by the larva as it grows. Larvae are sedentary predators, catching prey that passes nearby. Larvae are more directly affected by a limited food supply than adults because they are not as mobile as adults and almost never leave their burrows. Following pupation, adults emerge from the burrows in the late spring to early summer of their second year and mate. Adults are typically active in May, June, and July before dying (Allgeier 2005, p. 63).

Adult Salt Creek tiger beetles have a mean dispersal distance of 137 feet (ft) (42 meters (m)) and a maximum dispersal of 1,506 ft (459 m), and most are recovered within 82 ft (25 m) of the marking location, based upon a study of 60 individuals (Allgeier 2005, p. 50) in which 24 individuals were relocated following capture and 36 were not. The Salt Creek tiger beetle appears to have narrower habitat requirements for egg-laying, foraging, and thermoregulation than other tiger beetles found in Nebraska's eastern saline wetlands (Brosius 2010, p. 5).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Salt Creek tiger beetle during two comment periods. The first comment period associated with the publication of the proposed rule (78 FR 33282) opened on June 4, 2013, and closed on August 5, 2013. We also requested comments on the proposed critical habitat designation, associated draft economic analysis, and draft environmental assessment during a comment period that opened on March 13, 2014, and closed on March 28, 2014 (79 FR 14206). We did not receive any requests for a public hearing. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule, draft economic analysis, and draft environmental assessment during these comment periods.

During the first comment period, we received eight comment letters addressing the proposed critical habitat designation. During the second comment period, we received nine comment letters addressing the proposed critical habitat designation, draft economic analysis, and draft environmental assessment. All substantive information provided during both comment periods has either been incorporated directly into this final determination or is addressed below. Comments received were grouped into 32 general issues relating to the proposed critical habitat designation for the Salt Creek tiger beetle, and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from four appropriate and independent individuals with scientific expertise that included familiarity with the subspecies, the geographic region in which the subspecies occurs, and conservation biology principles. We received responses from all four peer reviewers. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding critical habitat for the Salt Creek tiger beetle. The peer reviewers supported the addition of the Haines Branch and Oak Creek Units to the critical habitat designation to increase habitat redundancy, but expressed concern about whether these alone were sufficient to recover the Salt Creek tiger beetle. Concerns were raised as to whether populations of 500 individuals or fewer can remain viable over the long term. A peer reviewer also pointed out that the proposed rule does not protect and ensure the availability of saline groundwater.

Peer Reviewer Comments

(1) *Comment:* Multiple peer reviewers supported our proposal to designate critical habitat at the Haines Branch and Oak Creek Units for the benefit of habitat redundancy, thereby reducing the risk of subspecies' extinction.

Our Response: We determined that the addition of the Haines Branch and Oak Creek Units are essential to the conservation of the subspecies because they provide necessary habitat redundancy in the event of a negative environmental impact associated with Little Salt Creek, the only stream system that currently supports the Salt Creek tiger beetle.

(2) *Comment:* A peer reviewer pointed out that the four areas currently proposed probably represent the minimum amount of habitat needed for the subspecies to increase in abundance and distribution, but stated that these may not be enough to recover the subspecies.

Our Response: Our proposed designation of critical habitat, based on the best scientific and commercial data available, sought to identify the habitat needed to support the survival and recovery of the Salt Creek tiger beetle. Our final designation is over 31 times larger than the amount of habitat that is currently available for the Salt Creek tiger beetle and includes three additional currently unoccupied areas (Rock Creek, Oak Creek, and Haines Branch Units). For our analysis, we determined that six populations were the minimum number of populations needed to maintain the subspecies' viability and that each viable population needed at least 116 ac to meet life requisites. Thus, a total of 696 ac (116 ac × 6 populations) are needed to maintain the subspecies' viability. Our final critical habitat acreage (1,110 ac) is 59 percent larger than this amount (696 ac), to ensure that we have delineated sufficient habitat for the subspecies to survive and recover. Populations will continue to be monitored on an annual basis to track status and trends over time.

(3) *Comment:* The peer reviewer stated concern about the reduction in the number of acres proposed from 1,933 to 1,110, pointing out that although redundancy was good, this reduction might negatively impact the net gain of adding additional units.

Our Response: In this final revised designation, we have targeted areas that are better able to support the subspecies. This designation includes saline seeps where the subspecies has actually been found along Rock, Little Salt, Oak, and Haines Branch Creeks. Additionally, a 137-foot (42 meter [m]) dispersal distance was extended outward on either side of these creeks to provide the Salt Creek tiger beetle with access to a vegetative mosaic around the salt flats located in the floodplain. The use of the 137 foot (42 m) dispersal distance outward from the creeks is the primary reason why the critical habitat acreage is less that our previous designation

(1,933 acres) (782 hectares [ha]), which included large blocks of adjacent Category I saline wetlands. These large blocks of Category I saline wetlands cannot support the Salt Creek tiger beetle without habitat restoration. In addition, this revised designation better provides for conservation by including additional unoccupied habitat so that we can establish additional populations needed to improve the subspecies' redundancy and resiliency, two important factors in reducing extinction risk.

(4) *Comment:* A peer reviewer stated that there is uncertainty with regard to whether populations of 500 or fewer can remain viable over the long term although a small population of tiger beetles can remain provided suitable habitat is available.

Our Response: Little is known about the minimal viable population size or the amount of habitat needed to sustain a viable population of Salt Creek tiger beetles. However, we have preliminarily determined that 500–1,000 adults is a reasonable estimate of a minimum viable population for the subspecies based on recovery plans for two other species of tiger beetles in the same genus (*Cicindela*) and surveys conducted for the Salt Creek tiger beetle since 1991. These plans consider a minimum viable population size to be at least 500–1,000 adults (Hill and Knisley 1993, p. 23; Hill and Knisley 1994, p. 31). The authors base this estimate on available literature and on preliminary observations of population stability at several sites, but acknowledge that there is little information available regarding the amount of habitat necessary to support a population of this size. We do know that Salt Creek tiger beetles can persist in relatively small areas provided that suitable habitat is available. Populations will continue to be monitored on an annual basis to track status and trends of the subspecies over time.

(5) *Comment:* A peer reviewer pointed out that the proposed rule still does not protect and ensure the availability of saline groundwater and guarantee the survival of the Salt Creek tiger beetle for all time.

Our Response: We acknowledge the importance of groundwater in creating and maintaining saline wetlands including saline seeps and barren salt flats. However, there is a high level of uncertainty with regard to the location of groundwater relative to the surface, flow pattern, interaction with surface water, and influence on saline wetlands and streams. Our designation of critical habitat is based on the presence and location of the primary constituent elements (PCEs), which are habitat features that are critical to the survival and recovery of the Salt Creek tiger beetle. While we did not include groundwater itself as a PCE, groundwater contributes, in part, to the formation of the more specific habitat elements used by the Salt Creek tiger beetle, such as saline barrens and seeps found within saline wetland habitat. These more specific aspects of the species habitat are what we considered as the PCEs on which our critical habitat designation is based. Section 7 consultation under the Act (16 U.S.C. 1531 *et seq.*) does, however, provide a level of protection to groundwater by triggering consultation should it be determined that a federal action may affect groundwater to the extent that such impacts would result in the destruction or adverse modification of these PCEs. Additionally, there are other important recovery actions, including land acquisition and restoration projects, that are underway to help protect the saline wetlands. We believe that these actions and the designation of critical habitat collectively will act to protect the saline groundwater system for the benefit of the Salt Creek tiger beetle.

(6) *Comment:* Peer reviewers recommended further study on vegetative characteristics and wetland community classification, hydrologic research on Haines Branch and Oak Creek Units, and development of a plan to address light pollution.

Our Response: We are supportive of further research that would aid in the recovery of the Salt Creek tiger beetle and the saline wetland ecosystem. Our section 6 program continues to provide funding to the Nebraska Game and Parks Commission (Commission) for research on federally listed endangered and threatened species. This source of funding is available to fund these kinds of important projects through a competitive grant process. As far as how this information pertains to the critical habitat designation, the Act requires us to make determinations based on the best scientific and commercial data available. It does not require additional studies, or that we wait until we have all the information that we would like to have. This rule is based on the best available information that we had at the time we made the decision.

Comments From the State

Comments we received from the Commission, Nebraska Department of Roads (NDOR), Nebraska Military Department (NMD), and Nebraska Department of Environmental Quality (NDEQ) regarding the proposal to designate critical habitat for the Salt Creek tiger beetle are addressed below.

(7) *Comment:* The Commission does not consider the proposed designation of 1,110 ac of critical habitat for the Salt Creek tiger beetle to be adequate for the conservation of the subspecies, and it is insufficient to maintain populations. The Commission stated that the approach used by the Service to prepare the proposed rule minimizes the amount of area designated as critical habitat rather than designating what is needed to conserve and sustain the subspecies. The Commission suggested that an adequate critical habitat designation would include all Category I saline wetlands and a 1,500 foot (457 m) zone to ensure the interconnection of ground and surface water flows and facilitate dispersal capabilities of the Salt Creek tiger beetle.

Our Response: Our designation of critical habitat identifies the habitat needed to support the survival and recovery of the Salt Creek tiger beetle. In this final revised designation, we have targeted areas that are better able to support the subspecies. This designation includes saline seeps where the subspecies has actually been found along Rock, Little Salt, Oak, and Haines Branch Creeks. Additionally, a 137-foot (42 meter [m]) dispersal distance was extended outward on either side of these creeks to provide the Salt Creek tiger beetle with access to a vegetative mosaic around the salt flats located in the floodplain. A designation as large as the one the Commission suggests would include a substantial amount of habitat that is currently unsuitable for the species without restoration. Our final designation is more than 31 times larger than the amount of habitat that is currently available for the Salt Creek tiger beetle and includes three additional unoccupied areas (Rock Creek, Oak Creek, and Haines Branch Units). For our analysis, we determined that six populations were the minimum number of populations needed to maintain the subspecies' viability and that each viable population needed at least 116 ac to meet life requisites. Thus, a total of 696 ac (116 ac $\times$ 6 populations) is needed to maintain the subspecies' viability. Our final critical habitat acreage (1,110 ac) is 59 percent larger than this amount (696 ac), to ensure that we have delineated sufficient habitat for the subspecies to survive and recover. Populations will continue to be monitored on an annual basis to track status and trends over time.

(8) *Comment:* The Commission stated that an unsubstantiated process that has no scientific basis was used by the Service to calculate the area needed for

critical habitat. The Commission further stated that the supposition by the Service that 153 Salt Creek tiger beetles occurring on 35 acres is a viable population and that amount of habitat can be used for calculating critical habitat requirements is indefensible.

Our Response: We do not assume that 153 Salt Creek tiger beetles on 35 acres is a viable population, and we discuss the process used to determine the acreage needed in the Population Spatial Needs section of this rule. As we noted previously, little is known about the minimal population size or the amount of habitat needed to sustain a viable population of Salt Creek tiger beetles. However, general estimates of a minimum viable wildlife population typically range from 500–1,000 individuals (Shaffer 1981, p. 133; Thomas 1990, p. 325). We used the estimate of 153 adult beetles (the minimum population of Salt Creek tiger beetles counted over the past 10 years) as a starting point, and assumed that at least 3.3 times that number would be needed to achieve a single viable population, with at least six populations needed to maintain the subspecies' viability. We further estimated that if those 153 beetles occupied approximately 35 acres of habitat, it was reasonable to assume that 3.3 times as many beetles would require approximately 3.3 times as much habitat (116 acres) to support a single viable population, and 696 acres would support six populations. If the higher estimate (1,000 adult beetles) is used, similar calculations would conclude that approximately 232 ac would be needed to support a single viable population, and 1,392 ac would be needed to support six populations. Therefore, approximately 696–1,392 ac would sustain the viability of Salt Creek tiger beetles. Consequently, we believe that the designation of 1,110 ac of critical habitat is a reasonable estimate of the amount of habitat essential for the subspecies. We acknowledge the assumptions and uncertainties associated with our estimates; however, in the absence of better information we conclude that this is a reasonable approach.

(9) *Comment:* The Commission questioned the assumption used by the Service that just because the area is occupied it can also sustain a population over the long term. The Commission pointed out that three of six known populations have disappeared already and that numbers of individuals are on a general decline within those three populations as an indication that the population is not sustaining itself. Further, the existing populations still face the same threats of habitat loss and degradation.

Our Response: Our designation of critical habitat for the Salt Creek tiger beetle is based on the best scientific and commercial data available. We acknowledge that there is uncertainty about whether the existing populations can be maintained. However, the areas included in our final designation constitute the best remaining Salt Creek tiger beetle habitat in existence. We are aware of no areas that would be better or more capable of supporting Salt Creek tiger beetles. We agree with the Commission that the 35 acres that are currently occupied by the Salt Creek tiger beetle are insufficient to sustain and recover the subspecies. For this reason, we are designating an additional 249 acres of critical habitat on Little Salt Creek. Populations will continue to be monitored on an annual basis to track status and trends of the subspecies, and future adjustments in the amount of habitat protected may be necessary.

(10) *Comment:* The Commission stated that the occupied habitat currently proposed by the Service for designation is at high risk and marginal, and will not sustain the Salt Creek tiger beetle over the long term. The Commission stated that the habitat proposed for designation occurs on steep slopes along stream banks and can be easily eroded and overcovered following bank sloughing that buries larval burrows. Prey is likely not as abundant in these locations given the sloping bank and potential inability of larvae to capture prey in sufficient qualities.

Our Response: The habitat included in our final designation constitutes the best available remaining habitat for the subspecies. As described in our rule to list the subspecies, habitat for the Salt Creek tiger beetle has been lost and severely degraded by commercial, residential, and infrastructure developments leading to intrusion of excess freshwater and dilution of salinity and channelization and bank armoring projects resulting in entrenchment of saline streams and loss of saline wetlands through hydrologic modification. This large-scale habitat loss and degradation led to our decision to list the subspecies. Although the remaining habitat is degraded, it constitutes the best Salt Creek tiger beetle habitat remaining. We agree with the Commission that 35 acres that are currently occupied by the Salt Creek tiger beetle are insufficient to sustain and recover the subspecies. For this reason, we are designating an additional 249 acres of critical habitat on Little Salt Creek. We recognize that habitat used by the Salt Creek tiger beetle along Little Salt Creek beetle is at high risk due to over-covering by bank sloughing and bank erosion, which scours away developing larvae. We hope that the listing and critical habitat designation will facilitate better conservation and recovery of the subspecies and its habitat.

(11) *Comment:* The Commission expressed concern that the small areas of habitat proposed for designation by the Service would result in a loss of population resilience due to amplified effects of limiting factors including drought, prey reduction, interspecific competition, parasitism, and predation risk on a small population of Salt Creek tiger beetles.

Our Response: In this final designation, we have targeted areas that are better able to support the subspecies. We have determined that the 35 acres that are currently occupied by the Salt Creek tiger beetle are insufficient to sustain the subspecies. For this reason, we are designating an additional 249 acres of critical habitat on Little Salt Creek, which should lead to population expansion and increased resiliency. In addition, this designation better provides for conservation by including additional unoccupied habitat so that we can establish additional populations needed to improve the subspecies' redundancy and resiliency, two important factors in reducing extinction risk. This subspecies' vulnerability to threats is part of the reason that the subspecies is listed as endangered.

(12) *Comment:* The Commission pointed out that the language ''limited to its range'' as stated in the proposed rule is not in the definition of critical habitat and introduces criteria not specified in the definition that would result in reducing the acreage proposed for critical habitat. The Commission indicated that the inclusion of this provision ignores a primary habitat component that is required to protect critical habitat for the Salt Creek tiger beetle, namely areas that are adjacent to Salt Creek tiger beetle habitat that are hydrologically connected and upon which occupied habitat is dependent for maintaining populations of the subspecies, even if it is not present at these areas. The Commission recommends that hydrologically connected areas that are adjacent to the areas under the current proposal be included because they meet the definition of critical habitat and they are essential for the conservation of the subspecies under the Act even though the Salt Creek tiger beetle may not be found in these areas.

Our Response: In our designation of critical habitat for the Salt Creek tiger beetle, we used a two-pronged approach to designate areas that are essential for the survival and recovery of the subspecies. Under the first prong, areas within the geographical area occupied by the (sub)species at the time it was listed are included in a critical habitat designation if they contain the physical and biological features (1) which are essential to the conservation of the (sub)species and (2) which may require special management considerations or protection. Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the (sub)species at the time it is listed, upon a determination that such areas are essential for the conservation of the (sub)species. We designate critical habitat in areas outside the geographical area occupied by the species only when a designation limited to its range would be inadequate to ensure the conservation of the species. We concluded that the designation of the Little Salt Creek Unit alone would be inadequate to ensure the conservation of the Salt Creek tiger beetle. As such, our designation also included the Oak, Rock, and Haines Branch Creek Units.

In order to include surrounding vegetative areas that provide essential resources and support functions to the subspecies, we delineated areas on segments of the four creeks that extended 137 ft (the average known dispersal distance for the subspecies) on either side of the stream course. We used 137 ft because it is the average distance that the Salt Creek tiger beetle can move to meet life-history requisites which can be satisfied within the stream segment and adjacent saline barrens and seeps in the floodplain area. We concluded that this distance would provide the subspecies with sufficient prey resources. Additionally, we have included sufficient occupied and unoccupied habitat to contribute to the recovery the Salt Creek tiger beetle. We have included 826 acres of unoccupied areas because we determined that they are essential for the conservation of the subspecies. We believe that this amount is a reasonable amount of area to provide habitat for an additional 1,500 beetles in the future.

Our designation of critical habitat for the Salt Creek tiger beetle must be based on the best scientific and commercial data available. There are other important recovery actions, including land acquisition and restoration projects, underway in the saline wetlands. We believe that these actions combined with our designation of critical habitat will act in concert to protect the saline groundwater system for the benefit of the Salt Creek tiger beetle.

(13) *Comment:* The Commission stated that the use of the 137-foot buffer around Salt Creek tiger beetle habitat by the Service was inadequate based on research conducted on documented movement patterns showing that the subspecies can move up to 0.25-mile. They also pointed out that a 137-foot buffer is unrelated to protection of the saline system, which maintains subspecies' habitat through the complex interaction of ground and surface water.

Our Response: We chose to use a mean dispersal distance of 137 feet because it is an average distance, a scientifically accepted way of accounting for outliers in the data, and based on the best scientific and commercial data available. The use of a 137-foot dispersal distance was based on a study done by Allgeier (2005, pp. 50–52) where 60 marked Salt Creek tiger beetles were released at five locations. Of those, 24 were recaptured with a mean dispersal distance of 137 feet (42 m) and a standard error of 21.58. Most individually-marked beetles were recaptured within 25 m of the location from where they were first captured and marked. Only three of the 24 beetles recovered were found at farther distances; one was recaptured 1,506 feet (459 m) away and two were recaptured 1,312 feet (400 m) away from where they were first captured and marked. Our use of a 137-foot buffer on either side of the streams designated as critical habitat is not intended to address protection of the complex interactions between surface and groundwater, which are important for maintaining saline wetland habitat for the Salt Creek tiger beetle. We used 137 ft because it is the average distance that the Salt Creek tiger beetle can move to meet lifehistory requisites, which can be satisfied within the stream segment and adjacent saline barrens and seeps in the floodplain area while minimizing the inclusion of unsuitable habitat areas. We also concluded that this distance would provide the subspecies with sufficient prey resources.

(14) *Comment:* The Commission recommends that all Category 1 saline wetlands be designated as critical habitat and that a 1,500-foot buffer encompass these sites to protect the saline wetland/surface and groundwater interaction and to address movement capabilities of the Salt Creek tiger beetle to ensure dispersal among saline habitats.

Our Response: We appreciate the recommendation and the Commission's commitment toward the recovery of the Salt Creek tiger beetle and the saline wetland ecosystem on which it depends. However, our designation of critical habitat focuses on the PCEs essential to the conservation of the Salt Creek tiger beetle. These PCEs are primarily located along Rock, Little Salt, Oak Creek, and Haines Branch Creeks, but in many cases are in locations lacking in adjacent saline wetlands. For this reason, we do not designate all the Category I saline wetlands because they lack the necessary PCEs. Thus, our designation represents the habitat needed to support the conservation of the Salt Creek tiger beetle and is based on the best scientific and commercial data available.

(15) *Comment:* The NDOR inquired if the proposed critical habitat designation includes the road and highway rights-of-way or the toe slopes that would fall within the right-of-way boundary.

Our Response: This revised critical habitat designation is for areas that have the primary constituent elements (PCEs) required by the Salt Creek tiger beetle and that require special management considerations and protection. As such, critical habitat does not include roads, road shoulders, road toe slopes, and other paved areas, but could include lands within a highway right-of-way beyond the aforementioned structures if those lands contain the primary constituent elements. Additionally, a federal action involving roads, road shoulders, road toe slopes, and other paved areas will not trigger section 7 consultation with respect to critical habitat unless the specific action would affect the physical or biological features in the adjacent critical habitat.

(16) *Comment:* The NDOR commented that the acreage and ownership percentages are reversed in the table between City of Lincoln and NDOR for the Oak Creek Unit.

Our Response: The table was modified to reflect the correct acreage and ownership.

(17) *Comment:* The NMD commented about potential restrictions at their Lincoln Airbase due to the proposed designation of critical habitat for the Salt Creek tiger beetle. These concerns included potential restrictions on type of aircraft (rotary or fixed winged), landing and departure areas, and flight path due to the proposed critical habitat designation.

Our Response: The NMD's Lincoln Airbase is not located within the boundaries of the critical habitat designation. As such, we do not anticipate recommending any potential restrictions on aircraft type, landing and departure areas, and/or flight path given

that the distance between NMD property boundaries and the large salt flat within the Oak Creek Unit exceeds 0.65 mile, a distance exceeding the flight capacity of the Salt Creek tiger beetle. We are unaware of any research on the Salt Creek tiger beetle or any other tiger beetle that would support such modifications.

(18) *Comment:* The NMD commented that the proposed critical habitat designation may result in restrictions to routine maintenance and repair of the Lincoln Airbase in terms of requiring modifications to lighting, mowing, water runoff or drainage, fence repair, road repair, and replacement.

Our Response: The NMD's Lincoln Airbase is not located within the boundaries of the critical habitat designation. As such, we do not anticipate recommending any potential restrictions on the routine maintenance and repair activities that occur at the Lincoln Airbase given that the distance between NMD property boundaries and the large salt flat within the Oak Creek Unit exceeds 0.65 mile, a distance exceeding the flight capacity of the Salt Creek tiger beetle. Additionally, the presence of Oak Creek creates a protective boundary around the Oak Creek Unit, thereby preventing runoff and other drainage from entering the Oak Creek Unit.

(19) *Comment:* The NMD expressed concern that the Salt Creek tiger beetle would migrate on to the Lincoln Airbase from the Oak Creek Unit.

Our Response: The Salt Creek tiger beetle has very narrow habitat preferences and would not migrate on to the Lincoln Airbase where such habitat is unavailable.

(20) *Comment:* The NMD espressed concern about the potential for a future increase in the critical habitat designation within the Oak Creek Unit.

Our Response: Our critical habitat designation is based on a targeted identification of primary constituent elements which comprise suitable habitat for the Salt Creek tiger beetle. Our analysis showed that none of the primary constituent elements are present on the Lincoln Airbase and are not likely to exist there in the future. As such, we would not expand our critical habitat designation to that area in the future.

(21) *Comment:* The NDEQ pointed out that the designation of critical habitat for the Salt Creek tiger beetle might prohibit new and expanded discharges from wastewater treatment facilities, municipal separate storm sewer system, and water treatment plants that are located upstream from the critical habitat units on Rock, Little Salt, Oak, and Haines Branch Creeks. The NDEQ suggested further dialogue with the Service on how to implement their responsibilities under the Clean Water Act without requiring additional unneeded infrastructure and expeditures by those entities holding permits for these discharges.

Our Response: The Service has engaged in and will continue to maintain a dialogue with NDEQ about these various forms of discharges. We note that prohibitions against new and expanded discharges by NDEQ to protect the Salt Creek tiger beetle may not be necessary depending on their volume and timing.

Public Comments

(22) *Comment:* The proposed revised designation of only 1,110 ac of critical habitat for the Salt Creek tiger beetle is inadequate to ensure the survival and recovery of the subspecies. The Service should err on the side of the subspecies and include any potential saline wetland habitat in the proposed critical habitat.

Our Response: We believe that our designation of critical habitat is the amount of habitat needed to support the survival and recovery of the Salt Creek tiger beetle and is based on the best scientific and commercial data available. We have determined that the 35 acres currently occupied by the Salt Creek tiger beetle is insufficient to sustain the subspecies. We are designating an additional 249 acres of critical habitat on Little Salt Creek, plus three additional unoccupied units, which should lead to population expansion and resiliency. In this final revised designation, we have targeted areas that are better able to support the subspecies. This designation includes saline seeps where the subspecies has actually been found along Rock, Little Salt, Oak, and Haines Branch Creeks. Additionally, a 137-foot (42 meter [m]) dispersal distance was extended outward on either side of these creeks to provide the Salt Creek tiger beetle with access to a vegetative mosaic around the salt flats located in the floodplain. The use of the 137 foot (42 m) dispersal distance outward from the creeks is the primary reason why the critical habitat acreage is less that our previous designation (1,933 acres) (782 hectares (ha)), which included large blocks of adjacent Category I saline wetlands. These large blocks of Category I saline wetlands would need to be restored to provide habitat for the Salt Creek tiger beetle.

(23) *Comment:* A commenter stated that the method used by the Service of determining critical habitat acreage based on an ''acres needed'' mathematical model is not biologically defensible, risks extinction of the subspecies, and is arbitrary and capricious. Determining that amount of habitat available at the time of a survey that is sufficient to sustain the population assumes that the population is evenly distributed and all the primary constituent elements are available within those 35 acres to support a population over the long term. There is no information that demonstrates that these assumptions were met or considered.

Our Response: Our designation of critical habitat, based on the best scientific and commercial data available, identifies habitat needed to support the survival and recovery of the Salt Creek tiger beetle. As is described in this final rule, our determination is based on an evaluation of habitat needs and mapping of primary constituent elements in occupied and unoccupied areas. We determined that the 35 occupied acres are insufficient to support the conservation of the Salt Creek tiger beetle. The purpose of the mathematical calculation is to inform our decision on the amount of critical habitat that is needed to ensure the conservation and recovery of the Salt Creek tiger beetle. These calculations help confirm that the 1,110 designated acres fall within the range of acres determined to be needed for recovery of the subspecies. (Also see our response to comment 8).

(24) *Comment:* A commenter pointed out the high degree of variation between the use of mark/recapture counts and visual counts to determine Salt Creek tiger beetle population size and lack of confidence that should be placed on visual counts; the commenter recommended use of mark/recapture counts on a regular basis in conjunction with visual counts of the Salt Creek tiger beetle. The commenter pointed out that the acreage of critical habitat needed should be based on the habitat needs and presence of PCEs and not on the amount of land occupied that was measured in one survey year.

Our Response: We acknowledge the commenter's concerns about the limitations of mark/recapture studies and recognize the implication that the type of survey has in our designation of critical habitat. However, a review of the data shows that mark/recapture studies were conducted on a small population that may have experienced immigration and emigration and, thus, may not have met the assumptions inherent to the use of mark/recapture methods. We determined that visual surveys provided the best available scientific information

because they were based on consistent survey methods done under similar intensity, and were done at the same time on an annual basis since 1991 by the University of Nebraska at Lincoln.

(25) *Comment:* Commenters stated that there is no scientific support for the assertion that 500 individuals in a population is viable given that the designation of 500 individuals is based on survey data from 1991 through 2011, when the number of individuals and populations were in decline. Thus, use of 500 individuals is based on an estimate taken not at the time of stability, but during a time of decline. While current scientific estimates are not available for what population size may be required by the Salt Creek tiger beetle, the commenter recommended that the Service should alternatively designate critical habitat that supports the recovery of larger population sizes to err on the side of the subspecies.

Our Response: See our response to Comment (8), above.

(26) *Comment:* A commenter pointed out that the Salt Creek tiger beetle is facing extinction in the near future and suggested that instead of three populations left that only two are left (and one is nonviable—Upper Little Salt Creek) and that these two populations appear to be a single population given synchrony in annual population numbers between Little Salt Creek at Arbor Lake and Lower Little Salt Creek.

Our Response: We have modified the text in this rule to show that the Upper Little Salt Creek population may not be viable. We are designating additional acres adjacent to the currently occupied area on Upper Little Salt Creek in the hopes of expanding the population to viable levels. However, we believe that the Little Salt Creek-Arbor Lake and Lower Little Salt Creek populations are discrete. Little, if any, population emmigration and immigration likely occurs between these two populations because of the lack of habitat between them and because the distance between them far exceeds the dispersal capability of the Salt Creek tiger beetle. However, these populations are likely influenced by similar abiotic events, which have similar effect on population numbers over time. Populations will continue to be monitored on an annual basis to track status and trends over time.

(27) *Comment:* A commenter recommended the use of water as a PCE for the designation of critical habitat for the Salt Creek tiger beetle given the requirements of adults to have it available during mating and ovipositing.

Our Response: We agree that water is an important aspect of Salt Creek tiger beetle recovery in terms of providing moist soils for thermoregulation and suitable sites for larval habitat. As such, we identified surface water and groundwater as physical features for the Salt Creek tiger beetle in our proposed rule and this final rule for the designation of critical habitat. While we did not include groundwater itself as a PCE, groundwater contributes, in part, to the formation of the more specific habitat elements used by the Salt Creek tiger beetle, such as saline barrens and seeps found within saline wetland habitat. These more specific aspects of the species habitat are what we considered as the PCEs on which our critical habitat designation is based. Also see our response to Comment 5.

(28) *Comment:* One commenter stated that the proposed rule did not consider the importance of peripheral populations in achieving population stability in addition to the source populations as it did in the Service's advanced concept paper from 2005. The commenter recommended the inclusion of peripheral populations in our proposed revised designation.

Our Response: We recognize that the presence of additional populations is important to the conservation of the Salt Creek tiger beetle. For this reason, we included the Haines Branch and Oak Creek Units as additions to the Rock and Little Salt Creek Units as part of this designation. We are hopeful that the subspecies can be reestablished in these areas in the future through reintroductions.

(29) *Comment:* A commenter inquired as to the basis for how the Oak Creek Unit was determined to be critical habitat for the Salt Creek tiger beetle.

Our Response: Our analysis of critical habitat was based on the availability of PCEs for the Salt Creek tiger beetle. A large salt flat located at the Oak Creek Unit was determined to have suitable habitat based on the presence of salt flats and saline seeps within the adjacent right of way along Interstate 80. The presence of exposed salts indicates that water is evaporating from the surface, supporting our assertion that the site has appropriate hydrology to support the Salt Creek tiger beetle. Additionally, a Salt Creek tiger beetle survey done in 1992 identified suitable habitat at the Oak Creek Unit. Although this survey is dated, there has been no activity in the area that would result in the modification of saline soils or hydrology such that suitable habitat would no longer be present at the Oak Creek Unit.

(30) *Comment:* Two commenters expressed concern that the proposed designation of critical habitat for the Salt Creek tiger beetle could affect current and future operations at the Lincoln Airport. The commenters suggested that any changes to airport operations, such as modifications to flight patterns, changes to aircraft operating parameters, or restrictions on maintenance and construction, could result in administrative and implementation costs to the airport that are not addressed in the economic analysis.

Our Response: We do not anticipate any restrictions or modifications to airport operations or other activities occurring on Lincoln Airport lands. The lands we are designating are not used for aircraft operations but are considered a noise buffer for the airport. The types of activities known to occur within the area of the critical habitat designation include agriculture, grazing, and other forms of routine land management.

Activities occurring within the area of the critical habitat designation at the airport are unlikely to require a permit from a Federal agency. The Federal Aviation Administration (FAA) may initiate section 7 consultation prior to issuing future grant funding for the operation or maintenance of the airport. However, we do not anticipate requesting any restrictions or modifications to airport operations or the use of alternative flight paths because the airport itself is nearly 0.25-mile away from the critical habitat area, thus, far exceeding the dispersal distance of the subspecies. Further, we have no information to indicate that flight activities would have an effect on the Salt Creek tiger beetle or its critical habitat.

(31) *Comment:* Two commenters suggested that the proposed designation of critical habitat for the Salt Creek tiger beetle could affect the ability of the Lincoln Airport to secure grants from the FAA's Airport Improvement Program. In particular, the commenters expressed concern that the designation of critical habitat could lead to violations of grant assurances for safe airport operation if the designation leads to the implementation of conservation measures, such as restrictions on mowing; this could increase the presence of wildlife on the airfield or the likelihood of wildlife/aircraft strikes. The commenters also expressed concern that the designation of critical habitat could lead to violations of grant assurances for financial self-sufficiency if the designation leads to restrictions on agricultural or grazing activity on airport lands. Violations of grant assurances could jeopardize the

airport's ability to secure future Federal funding.

Our Response: The types of activities known to occur within the portion of the Lincoln Airport that is included within the critical habitat designation include agriculture, grazing, and routine land management activities. As described above, critical habitat is unlikely to result in changes to these activities.

(32) *Comment:* One comment suggested that we failed to fulfill our responsibility to communicate and coordinate with stakeholders by not communicating with the Lincoln Airport Authority as part of the economic analysis.

Our Response: The contractor conducting the economic analysis attempted to contact the Lincoln Airport Authority via email on December 10, 2013, and in subsequent phone calls. Because the contractor was unable to reach the Lincoln Airport Authority, the economic analysis references information provided by the Lincoln/Lancaster County Planning Department.

Summary of Changes From Proposed Rule

We have made changes to this final rule based on the information we received in comments regarding the origins of the salinity in Salt Creek tiger beetle habitat, viability of the Upper Little Salt Creek population, and landowner and acreage information. The following is a summary of our changes:

- Text in the *Habitat* and ''Surface Water'' sections now states that the source of salinity in Salt Creek tiger beetle habitat originates from the Pennsylvanian and/or Permian formations, and that the actual salt source is in north-central Kansas.
- Acreage and ownership percentages and land ownership descriptions were verified and corrected for the Oak Creek Unit in Table 2.
- Text was modified to clarify that the Upper Little Salt Creek population may not be viable in the Final Critical Habitat designation section of this Rule, Little Salt Creek Unit description.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources

may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the (sub)species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the (sub)species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the Salt Creek tiger beetle from studies of this subspecies' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on June 4, 2013 (78 FR 33282), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on October 6, 2005 (70 FR 58335). We have determined that the Salt Creek tiger beetle requires the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

Individual Spatial Needs—The Salt Creek tiger beetle requires areas associated with saline seeps along stream banks and salt flats with the appropriate soil moisture and salinity levels and that are largely barren and nonvegetated. During the subspecies' nearly 2-year larval stage, its spatial requirements are small, but very specific in terms of soil texture, moisture, and chemical composition (Allgeier et al. 2004, pp. 5–6; Allgeier 2005, p. 64; Brosius 2010, p. 20; Harms 2012a, pers. comm.). At this stage, the subspecies is a sedentary predator that positions itself at the top of its burrow to catch prey that passes nearby. Tiger beetle larvae do not move more than an inch or so from where eggs are originally deposited by the female (Brosius 2010, p. 64).

The adult stage of the Salt Creek tiger beetle lasts a few weeks in May, June, and July (Carter 1989, pp. 8 and 17). Adults have greater spatial requirements in order to accommodate foraging needs and egg-laying. We do not have information regarding historic dispersal distances for the subspecies. However, adults are strong fliers (Carter 1989, p. 9); therefore, it is likely they could disperse some distance if suitable habitat was available. A recent study documented adults dispersing up to 1,506 feet (ft) (459 meters(m)), with a mean dispersal distance of 137 ft (42 m), and most individuals dispersed less than 82 ft (25 m) (Allgeier 2005, p. 50). Longer dispersal movements almost certainly occur (Allgeier 2005, p. 51).

A female will lay up to 50 eggs during her brief adult season, each in a separate burrow (Rabadinanth 2010, p. 14). We do not have subspecies-specific information regarding the typical distance between burrows in the wild. However, tiger beetles using burrows in close proximity to one another may succumb to intraspecific and interspecific competition (Brosius 2010, p. 27). Efforts to breed the subspecies in captivity attempted to keep burrows in terrariums at least 1 inch (25 milimeter) apart; at this distance, incidences of burrow collapse due to proximity to another burrow were documented (Allgeier 2005, pp. 121–122).

Population Spatial Needs—We do not have subspecies-specific information regarding a minimum viable population size for the Salt Creek tiger beetle or the amount of habitat needed to sustain a viable population. However, we have preliminarily determined that 500–1,000 adults is a reasonable estimate of a minimum viable population for the subspecies based on recovery plans for two other species of tiger beetles in the same genus (*Cicindela*). These plans consider a minimum viable population size to be at least 500–1,000 adults (Hill and Knisley 1993, p. 23; Hill and Knisley 1994, p. 31). The authors base this estimate on available literature and on preliminary observations of population stability at several sites, but acknowledge that there is little information available regarding the amount of habitat necessary to support a population of this size.

The Salt Creek tiger beetle is historically known from six populations (70 FR 58336, October 6, 2005); four from Little Salt Creek, one from Rock Creek, and one from Oak Creek (i.e., Capitol Beach). Half of these populations are now extirpated. Our recovery goal for the subspecies is to re-establish six populations, each with a size of 500 individuals or more. Little Salt Creek contains saline wetland and stream habitats currently occupied by the remaining populations of the subspecies. Rock and Oak Creeks also contain saline wetland and stream habitats although the subspecies has disappeared from those areas. One of the populations at Little Salt Creek (Upper Little Salt Creek South population) was extirpated, leaving the remaining three populations. The two additional populations on Rock and Oak Creeks existed prior to the mid-1990s (70 FR 58336, October 6, 2005). Visual surveys of adults at the three remaining populations on Little Salt Creek over the past 10 years have ranged from 153 to

745 individuals (Harms 2009, p. 3). The Service determined that 38 ac (15 ha) of scattered barren salt flats and saline stream edges remain in the Little Salt Creek watershed, with approximately 35 ac (14 ha) currently occupied by the Salt Creek tiger beetle (70 FR 58342, October 6, 2005; George and Harms 2013, pers. comm.).

In the absence of specific data on how much space is required to maintain viable populations of Salt Creek tiger beetles, we derived an estimate of the amount of habitat needed to support six viable populations as follows. The minimum population of Salt Creek tiger beetles counted over the past 10 years was 153 adult beetles in 2005, from three populations. We consider a minimum of 500 adult beetles necessary to maintain a single viable population. The small population of 153 beetles occupied approximately 35 ac (14 ha) of habitat. We estimate that 3.3 times as much habitat would be required to support a minimum of 500 beetles; therefore approximately 116 ac (47 ha) are required to support a single viable population, and approximately 696 ac (282 ha) would be required to support 6 viable populations. This estimate is very conservative from the standpoint that 500 individuals was used as a minimum viable population size. If the upper number in the range of 500–1,000 adults to support a single viable population is used, similar calculations would conclude that approximately 1,368 ac (554 ha) are required to support six viable populations of the subspecies. Therefore, based upon the best available information, it is reasonable to assume that 696–1,368 ac (282–554 ha) are needed to maintain the subspecies' viability. Therefore, we designed our revised critical habitat units to provide sufficient habitat to ensure the subspecies' recovery.

Summary—Based upon the best available information, we conclude that recovery of the Salt Creek tiger beetle would require at least six populations, with each population containing at least 500–1,000 adults of the subspecies. We estimate that at least 696–1,368 ac (282–554 ha) would be required to maintain these populations. Given the nature of insect populations, which are cyclic and subject to local extirpations, the subspecies must be sufficiently abundant and in a geographic configuration that allows them to repopulate areas following local extirpations when suitable habitat conditions return. Salt Creek tiger beetles require nonvegetated areas associated with stream banks, mid-channel islands, and salt flats to meet life-history requirements as core habitat, as well as adjacent habitat to facilitate dispersal and protect core habitat. We identify these spatial characteristics as a necessary physical feature for this subspecies.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Food—The Salt Creek tiger beetle is a predatory insect. Larvae are sedentary predators that capture small prey passing over or near their burrows on the soil surface. Adults are very quick and agile, and use this ability to actively hunt a wide variety of flying and terrestrial invertebrates (Allgeier 2005, pp. 1–2, 5). Insect prey may be supported by the limited open habitat in close proximity to the burrows or by the adjacent vegetated habitat. Typical prey items include insects belonging to the orders Coleoptera (beetles), Orthoptera (grasshoppers and crickets), Hemiptera (true bugs), Hymenoptera (ants, bees, and wasps), Odonata (dragonflies), Diptera (flies), and Lepidoptera (moths and butterflies) (Allgeier 2005, p. 5). Ants appear to be the most commonly observed prey of adult tiger beetles (Allgeier 2005, p. 5). Larvae are more easily affected by a limited food supply than adults because they almost never leave their burrows and must wait for prey (Ratcliffe and Spomer 2002, unpaginated).

Surface Water—The Salt Creek tiger beetle prefers very moist soils for egg-laying and during its larval stage, with mean soil moisture of 47.6 percent (Allgeier 2005, p. 72). This high moisture percentage likely aids in the subspecies' ability to tolerate heat (Allgeier 2005, p. 75) and keeps the soil malleable during burrow construction and maintenance (Harms 2012b, pers comm.). Adults of the subspecies spend significantly more time on damp surfaces and in shallow water than other tiger beetles (Ratcliffe and Spomer 2002, unpaginated; Brosius 2010, p. 70). This close association with seeps and adjacent shallow pools may allow adults to forage at times when high temperatures limit foraging by other saline-adapted tiger beetles. However, this association may also explain some of the subspecies' vulnerability to extinction—beyond the loss of saline wetlands in general, the limited seeps and pools in the remaining habitat may represent a further limitation regarding habitat (Brosius 2010, p. 74). Channelization along Salt Creek has increased its velocity, which in turn has resulted in deep cuts in the lower reaches of its tributaries. This change has caused these tributary streams to function like drainage ditches, lowering adjacent water table levels and drying many of the saline wetlands that once provided suitable habitat for the subspecies (Farrar and Gersib 1991, p. 29; Murphy 1992, p. 12). Additionally, saline seeps located along Little Salt Creek have become over-covered following bank sloughing that was facilitated by channel entrenchment. Seeps are currently the only locations that provide suitable larval habitat.

Groundwater—Nebraska's eastern saline wetlands are fed by groundwater aquifer discharge originating from Pennsylvanian and/or Permian formations with the actual salt source located in north-central Kansas. Urban expansion associated with the City of Lincoln is placing increasing demands on the aquifer (Gosselin et al. 2001, p. 99). The official soil series description for the ''Salmo'' soil series notes that the water table is near the surface in the spring and at depths of 2–4 ft (0.6–1.2 m) in the fall (USDA 2009). Harvey *et al.* (2007, p. 740) monitored groundwater levels and groundwater salinity at Rock Creek and Little Salt Creek from 2000 through 2002. They found that groundwater did not reach the soil surface and was present in the upper few yards (meters) of the soil column only during the spring when groundwater levels were at their highest due to winter snowmelt and spring rainstorms. They also noted that the depth of groundwater was related to the proximity of the stream, such that groundwater was at a lower depth near a stream than far away from it. They also noted that the area was under slight drought conditions during the study period. The increased depth to groundwater in this region is likely due to a combination of factors including drought, channelization along Salt Creek, and water depletions for urban and agricultural uses. If groundwater levels continue to decline, saline features of the wetlands could gradually change to freshwater, or wetlands could dry. Either of these scenarios could result in extirpation of the Salt Creek tiger beetle from affected wetlands and could ultimately lead to extinction of the subspecies.

Saline Soils—Soils in the eastern saline wetlands of Nebraska typically contain chloride or sulfate salts and have a pH from 7–8.5 (Allgeier 2005, p. 17). Salt Creek tiger beetles prefer soils that are slightly saline, with an optimal electroconductivity of 2,504 milliSiemens per meter (mS/m) (Allgeier 2005, p. 75). However, salinities as low as 1,656 mS/m have been measured at survey sites (Rabadinanth 2010, p. 19). Soil salinity may serve as a means of partitioning

habitat between the 12 species of tiger beetles in the genus *Cicindela* that use the saline wetlands of Nebraska (Allgeier et al. 2004, pp. 5–6; Allgeier 2005, p. 65; Brosius 2010, p. 13).

The ''Salmo'' soil series is found at all known occurrences for the subspecies (Allgeier 2005, p. 42). This soil type is formed on saline flood plains, and its characteristics typically include: (1) A texture of silt loam or silty-clay loam, (2) 0–2 percent slope, (3) somewhat poorly drained or poorly drained soils, and (4) 0–3 feet to the water table (Gersib and Steinauer 1991, p. 41; Gilbert and Stutheit 1994, p. 4; USDA 2009, pp. 1–3). The ''Saltillo'' soil series is found in adjacent Saunders County and has soil characteristics very similar to the ''Salmo'' soil series (USDA 2006, pp. 1–4). Consequently we believe that this soil type may also be able to provide suitable salinity levels and capacity to hold sufficient soil moisture for the subspecies.

Light—Salt Creek tiger beetles have only been observed laying eggs at night (Allgeier et al. 2004, p. 5). Light pollution from urban areas likely disrupts nocturnal behavior by attracting beetles towards the light and out of their normal habitats (Allgeier et al. 2003, p. 8). In both field and laboratory studies, attraction to light from different types of lamps varied, in decreasing order, from blacklight, mercury vapor, fluorescent, incandescent, and sodium vapor, with blacklight being the most favored by the subspecies (Allgeier 2005, pp. 89–95). The disruption in behavior caused by lights could affect egg-laying activity of females, if it attracts females into unsuitable habitat.

Summary—Based upon the best available information, we conclude that the Salt Creek tiger beetle requires abundant available insect prey (supported by both the immediate core habitat and adjacent habitat), moist saline soils, and minimal light pollution. We identify these characteristics as necessary physical or biological features for the subspecies.

Cover or Shelter

Burrows—Salt Creek tiger beetle larvae are closely associated with their burrows, which provide cover and shelter for approximately 2 years. Larvae are sedentary predators and position themselves at the top of their burrows. When prey passes nearby, a larva lunges out of its burrow, clutches the prey in its mandibles, and pulls the prey down into the burrow to feed. Once a larva obtains enough food, it plugs its burrow and digs a pupation chamber, emerging as an adult in early summer of its second year (Ratcliffe and Spomer 2002, unpaginated; Allgeier 2005, p. 2). The subspecies is a visual predator, requiring open habitat to locate prey (Ratcliffe and Spomer 2002, unpaginated). Consequently, a clear line of sight is important. Habitat that becomes covered with vegetation no longer provides suitable larval habitat (Allgeier 2005, p. 78). Burrow habitat can also be impacted from disturbances such as trampling (Spomer and Higley 1993, p. 397), which causes soil compaction and damages the fragile crust of salt that is evident on the soil surface. After the adult emerges from the pupa, it remains in the burrow chamber while its outer skeleton hardens (Ratcliffe and Spomer 2002, unpaginated). For the remainder of its brief adult stage, burrows are no longer used.

Summary—Based upon the best available information, we conclude that the Salt Creek tiger beetle requires a suitable burrow in moist, saline, sparsely vegetated soils for its larval stage. We identify this characteristic as a necessary physical feature for the subspecies.

Sites for Breeding, Reproduction, or Development of Offspring

Annual visual surveys have been conducted since 1991, when six populations were known. Each of the three populations of Salt Creek tiger beetle currently known is associated with Category 1 wetlands along Little Salt Creek including moist saline soils and seeps which can be located at saline wetlands and streams. Three additional populations occurred in the mid-1990s on Little Salt Creek, Oak Creek, and Rock Creek, but these have been extirpated since 1998. No records of the subspecies are known for other tributaries of Salt Creek. However, the subspecies may have been abundant historically, based on numerous museum specimens collected from the Oak Creek area (locally referred to as Capitol Beach (Carter 1989, p. 17; Allgeier et al. 2003, p. 1)). The Oak Creek (Capitol Beach) population was severely impacted following construction of the Interstate-80 corridor and other urban development (Farrar and Gersib 1991, pp. 24–25), and finally disappeared in 1998. Little or no suitable habitat remains along Oak Creek because it has been channelized and has become somewhat entrenched. However, numerous saline seeps and a large salt flat are located southwest of Oak Creek in its former floodplain. Little Salt Creek and Rock Creek still contain numerous saline wetlands and are the focus of efforts to protect remaining saline wetlands (Farrar and Gersib 1991, p. 40). Saline seeps are known to occur at the Haines Branch Creek. Few regular surveys for the Salt Creek tiger beetle have been done in these areas; however, suitable habitat occurs there, and more habitat could be potentially restored to aid in the recovery of the Salt Creek tiger beetle (USFWS 2005, p. 18). Given the presence of suitable habitat for a subspecies with very narrow habitat preferences with historical records nearby, we can infer that the subspecies was likely present there in the past.

The Salt Creek tiger beetle has very specific habitat requirements for foraging, egg-laying, and larval development. Requirements regarding water, soil salinity, and exposed habitat are described in the previous sections.

Summary—Based upon the best available information, we conclude that the Salt Creek tiger beetle requires a core habitat of moist saline soils with minimal vegetative cover for foraging, egg-laying, and larval development. Adjacent, more vegetative habitat is used for shade to cool adults (Harms 2013, pers. comm.), protecting core habitat, and supporting a diverse source of prey for adults and larval Salt Creek tiger beetles. Approximately 90 percent of all remaining wetlands suitable for Salt Creek tiger beetles occur in the Little Salt Creek and Rock Creek watersheds, but saline seeps and wetlands also occur at Oak and Haines Branch Creeks. We identify barren salt flats and saline seeps along streams and within suitable wetlands as a necessary physical feature for the subspecies.

Primary Constituent Elements for the Salt Creek Tiger Beetle

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Salt Creek tiger beetle in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements are those specific elements of the physical or biological features that provide for a (sub)species' life-history processes and are essential to the conservation of the (sub)species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the (sub)species' life-history processes, we determine that the primary constituent elements specific to the Salt Creek tiger beetle are saline barrens and seeps found within saline wetland habitat in Little Salt, Rock, Oak and Haines Branch Creeks. For our evaluation, we determined that two

habitat types within suitable wetlands are required by the Salt Creek tiger beetle:

• Exposed mudflats associated with saline wetlands or the exposed banks and islands of streams and seeps that contain adequate soil moisture and soil salinity are essential core habitats. These habitats support egg-laying and foraging requirements. The ''Salmo'' soil series is the only soil type that currently supports occupied habitat; however, ''Saltillo'' is the other soil series that has adequate soil moisture and salinity and can also provide suitable habitat.

• Vegetated wetlands adjacent to core habitats that provide shade for subspecies thermoregulation, support a source of prey for adults and larval forms of Salt Creek tiger beetles, and protect core habitats.

With this final designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the subspecies, through the identification of the features' primary constituent elements sufficient to support the life-history processes of the subspecies.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. A detailed discussion of threats to the Salt Creek tiger beetle and its habitat can be found in the October 6, 2005, final rule to list the subspecies (70 FR 58335).

The primary threats impacting the physical and biological features essential to the conservation of the Salt Creek tiger beetle are described in detail in the final rule to list the subspecies published on October 6, 2005 (70 FR 58335). These threats may require special management considerations or protection within the critical habitat and include, but are not limited to, urban development (e.g., commercial and residential development, road construction, associated light pollution, and stream channelization) and agricultural development (e.g., over-grazing and cultivation). These threats are exacerbated by having only three populations on one stream (Little Salt Creek) with extremely low numbers and a highly restricted range making this subspecies particularly susceptible to extinction in the foreseeable future.

The features essential to the conservation of the Salt Creek tiger beetle (exposed, moist, saline areas associated with stream banks, mid-channel islands, and mudflats) may require special management considerations or protection to reduce threats. For example, a loss of moist, open habitat necessary for larval foraging, thermoregulation, and other life-history activities resulted in the extinction of another endemic tiger beetle—the Sacramento Valley tiger beetle (*Cicindela hirticollis abrupta*) (Knisley and Fenster 2005, p. 457). This was the first tiger beetle known to be extirpated. Actions that could ameliorate threats include, but are not limited to:

(1) Increased protection of existing habitat through actions such as land acquisition and limiting access;

(2) Restoration of potential habitat within saline wetlands and streams through exposure of saline seeps, removal of sediment layers to expose saline soils and seeps, and use of wells to pump saline water over saline soils by Federal, State, and local interested parties;

(3) Establishment of multiple populations in the Rock, Oak, and Haines Branch Creeks through captive rearing and translocation of laboratory-reared larvae originating from wild populations;

(4) Protection of habitat adjacent to existing and new populations to provide dispersal corridors, support prey populations, and protect wetland functions; and

(5) Avoidance of activities such as groundwater depletions, new channelization projects, increased surface water runoff, and residential or road development that could alter soil moisture levels, salinity, open habitat, or low light levels required by the subspecies.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If, after identifying areas occupied at the time of listing, we determine that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e) we then consider whether designating additional areas—outside those occupied at the time of listing—are essential for the conservation of the species. We are designating critical habitat in areas within the geographical area occupied by the subspecies at the time of listing in 2005 (Little Salt Creek) under the first prong of the Act's definition of critical habitat. We also are designating specific areas outside the geographical area occupied by the subspecies at the time of listing that were documented to be occupied as recently as the mid-1990s, or are presumed to have been occupied in the past given the availability of suitable saline habitat, but which are presently unoccupied (Rock, Oak, and Haines Branch Creeks), under the second prong of the Act's definition of critical habitat. We have determined that such areas are essential for the conservation of the subspecies as they will spread the risk of subspecies extinction over multiple stream systems. Important sources of supporting data include the final rule for listing the subspecies (70 FR 58335, October 6, 2005), the recovery outline (USFWS 2009), available literature, and information provided by the University of Nebraska at Lincoln and the Commission (citations noted herein).

We are including all currently occupied habitat in our designation of critical habitat because any further loss of occupied habitat would increase the Salt Creek tiger beetle's susceptibility to extinction. As previously noted, the subspecies currently occupies approximately 35 ac (14 ha) of saline wetland and streams in three small populations along approximately 7 mi (11 km) of Little Salt Creek. The three existing populations are referred to as Upper Little Salt Creek-North, Little Salt Creek-Arbor Lake, and Little Salt Creek-Roper.

We are also including unoccupied saline wetlands, specifically saline salt flats along Little Salt Creek that are interspersed among these three populations. These barren salt flats are essential to the conservation of the subspecies because they provide larval habitat, protect existing populations, provide dispersal corridors between populations, support prey populations, and provide potential habitat for new populations.

Lastly, we are including unoccupied barren salt flats and saline streams along Rock, Oak, and Haines Branch Creeks that were either occupied by the subspecies until 1998 (i.e., Rock and Oak Creeks) or have suitable habitat for the Salt Creek tiger beetle, but were surveyed infrequently (Haines Branch). We have determined that these areas (Little Salt, Rock, Oak, and Haines Branch Creeks) are essential to the conservation of the subspecies because they provide necessary redundancy in

the event of an environmental catastrophe associated with Little Salt Creek—the only watershed that currently supports the subspecies. All of these areas are tributaries to Salt Creek.

We recommend that at least one viable population of Salt Creek tiger beetles be established in each of the three unoccupied units of critical habitat, recognizing the uncertainty as to which areas will successfully support reintroduced populations. However, so little appropriate habitat remains in one of these units (Haines Branch) that it is below the number of acres that we estimated would be necessary to support a population of 500 adults. With habitat restoration, we believe that the Haines Branch Unit would be capable of supporting a viable population of Salt Creek tiger beetles.

These populations, in addition to the three existing populations at Little Salt Creek, would result in six populations, with at least 500 adults in each population, but with three populations in Little Salt Creek. This is the number of populations documented in the mid-1990s, and the minimum number needed for subspecies recovery; however, at that time, none of these populations were large enough to maintain the subspecies' viability, and three of the populations were later extirpated. As the populations expand to viable numbers, we anticipate that they will be within the maximum documented dispersal range of the subspecies and may eventually constitute one metapopulation that has spatially separated populations with some interaction between those populations.

We delineated the critical habitat unit boundaries for the Salt Creek tiger beetle using the following steps:

(1) We used Geographic Information System (GIS) coverages initially generated by Gilbert and Stutheit (1994, entire) to categorize saline wetlands in the Salt Creek watershed of Lancaster and Saunders Counties, Nebraska.

(2) We delineated critical habitat within the areas of Little Salt, Rock, Oak, and Haines Branch Creeks that (a) are documented to support the subspecies currently or to have supported it in the recent past (until 1998), or (b) that provide potential suitable habitat for the subspecies that could sustain a viable population.

(3) We delineated all of the barren salt flats in the four creeks with adjacent suitable saline wetlands.

(4) In order to include surrounding vegetative areas that provide essential resources and support functions to the subspecies, we delineated areas on segments of the four creeks that extended 137 ft (the average known dispersal distance for the subspecies) on either side of the stream course. We used 137 ft because it is the average distance that the Salt Creek tiger beetle can move to meet life-history requisites, which can be satisfied within the stream segment and adjacent saline barrens and seeps in the floodplain area. We concluded that this distance would provide the subspecies with sufficient prey resources.

Some other areas within the likely historical range of the Salt Creek tiger beetle were considered in this revised designation, but ultimately are not included. We do not designate suitable saline wetlands along Middle Creek as critical habitat because the habitat there has been eliminated due to commercial and residential developments, road construction, and stream channelization, and is probably not restorable. Similarly, we do not designate areas on tributaries to Salt Creek near the Cities of Roca and Hickman, Nebraska, because agricultural development has somewhat limited the ability of these areas to be restored for the benefit of the Salt Creek tiger beetle. We also do not designate areas of Salt Creek downstream of Lincoln, Nebraska, because channel entrenchment has resulted in the loss of saline seep and saline wetland habitats there. We also do not include some remaining areas of saline wetlands in Upper Salt Creek because they are outside of the average dispersal distance of 137 feet for the subspecies.

This revision to the critical habitat designation for Salt Creek tiger beetle decreases the previous designation of 1,933 acres by 823 acres, but it increases the number of unoccupied units from one to three. This change extends critical habitat to two additional stream corridors not previously included in critical habitat that could support populations of the subspecies in the future, thereby reducing the risk of extinction. We have also revised the PCEs on which this revision was based to make them clearer and easier for the public to understand. However, these revised PCEs are based on the same biological concepts about the needs of the Salt Creek tiger beetle that were used in the previous critical habitat designation.

Since the time of our previous critical habitat designation, we have begun the process of recovery planning, and have preliminarily determined that at least six populations of 500–1,000 beetles within suitable habitat across multiple stream corridors would be necessary to recover the subspecies. Therefore, we are designating an amount of critical habitat to allow for that recovery to occur. We considered other possible critical habitat configurations for this designation, including larger and smaller designations and different numbers of units. In this final revised designation, we have targeted areas that are better able to support the subspecies. This designation includes saline seeps where the subspecies has actually been found along Rock, Little Salt, Oak, and Haines Branch Creeks. Additionally, a 137-foot (42 m) dispersal distance was extended outward on either side of these creeks to provide the Salt Creek tiger beetle with access to a vegetative mosaic around the salt flats located in the floodplain. The use of the 137 foot (42 m) dispersal distance outward from the creeks is the primary reason why the critical habitat acreage is less that our previous designation (1,933 acres) (782 ha), which included large blocks of adjacent Category I saline wetlands. These Category I saline wetlands would need to be restored to provide habitat for the Salt Creek tiger beetle. In addition, this revised designation better provides for conservation by including additional unoccupied habitat that is suitable for the species so that we can establish additional populations needed to improve the subspecies' redundancy and resiliency, two important factors in reducing extinction risk. We have conclude that this designation of 1,110 acres in four units is the most biologically appropriate as it is based on habitat features that are used by Salt Creek tiger beetles, is consistent with the statutory definition of critical habitat, and will best provide for the recovery of the subspecies.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for the Salt Creek tiger beetle. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as

modified by any accompanying regulatory text, presented at the end of this document in the Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0068, on our Internet site *http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

We are designating as critical habitat lands that we have determined were occupied at the time of listing and contain sufficient physical or biological features to support life-history processes essential for the conservation of the subspecies, and lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of the Salt Creek tiger beetle.

We are designating four units based on sufficient elements of physical or biological features being present to support the Salt Creek tiger beetle life processes. Some units contain all of the identified elements of physical or biological features and support multiple life processes. Some units contain only some elements of the physical or biological features necessary to support the Salt Creek tiger beetle's particular use of that habitat. Designating units of critical habitat on Little Salt, Rock, Oak, and Haines Branch creeks provides redundancy in the event that adverse effects on one of these watersheds impact Salt Creek tiger beetles or their habitat.

Final Critical Habitat Designation

We are designating four units as critical habitat for the Salt Creek tiger beetle. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. The four units are: (1) Little Salt Creek—under the first prong of the Act's definition of critical habitat and (2) Rock Creek, Oak Creek, and Haines Branch—under the second prong of the Act's definition of critical habitat. Table 1 shows the occupancy status of these units.

TABLE 1—OCCUPANCY OF SALT CREEK TIGER BEETLE BY DESIGNATED CRITICAL HABITAT UNIT

Unit	Occupied at time of listing?	Currently occupied?
Little Salt Creek Unit	Yes	Yes.
Rock Creek Unit	No	No.
Oak Creek Unit	No	No.
Haines Branch Unit	No	No.

The approximate area and ownership of each critical habitat unit is shown in Table 2.

TABLE 2—DESIGNATED CRITICAL HABITAT UNITS FOR SALT CREEK TIGER BEETLE

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Estimated quantity of critical habitat	Percent of critical habitat unit
Little Salt Creek Unit	City of Lincoln, Lower Platte South Natural Resources District, Nebraska Game & Parks Commission, The Nature Conservancy, Pheasants Forever, Private*.	40 ac (16 ha)	14
		19 ac (8 ha)	7
		41 ac (17 ha)	14
		29 ac (12 ha)	10
		11 ac (4 ha)	4
		144 ac (58 ha)	51
Subtotal		284 ac (115 ha)	
Rock Creek Unit	Nebraska Game & Parks Commission, Private*	152 ac (62 ha)	29
		374 ac (152 ha)	71
Subtotal		526 ac (213 ha)	
Oak Creek Unit	Nebraska Department of Roads, City of Lincoln	30 ac (12 ha)	14
		178 ac (72 ha)	86
Subtotal		208 ac (84 ha)	
Haines Branch Unit	BNSF Railway, City of Lincoln/State of Nebraska, Private	7 ac (3 ha)	8
		45 ac (18 ha)	49
		40 ac (16 ha)	43
Subtotal		92 ac (37 ha)	

TABLE 2—DESIGNATED CRITICAL HABITAT UNITS FOR SALT CREEK TIGER BEETLE—Continued

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Estimated quantity of critical habitat	Percent of critical habitat unit
Total	City of Lincoln, Lower Platte South Natural Resources District, Nebraska Game & Parks Commission, Nebraska Department of Roads, BNSF Railway, The Nature Conservancy, Pheasants Forever, Private*.	263 ac (106 ha)	24
		19 ac (8 ha)	1.7
		193 ac (78 ha)	17.4
		30 ac (12 ha)	2.7
		7 ac (3ac)	0.6
		29 ac (12 ha)	2.6
		11 ac (4 ha)	1.0
		558 ac (226 ha)	50.0
Total		1,110 ac (449 ha)	

* Several private tracts are protected by easements.

We present a brief description of each unit and reasons why it meets the definition of critical habitat for Salt Creek tiger beetle below.

Unit 1: Little Salt Creek Unit

This unit consists of 284 ac (115 ha) of barren salt flats and three stream segments on Little Salt Creek in Lancaster County from near its junction with Salt Creek to approximately 7 mi (11 km) upstream. It includes the three existing populations of Salt Creek tiger beetles (Upper Little Salt Creek-North, Arbor Lake, and Little Salt Creek-Roper) present at the time of listing, and an additional site with an extirpated population (Upper Little Salt Creek-South). The Upper Little Salt Creek population is not considered viable given low populations numbers known from this area. This unit contains the physical or biological features essential to the Salt Creek tiger beetle.

Approximately 50 percent of the unit is either owned by entities that will protect or restore saline wetland habitat (see Table 2) or is part of an easement that protects the saline wetland habitat in perpetuity. This portion of the unit is largely protected from future urban development (e.g., commercial and residential development, road construction, and stream channelization) and future agricultural development (e.g., overgrazing and cultivation) by the landowners' or easement holders' participation in the Implementation Plan for the Conservation of Nebraska's Eastern Saline Wetlands and their membership in the Saline Wetlands Conservation Partnership (SWCP). At least two tracts (owned by the City of Lincoln) have been restored (Arbor Lake and Frank Shoemaker Marsh) (Malmstrom 2011 and 2012, entire) and other areas are in the process of being restored or are managed to conserve saline wetlands. However, special management is needed, because without continued special management, historical impacts from development will continue to adversely affect much of the habitat. The remaining 50 percent of the Little Salt Creek Unit that is not currently receiving special management through protection and restoration of saline wetland habitat remains vulnerable to both historical and ongoing impacts from development. The lower reaches of Little Salt Creek are in or near the City of Lincoln and, consequently, are most vulnerable to impacts related to urban development; upper stream reaches are more impacted by agricultural development.

Unit 2: Rock Creek Unit

The unit consists of 526 ac (213 ha) of barren salt flats and a stream segment of Rock Creek from approximately 2 mi (3 km) above its confluence with Salt Creek to approximately 12 mi (19 km) upstream. Most of this stream reach is in Lancaster County, but the northernmost portion is in southern Saunders County. This unit was not occupied at the time of listing; however, one population was present there until 1998. This unit contains the physical or biological features essential to the Salt Creek tiger beetle. It is essential to the conservation of the subspecies because any population established on Rock Creek would provide redundancy, in the event of a natural or manmade disaster on Little Salt Creek.

Approximately 29 percent of the unit is either owned by an entity that will protect or restore saline wetland habitat (see Table 2) or is part of an easement that protects the saline wetland habitat in perpetuity. This portion of the unit is largely protected from future urban development (e.g., commercial and residential development, road construction, and stream channelization), but not future agricultural development (e.g., overgrazing and cultivation). Approximately 152 ac (61 ha) of barren salt flats and the stream segment are part of the Jack Sinn WMA (owned by Nebraska Game and Parks Commission) located in southern Saunders and northern Lancaster Counties. This tract has undergone several projects to restore saline wetlands. However, special management is needed, because without special management through habitat protection and restoration, historical impacts from development will continue to adversely affect much of the habitat. The 71 percent of the Rock Creek Unit that is not currently receiving special management through protection and restoration of saline wetland habitat remains vulnerable to both historical and ongoing impacts from development. This unit is further removed from Lincoln; therefore, it faces fewer threats from urban development (e.g., commercial and residential development, road construction, and stream channelization) and more threats from agricultural development (e.g., overgrazing and cultivation) than the Little Salt Creek Unit.

Unit 3: Oak Creek Unit

The unit consists of 208 ac (84 ha) of barren salt flats and a saline seep complex located within a historic floodplain of Oak Creek. The unit is located along Interstate 80 in the northwest part of Lincoln, near the Municipal airport in Lancaster County. This unit was not occupied at the time of listing; however, one population was present until 1998. This unit contains the physical or biological features essential to the Salt Creek tiger beetle and is essential to the conservation of the subspecies because any population established on Oak Creek would provide redundancy, in the event of a natural or manmade disaster on Little Salt Creek.

Approximately 86 percent of the unit is owned by the City of Lincoln and 14 percent by the Nebraska Department of Roads (see Table 2). This unit is largely protected from future urban development (e.g., commercial and residential development, road construction, and stream channelization) and future agricultural development (e.g., overgrazing and cultivation). Barren salt flats including the saline seep complex along Interstate 80 are part of this unit. This tract was once a part of a large saline wetland complex and is the type locality for the Salt Creek tiger beetle. However, a substantial amount of development has resulted in the loss of the once large saline wetland known from the area and special management practices may be needed to restore hydrology and the saline flat and seep habitats once prevalent in the area. This unit is near the City of Lincoln; however, it faces fewer threats from urban development (e.g., commercial and residential development, road construction, and stream channelization) than the Little Salt Creek Unit given the limitations on development that can be done along the Interstate and within the boundaries of the Lincoln Municipal Airport.

Unit 4: Haines Branch Unit

The unit consists of 92 ac (37 ha) of barren salt flats and a 2.8-mile long Haines Branch stream segment. Haines Branch is located on the west side of Lincoln, near Pioneers Park in Lancaster County. This unit was not occupied at the time of listing, but suitable habitat in the form of saline seeps and wetlands are available for the Salt Creek tiger beetle. This unit contains the physical or biological features essential to the Salt Creek tiger beetle and is essential to the conservation of the subspecies because any population established on Haines Branch Creek would provide redundancy, in the event of a natural or human-caused disaster on Little Salt Creek.

The entire unit is owned by private entities (see Table 2). This unit is not protected from future urban development (e.g., commercial and residential development, road construction, and stream channelization) or future agricultural development (e.g., overgrazing and cultivation). Special management is needed to restore the hydrology and saline flat and seep habitats for the subspecies.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 434 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the ongoing action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical

habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the Salt Creek tiger beetle. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Salt Creek tiger beetle. These activities include, but are not limited to:

(1) Actions that would alter soil moisture or salinity. Such activities could include, but are not limited to, development within or adjacent to critical habitat such as installation of tile drains in agricultural lands, construction of storm drains in urban areas, road construction, or further development of residential or commercial areas. These activities could decrease soil moisture levels (in the case of tile drains) or increase soil moisture and decrease salinity levels through increased runoff of fresh surface water (in the case of storm drains, road construction, and residential or commercial development). Any change to soil moisture or salinity levels could degrade or destroy habitat by altering habitat characteristics beyond the narrow range of soil moisture and salinity required by the subspecies. A secondary effect of increased freshwater inputs that lessens soil salinity is the potential invasion of more freshwater-tolerant plants such as cattails (*Typha* spp.) and reed canary grass (*Phalaris arundinacea*) that eliminate the open habitat required by the subspecies (Harvey et al. 2007, p. 749).

(2) Actions that would increase the depth to the water table. Such activities could include, but are not limited to, stream channelization or bank armoring in Little Salt Creek, Rock Creek, Haines Branch, and Oak Creek or adjacent portions of Salt Creek. These activities could result in a lowering of the water table within critical habitat that would compromise groundwater discharge functions necessary to maintain saline wetlands. A further loss of saline wetland habitat could impact our ability to conserve the Salt Creek tiger beetle.

(3) Actions that would cause trampling of open saline areas associated with stream banks, mid-channel islands, and mudflats. Such activities could include, but are not limited to, overgrazing by livestock within critical habitat. Trampling could result in the destruction of larvae and larval burrows, leading to population declines.

(4) Actions that would increase nighttime levels of light. Such activities could include, but are not limited to, new construction of residential or commercial areas that includes nighttime lighting. Light pollution likely disrupts nocturnal behavior by attracting beetles away from their normal habitats (Allgeier et al. 2003, p. 8). Attraction to light from different types of lamps varies, in decreasing order, from blacklight, mercury vapor, fluorescent, incandescent, and sodium vapor, with blacklight being the most favored (Allgeier et al. 2004, p. 10). The disruption in behavior could affect nighttime egg-laying activity of females, if it attracts females into unsuitable habitat.

(5) Actions that would result in modification to the right-of-way located along Interstate 80 that could alter the hydrology supporting saline seeps and salt flats at Oak Creek. This could include earth disturbance and installation of drainage structures.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the final critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise her discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which together with our narrative and interpretation of effects, was our draft economic analysis (DEA) of the proposed critical habitat designation (IEc 2014). The draft analysis, dated February 5, 2014, was made available for public review from March 13, 2014, through March 28, 2014 (79 FR 14206). The DEA addressed potential economic impacts of critical habitat designation for the Salt Creek tiger beetle. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable economic impacts of this critical habitat designation. Information relevant to the probable economic impacts of critical habitat designation for the Salt Creek tiger beetle is summarized below and available in the screening analysis for the Salt Creek tiger beetle (IEc 2014), available at *http://www.regulations.gov*. We have not made any changes to the economic

screening analysis since the proposed rule, but comments we received that pertain to the economic screening analysis are discussed in the Summary of Comments and Recommendations section of this rule.

The intent of the economic screening analysis is to quantify the economic impacts of all potential conservation efforts for the Salt Creek tiger beetle; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the subspecies (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the subspecies. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the subspecies. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the subspecies was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The economic screening analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The economic screening analysis measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the economic screening analysis looks retrospectively at costs that have been incurred since 2005 (year of the subspecies' listing) (70 FR 58335), and considers those costs that may occur annually in the years following the designation of critical habitat. The economic screening analysis quantifies economic impacts of Salt Creek tiger beetle conservation efforts associated with the following categories of activity: (1) Agriculture and livestock grazing; (2) restoration and conservation; (3) residential and commercial development; (4) water management and supply; (5) transportation activities, including bridge construction; and (6) utility activities. The economic screening analysis considered each industry or category individually. Additionally, the economic screening analysis considered whether each of these activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Salt Creek tiger beetle is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the subspecies. Once this critical habitat designation takes effect (see **DATES**, above), consultations to avoid the destruction or adverse modification of critical habitat will be incorporated into the existing consultation process.

In occupied habitat (Little Salt Creek Unit), the economic screening analysis determined that the economic cost of implementing the critical habitat rule through section 7 of the Act will most likely be limited to additional administrative effort to consider adverse modification. This finding was based on the following factors:

- The presence of the subspecies already results in significant baseline protection under the Act.
- Project modifications requested by the Service to avoid jeopardy to the subspecies are also likely to avoid adverse modification of critical habitat. The designation of critical habitat is unlikely to generate recommendations for additional or different project modifications.
- Critical habitat is unlikely to increase the number of consultations occurring in occupied habitat as a result of the existing awareness by Federal agencies of the need to consult due to the listing of the subspecies.
- The designation also receives baseline protection from the presence of a State-listed endangered plant, saltwort *(Salicornia rubra)*.

In unoccupied habitat (Rock Creek, Oak Creek, and Haines Branch Units), the economic screening analysis found that the designation would generate the need for section 7 consultation on projects or activities that may affect critical habitat. The administrative costs of these consultations, and costs of any project modifications resulting from these consultations, reflect incremental costs of the critical habitat rule. In particular, we may request project modifications, including erosion control and biological monitoring for highway projects to avoid adverse modification in unoccupied critical habitat, and grazing restrictions for consultations related to potential conservation partnerships.

Based on the historical consultation rate and forecasts of projects and activities identified by land managers, the economic screening analysis found that the number of future consultations is likely to be fewer than 12 in a single year, all of which are expected to be conducted informally. The additional administrative cost of addressing adverse modification during informal section 7 consultation is approximately $2,400 per consultation, and the full cost of a new informal consultation is approximately $7,100 per consultation. Incremental project modification costs may include $360,000 for highway projects in the Oak Creek Unit, and up to $110,000 if grazing exclosures are implemented through conservation partnerships in the Rock Creek Unit. Incremental costs are likely to be greatest in the Oak Creek Unit and are driven by project modifications for highway construction activities. Total forecast incremental costs of section 7 consultations, including administrative and project modification costs, are likely to be less than $540,000 in a given year. Thus, in summary, the incremental costs resulting from the critical habitat designation are unlikely to reach $100 million in a given year based on the number of anticipated consultations and per-consultation administrative and project modification costs. Executive Order (E.O.) 12866, Regulatory Planning and Review, directs Agencies to assess the costs and benefits of regulatory actions and quantify those costs and benefits if that action may have an effect on the economy of $100 million or more in any one year. Costs associated with this designation are not expected to exceed this threshold, therefore a qualitative evaluation in accordance with E.O. 12866 was prepared for this action.

The designation of critical habitat is unlikely to trigger additional requirements under State or local regulations. This conclusion is based on the likelihood that activities in wetland areas will require Federal permits and,

therefore, section 7 consultation. Additionally, the designation of critical habitat has the potential to convey other benefits to the public. Additional efforts to conserve the beetle are anticipated in unoccupied habitat. Project modifications may result in direct benefits to the subspecies (e.g., increased potential for recovery) as well as broader improvements to environmental quality in these areas. Due to existing data limitations, the economic screening analysis is unable to assess the likely magnitude of such benefits.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exerting her discretion to exclude any areas from this designation of critical habitat for the Salt Creek tiger beetle based on economic impacts.

A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the Nebraska Ecological Services Field Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov,* or at *http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/*.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this final rule, we have determined that no lands within the designation of critical habitat for the Salt Creek tiger beetle are owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exerting her discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we also consider any other relevant impacts resulting from the designation of critical habitat. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no HCPs or other management plans for the Salt Creek tiger beetle, and the final designation does not include any tribal lands or trust resources. However, there is an implementation plan for the conservation of Nebraska's remaining eastern saline wetlands (LaGrange *et al.* 2003, entire). Signatories to this plan include the Nebraska Game and Parks Commission, the City of Lincoln, the County of Lancaster, the Lower Platte South Natural Resources District, and The Nature Conservancy. This plan may protect and restore Salt Creek tiger beetle habitat to the same extent into the future. The goal of the plan is no net loss of saline wetlands and their associated functions, with long-term improvements in wetland functions through restoration of the hydrological system, prescribed wetland management, and watershed protection (LaGrange et al. 2003, p. 6). This plan led to formation of the Saline Wetland Conservation Partnership (SWCP), which has purchased nearly 1,200 ac (486 ha) of eastern saline wetlands and associated uplands, and acquired conservation easements on more than 2,000 ac (810 ha) of additional lands (Malmstrom 2011 and 2012, entire). Overall, approximately 29 percent of occupied and unoccupied critical habitat is protected through these acquisitions. We believe that activities implemented under the plan or under the SWCP will be supported by the designation of critical habitat. The benefits of exclusion of these areas would include the reduction in federal oversight that would otherwise be applied if an unoccupied critical habitat unit were designated as critical habitat. However, a critical habitat designation increases the opportunities for funding to do habitat restoration projects for the benefit of the Salt Creek tiger beetle and its saline wetland and stream habitats. Therefore, the benefits of including this area in critical habitat outweigh any benefits of excluding it. No areas are excluded from this designation based on other relevant impacts.

We anticipate no impact on tribal lands, partnerships, or HCPs from this critical habitat designation. Accordingly, the Secretary is not exercising her discretion to exclude any areas from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining

concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration.

The economic analysis finds that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Salt Creek tiger beetle conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because most of the lands within the designated critical habitat do not occur within the jurisdiction of small governments. This rule will not produce a Federal mandate of $100 million or greater in any year. Therefore, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property rights''), we have analyzed the potential takings implications of designating critical

habitat for the Salt Creek tiger beetle in a takings implications assessment. Based on the best available information, the takings implications assessment concludes that this designation of critical habitat for the Salt Creek tiger beetle does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Nebraska. We received comments from the Nebraska Game and Parks Commission and the Nebraska Department of Roads and have addressed them in the Summary of Comments and Recommendations section of the rule. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the subspecies are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the subspecies are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the subspecies, the rule identifies the elements of physical or biological features essential to the conservation of the Salt Creek tiger beetle. The designated areas of critical habitat are presented on a map, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for a proposal when it is finished. In the case of the Salt Creek tiger beetle, we prepared an environmental assessment for our 2010 final rule designating critical habitat for the subspecies, and made a finding of no significant impacts. Although the State of Nebraska is not part of the Tenth Circuit, and, therefore, NEPA analysis is not required, we undertook a NEPA analysis in this case since we conducted one previously for our 2010 final rule.

We performed the NEPA analysis, and a draft of the environmental assessment was made available for public comment on March 13, 2014 (79 FR 14206). The final environmental assessment has been completed and is available for review with the publication of this final rule. Our environmental assessment showed that there would be beneficial impacts for the Salt Creek tiger beetle through habitat redundancy and focused conservation activities as well as increased awareness about critical habitat. Conservation actions that benefit the Salt Creek tiger beetle would also benefit many other species of fish, wildlife, and plants found along Rock, Little Salt, Oak, and Haines Branch creeks. As such, we concluded that the designation of critical habitat for the Salt Creek tiger beetle does not constitute a major Federal action significant affecting the quality of the human and natural environment. Accordingly, on May 1, 2014, we issued a finding of no significant impact for our final designation of critical habitat for the Salt Creek tiger beetle.

You may obtain a copy of the final environmental assessment and finding of no significant impact online at *http://www.regulations.gov,* by mail from the Nebraska Ecological Services Field Office (see **ADDRESSES**), or by visiting our Web site at *http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge

our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands occupied by the Salt Creek tiger beetle at the time of listing that contain the physical or biological features essential to conservation of the subspecies, and no tribal lands unoccupied by the Salt Creek tiger beetle that are essential for the conservation of the subspecies.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Nebraska Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. In § 17.95, amend paragraph (i) by revising the entry for ''Salt Creek Tiger Beetle (*Cicindela nevadica lincolniana*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Salt Creek Tiger Beetle (*Cicindela nevadica lincolniana*)

(1) Critical habitat units are depicted for Lancaster and Saunders Counties, Nebraska, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Salt Creek tiger beetle consist of saline barrens and seeps found within saline wetland habitat in Little Salt, Rock, Oak and Haines Branch Creeks. For our evaluation, we determined that two habitat types within suitable wetlands are required by the Salt Creek tiger beetle:

(i) Exposed mudflats associated with saline wetlands or the exposed banks and islands of streams and seeps that contain adequate soil moisture and soil salinity are essential core habitats. These habitats support egg-laying and foraging requirements. The ''Salmo'' soil series is the only soil type that currently supports occupied habitat; however, ''Saltillo'' is the other soil series that has adequate soil moisture and salinity and can also provide suitable habitat.

(ii) Vegetated wetlands adjacent to core habitats that provide shade for subspecies thermoregulation, support a source of prey for adults and larval forms of Salt Creek tiger beetles, and protect core habitats.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on June 5, 2014.

(4) *Critical habitat map units.* Data layers defining map units were created using National Wetlands Inventory polygons, habitat categorization classes, and an image object analysis. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site at *http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/,* at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0068, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Map showing critical habitat units for the Salt Creek tiger beetle follows:

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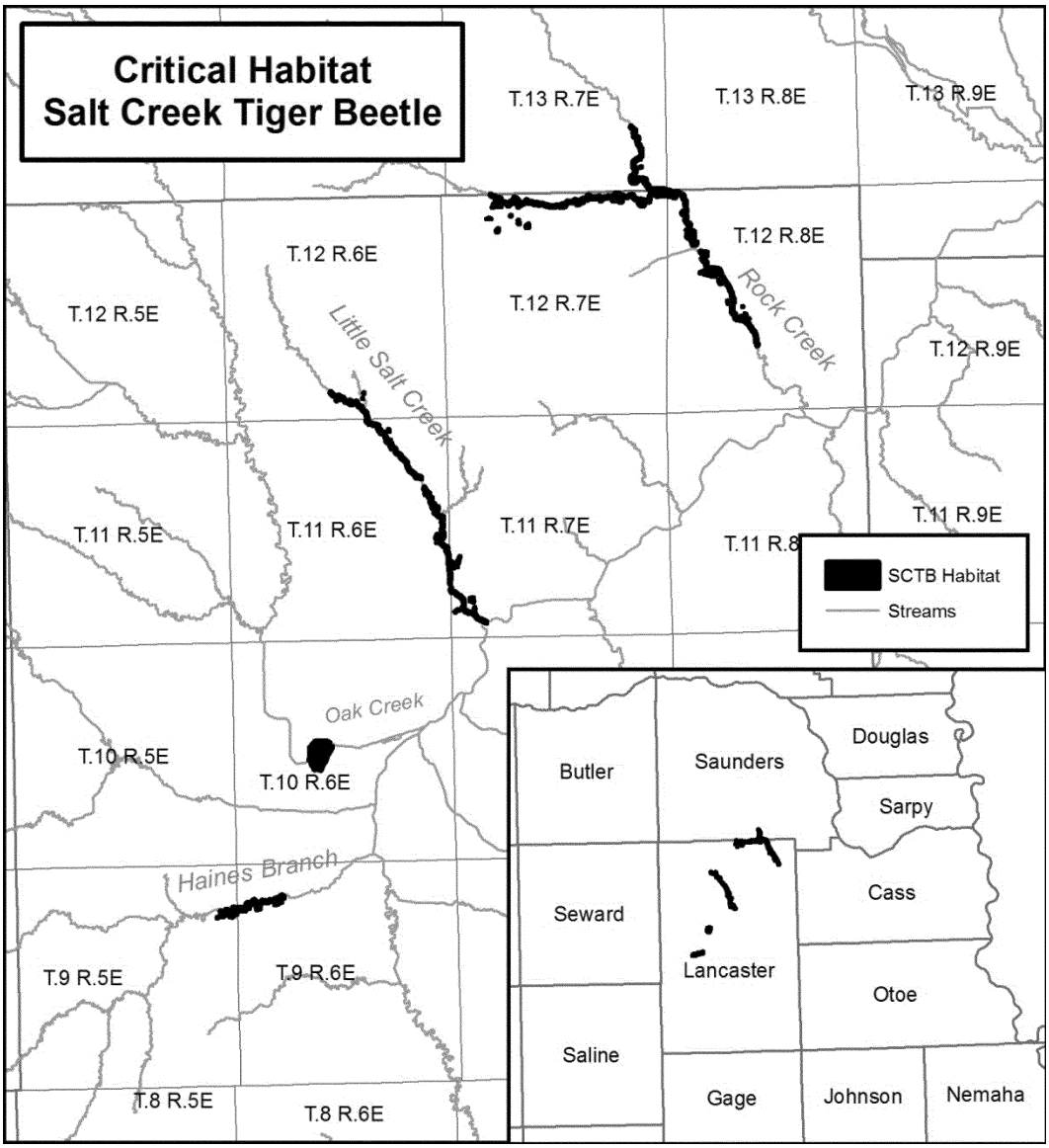

* * * * *

Dated: April 25, 2014.

Michael Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–10051 Filed 5–5–14; 8:45 am]

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2014 (FY 2015); Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1606–P]

RIN 0938–AS08

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2014 (FY 2015)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs). These changes would be applicable to IPF discharges occurring during the fiscal year (FY) beginning October 1, 2014 through September 30, 2015. This proposed rule would also address implementation of ICD–10–CM and ICD–10–PCS codes; propose a new methodology for updating the cost of living adjustment (COLA), and propose new quality measures and reporting requirements under the IPF quality reporting program.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Dorothy Myrick or Jana Lindquist, (410) 786–4533, for general information.

Hudson Osgood, (410) 786–7897 or Bridget Dickensheets, (410) 786–8670, for information regarding the market basket and labor-related share.

Theresa Bean, (410) 786–2287, for information regarding the regulatory impact analysis.

Rebecca Kliman, (410) 786–9723 or Jeffrey Buck, (410) 786–0407, for information regarding the inpatient psychiatric facility quality reporting program.

SUPPLEMENTARY INFORMATION:

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Acronyms

Because of the many terms to which we refer by acronym in this propose rule, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

BBRA—Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (Pub. L. 106–113)
CBSA—Core-Based Statistical Area
CCR—Cost-to-Charge Ratio
CAH—Critical Access Hospital
DSM–IV–TR Diagnostic and Statistical Manual of Mental Disorders Fourth Edition—Text Revision
DRGs—Diagnosis-Related Groups
FY—Federal Fiscal Year (October 1 through September 30)
ICD–9–CM—International Classification of Diseases, 9th Revision, Clinical Modification
ICD–10–CM—International Classification of Diseases, 10th Revision, Clinical Modification
ICD–10–PCS—International Classification of Diseases, 10th Revision, Procedure Coding System
IPFs—Inpatient Psychiatric Facilities
IPFQR—Inpatient Psychiatric Facilities Quality Reporting
IRFs—Inpatient Rehabilitation Facilities
LTCHs—Long-Term Care Hospitals
MAC—Medicare Administrative Contractor
MedPAR—Medicare Provider Analysis and Review File
RPL—Rehabilitation, Psychiatric, and Long-Term Care
RY—Rate Year (July 1 through June 30)
TEFRA—Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248)

I. Executive Summary

A. Purpose

This proposed rule would update the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities for discharges occurring during the fiscal year (FY) beginning October 1, 2014 through September 30, 2015.

B. Summary of the Major Provisions

In this proposed rule, we would update the IPF PPS, as specified in 42 CFR 412.428. The updates include the following:

- The FY 2008-based Rehabilitation, Psychiatric, and Long Term Care (RPL) market basket update (currently estimated to be 2.7 percent) would be adjusted by a 0.3 percentage point reduction as required by section 1886(s)(2)(A)(ii) of the Social Security Act (the Act) and a reduction for economy-wide productivity (currently estimated to be 0.4 percentage point) as required by 1886(s)(2)(A)(i) of the Act.
- The FY 2015 per diem rate would be updated from $713.19 to $727.67.
- The electroconvulsive therapy payment would be updated from $307.04 to $313.27.
- The fixed dollar loss threshold amount would be updated from $10,245 to $10,125 in order to maintain outlier payments that are 2 percent of total IPF PPS payments.
- The national urban and rural cost-to-charge ratio (CCR) ceilings for FY

2015 would be 1.7049 and 1.8823, respectively, and the national median CCR would be 0.6220 for rural IPFs and 0.4700 for urban IPFs. These amounts are used in the outlier calculation to determine if an IPF's CCR is statistically accurate and for new providers without an established CCR.

• The cost of living adjustment factors for IPFs located in Alaska and Hawaii would be updated using the approach finalized in the FY 2014 inpatient hospital prospective payment system (IPPS) final rule (78 FR 50985 through 50987).

In addition:

• We are proposing the ICD–10–CM/PCS codes that would be eligible for the MS–DRG and comorbidity payment adjustments under the IPF PPS. The effective date of those changes would be the date when ICD–10–CM becomes the required medical data code set for use on Medicare claims.

• We are proposing the ICD–9–CM/PCS codes that would be eligible for the MS–DRG and comorbidity payment adjustments under the IPF PPS.

• We would use the best available hospital wage index and establish the wage index budget-neutrality adjustment of 1.0003.

• We would retain the 17 percent payment adjustment for IPFs located in rural areas, the 1.31 payment adjustment factor for IPFs with a qualifying emergency department, the coefficient value of 0.5150 for the teaching adjustment, and the MS–DRG adjustment factors and comorbidity adjustment factors currently being paid to IPFs in FY 2014.

C. Summary of Impacts

Provision description	Total transfers
FY 2015 IPF PPS payment rate update.	The overall economic impact of this proposed rule is an estimated $100 million in increased payments to IPFs during FY 2015.

Provision description	Costs
New quality reporting program requirements.	The total costs in FY 2015 for IPFs as a result of the proposed new quality reporting requirements are estimated to be $33,372,508.

II. Background

A. Annual Requirements for Updating the IPF PPS

In November 2004, we implemented the inpatient psychiatric facilities (IPF) prospective payment system (PPS) in a final rule that appeared in the November 15, 2004 **Federal Register** (69 FR 66922). In developing the IPF PPS, in order to ensure that the IPF PPS is able to account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the per diem costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a per diem basis. For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

In that final rule, we explained that we believe it is important to delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. Therefore, we indicated that we did not intend to update the regression analysis and the patient- and facility-level adjustments until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (71 FR 27041). We have begun the necessary analysis to make refinements to the IPF PPS using more current data to set the adjustment factors, however, we are not proposing those refinements in this proposed rule. Rather, as explained in section V.D.3 of this proposed rule, we expect that in future rulemaking, possibly for FY 2017, we will be ready to propose potential refinements.

In the May 6, 2011 IPF PPS final rule (76 FR 26432), we changed the payment rate update period to a rate year (RY) that coincides with a fiscal year (FY) update. Therefore, update notices are now published in the **Federal Register** in the summer to be effective on October 1. When proposing changes in IPF payment policy, a proposed rule would be issued in the spring and the final rule in the summer in order to be effective on October 1. For further discussion on changing the IPF PPS payment rate update period to a RY that coincides with a FY, see the IPF PPS final rule published in the **Federal Register** on May 6, 2011 (76 FR 26434 through 26435). For a detailed list of updates to the IPF PPS, see 42 CFR 412.428.

Our most recent IPF PPS annual update occurred in an August 1, 2013, **Federal Register** notice (78 FR 46734) (hereinafter referred to as the August 2013 IPF PPS notice) that set forth updates to the IPF PPS payment rates for FY 2014. That notice updated the IPF PPS per diem payment rates that were published in the August 2012 IPF PPS notice (77 FR 47224) in accordance with our established policies.

B. Overview of the Legislative Requirements for the IPF PPS

Section 124 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) required the establishment and implementation of an IPF PPS. Specifically, section 124 of the BBRA mandated that the Secretary develop a per diem PPS for inpatient hospital services furnished in psychiatric hospitals and psychiatric units including an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and psychiatric units.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to distinct part psychiatric units of critical access hospitals (CAHs).

Section 3401(f) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (hereafter referred to as ''the Affordable Care Act'') added subsection (s) to section 1886 of the Act.

Section 1886(s)(1) of the Act titled ''Reference to Establishment and Implementation of System'' refers to section 124 of the BBRA, which relates to the establishment of the IPF PPS.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in

section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the RY beginning in 2012 (that is, a RY that coincides with a FY) and each subsequent RY. For the RY beginning in 2014 (that is, FY 2015), the current estimate of the productivity adjustment would be equal to 0.4 percentage point, which we are proposing in this FY 2015 proposed rule.

Section 1886(s)(2)(A)(ii) of the Act requires the application of an ''other adjustment'' that reduces any update to an IPF PPS base rate by percentages specified in section 1886(s)(3) of the Act for the RY beginning in 2010 through the RY beginning in 2019. For the RY beginning in 2014 (that is, FY 2015), section 1886(s)(3)(C) of the Act requires the reduction to be 0.3 percentage point. We are proposing that reduction in this FY 2015 IPF PPS proposed rule.

Section 1886(s)(4) of the Act requires the establishment of a quality data reporting program for the IPF PPS beginning in RY 2014. We proposed and finalized new requirements for quality reporting for IPFs in the ''Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2014 Rates'' proposed rule published on May 10, 2013 (78 FR 27486, 27734 through 27744) and final rule published on August 19, 2013 (78 FR 50496, 50887 through 50903).

To implement and periodically update these provisions, we have published various proposed and final rules in the **Federal Register**. For more information regarding these rules, see the CMS Web site at *http://www.cms.hhs.gov/InpatientPsychFacilPPS/.*

C. General Overview of the IPF PPS

The November 2004 IPF PPS final rule (69 FR 66922) established the IPF PPS, as required by section 124 of the BBRA and codified at subpart N of part 412 of the Medicare regulations. The November 2004 IPF PPS final rule set forth the per diem Federal rates for the implementation year (the 18-month period from January 1, 2005 through June 30, 2006), and provided payment for the inpatient operating and capital costs to IPFs for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs, but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS). Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) of the Medicare program.

The IPF PPS established the Federal per diem base rate for each patient day in an IPF derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average per diem cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget-neutrality.

The Federal per diem payment under the IPF PPS is comprised of the Federal per diem base rate described above and certain patient- and facility-level payment adjustments that were found in the regression analysis to be associated with statistically significant per diem cost differences.

The patient-level adjustments include age, DRG assignment, comorbidities, and variable per diem adjustments to reflect higher per diem costs in the early days of an IPF stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost-of-living adjustment for IPFs located in Alaska and Hawaii, and the presence of a qualifying emergency department (ED).

The IPF PPS provides additional payment policies for: Outlier cases; interrupted stays; and a per treatment adjustment for patients who undergo electroconvulsive therapy (ECT). During the IPF PPS mandatory 3-year transition period, stop-loss payments were also provided; however, since the transition ended in 2008, these payments are no longer available.

A complete discussion of the regression analysis that established the IPF PPS adjustment factors appears in the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

Section 124 of the BBRA did not specify an annual rate update strategy for the IPF PPS and was broadly written to give the Secretary discretion in establishing an update methodology. Therefore, in the November 2004 IPF PPS final rule, we implemented the IPF PPS using the following update strategy:

- Calculate the final Federal per diem base rate to be budget-neutral for the 18-month period of January 1, 2005 through June 30, 2006.
- Use a July 1 through June 30 annual update cycle.
- Allow the IPF PPS first update to be effective for discharges on or after July 1, 2006 through June 30, 2007.

III. Changing the IPF PPS Payment Rate Update Period From a Rate Year to a Fiscal Year

Prior to RY 2012, the IPF PPS was updated on a July 1 through June 30 annual update cycle. Effective with RY 2012, we switched the IPF PPS payment rate update from a rate year that begins on July 1 and ends on June 30 to a period that coincides with a fiscal year. In order to transition from a RY to a FY, the IPF PPS RY 2012 covered a 15-month period from July 1 through September 30. As proposed and finalized, after RY 2012, the rate year update period for the IPF PPS payment rates and other policy changes begin on October 1 through September 30. Therefore, the update cycle for FY 2015 will be October 1, 2014 through September 30, 2015.

For further discussion of the 15-month market basket update for RY 2012 and changing the payment rate update period from a RY to a FY, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and the RY 2012 IPF PPS final rule (76 FR 26432).

IV. Proposed Market Basket for the IPF PPS

A. Background

The input price index (that is, the market basket) that was used to develop the IPF PPS was the Excluded Hospital with Capital market basket. This market basket was based on 1997 Medicare cost report data and included data for Medicare participating IPFs, inpatient rehabilitation facilities (IRFs), long-term care hospitals (LTCHs), cancer hospitals, and children's hospitals. Although ''market basket'' technically describes the mix of goods and services used in providing hospital care, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies combined) derived from that market basket. Accordingly, the term ''market basket'' as used in this document refers to a hospital input price index.

Beginning with the May 2006 IPF PPS final rule (71 FR 27046 through 27054), IPF PPS payments were updated using a FY 2002-based market basket reflecting the operating and capital cost structures for IRFs, IPFs, and LTCHs (hereafter referred to as the Rehabilitation, Psychiatric, and Long-Term Care (RPL) market basket).

We excluded cancer and children's hospitals from the RPL market basket because these hospitals are not reimbursed through a PPS; rather, their payments are based entirely on reasonable costs subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which are implemented in regulations at § 413.40. Moreover, the FY 2002 cost structures for cancer and children's hospitals are noticeably different than the cost structures of the IRFs, IPFs, and

LTCHs. A complete discussion of the FY 2002-based RPL market basket appears in the May 2006 IPF PPS final rule (71 FR 27046 through 27054).

In the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432), we proposed and finalized the use of a rebased and revised FY 2008-based RPL market basket to update IPF payments.

B. Development of an IPF-Specific Market Basket

In the May 1, 2009 IPF PPS notice (74 FR 20362), we expressed our interest in exploring the possibility of creating a stand-alone, or IPF-specific market basket that reflects the cost structures of only IPF providers. We noted that, of the available options, one would be to join the Medicare cost report data from freestanding IPF providers with data from hospital-based IPF providers. We indicated that an examination of the Medicare cost report data comparing freestanding and hospital-based IPFs revealed considerable differences between the two with respect to cost levels and cost structures. At that time, we stated that we were unable to fully explain the differences in costs between freestanding and hospital-based IPF providers. As a result, we felt that further research was required and we solicited public comments for additional information that might help explain the reasons for the variations in costs and cost structures, as indicated by the cost report data (74 FR 20376). We summarized the public comments we received and our responses in the April 2010 IPF PPS notice (75 FR 23111 through 23113).

Since the April 2010 IPF PPS notice was published, we have made significant progress on the development of a stand-alone, or IPF-specific, market basket. Our research has focused on addressing several concerns regarding the use of the hospital-based IPF Medicare cost report data in the calculation of the major market basket cost weights. As discussed above, one concern is the cost level differences for hospital-based IPFs relative to freestanding IPFs that were not readily explained by the specific characteristics of the individual providers and the patients that they serve (for example, case mix, urban/rural status, teaching status). Furthermore, we are concerned about the variability in the cost report data among these hospital-based IPF providers and the potential impact on the market basket cost weights. These concerns led us to consider whether it is appropriate to use the universe of IPF providers to derive an IPF-specific market basket.

Recently, we have investigated the use of regression analysis to evaluate the effect of including hospital-based IPF Medicare cost report data in the calculation of cost distributions. We created preliminary regression models to try to explain variations in costs per day across both freestanding and hospital-based IPFs. These models were intended to capture the effects of facility-level and patient-level characteristics (for example, wage index, urban/rural status, ownership status, length-of-stay, occupancy rate, case mix, and Medicare utilization) on IPF costs per day. Using the results from the preliminary regression analyses, we identified smaller subsets of hospital-based and freestanding IPF providers where the predicted costs per day using the regression model closely matched the actual costs per day for each IPF. We then derived different sets of cost distributions using (1) these subsets of IPF providers and (2) the entire universe of freestanding and hospital-based IPF providers (including those IPFs for which the variability in cost levels remains unexplained). After comparing these sets of cost distributions, the differences were not substantial enough for us to conclude that the inclusion of those IPF providers with unexplained variability in costs in the calculation of the cost distributions is a major cause for concern.

Another concern with incorporating the hospital-based IPF data in the derivation of an IPF-specific market basket is the complexity of the Medicare cost report data for these providers. The freestanding IPFs independently submit a Medicare cost report for their facilities, making it relatively straightforward to obtain the cost categories necessary to determine the major market basket cost weights. However, cost report data submitted for a hospital-based IPF are embedded in the Medicare cost report submitted for the entire hospital facility in which the IPF is located. Therefore, adjustments would have to be made to obtain cost weights that represent just the hospital-based IPF (as opposed to the hospital as a whole). For example, ancillary costs for services such as clinic services, drugs charged to patients, and emergency services for the entire hospital would need to be appropriately converted to a value that only represents the hospital-based IPF unit's cost. The preliminary method we have developed to allocate these costs is complex and still needs to be fully evaluated before we are ready to propose an IPF-specific market basket that would reflect both hospital-based and freestanding IPF data.

We would also note that our current preliminary data show higher labor costs for IPFs than observed for the 2008-based RPL market basket. This increase is driven primarily by higher compensation cost as a percent of total costs for IPFs. In our ongoing research, we are also evaluating the differences in salary costs as a percent of total costs for both hospital-based and freestanding IPFs. Salary costs are historically the largest component of the market baskets. Based on our review of the data reported on the applicable Medicare cost reports, our initial findings (using the preliminary allocation method as discussed above) have shown that the hospital-based IPF salary costs as a percent of total costs tend to be lower than those of freestanding IPFs. We are still evaluating the methods for deriving salary costs as a percent of total costs and need to further investigate the percentage of ancillary costs that should be appropriately allocated to the IPF salary costs for the hospital-based IPF, as discussed above.

Also, effective for cost reports beginning on or after May 1, 2010, we finalized a revised Hospital and Hospital Health Care Complex Cost Report, Form CMS 2552–10, (74 FR 31738). The report is available for download from the CMS Web site at *http://www.cms.gov/Research-Statistics-Data-and-Systems/Files-for-Order/CostReports/Hospital-2010-form.html.* The revised Hospital and Hospital Health Care Complex Cost Report includes a new worksheet (Worksheet S–3, part V) that identifies the contract labor costs and benefit costs for the hospital/hospital care complex and is applicable to sub-providers and units. Our analysis of Worksheet S–3, part V shows significant underreporting of this data with fewer than 20 freestanding IPF providers reporting it. We encourage providers to submit this data so we can use it to calculate benefits and contract labor cost weights for the market basket. In the absence of this data, we will likely use the 2008-based RPL market basket methodology (76 FR 5003) to calculate the IPF benefit cost weight. This methodology calculates the ratio of the IPPS benefit cost weight to the IPPS salary cost weight and applies this ratio to the IPF salary cost weight in order to estimate the IPF benefit cost weight. For contract labor, in the absence of IPF-specific data, we will use a similar methodology.

For the reasons discussed above, while we believe we have made significant progress on the development of an IPF-specific market basket, we

believe that further research is required at this time. As a result, we are not proposing an IPF-specific market basket for FY 2015. We plan to complete our research during the remainder of this year and, provided that we are prepared to draw conclusions from our research, may propose an IPF-specific market basket for the FY 2016 rulemaking cycle. We welcome public comments on the preliminary findings discussed above.

C. Proposed FY 2015 Market Basket Update

The proposed FY 2015 update for the IPF PPS using the FY 2008-based RPL market basket and IHS Global Insight's first quarter 2014 forecast of the market basket components is 2.7 percent (prior to the application of statutory adjustments). IHS Global Insight, Inc. (IGI) is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets.

As previously described in section I.B, section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the RY beginning in 2012 and each subsequent RY. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period) (the ''MFP adjustment'').

The Bureau of Labor Statistics (BLS) publishes the official measure of private non-farm business MFP. We refer readers to the BLS Web site at *http://www.bls.gov/mfp* to obtain the BLS historical published MFP data. The MFP adjustment for FY 2015 applicable to the IPF PPS is derived using a projection of MFP that is currently produced by IGI. For a detailed description of the model currently used by IGI to project MFP, as well as a description of how the MFP adjustment is calculated, we refer readers to the FY 2012 IPPS/LTCH final rule (76 FR 51690 through 51692). Based on IGI's first quarter 2014 forecast, the proposed productivity adjustment for FY 2015 is 0.4 percentage point. Section 1886(s)(2)(A)(ii) of the Act also requires the application of an ''other adjustment'' that reduces any update to an IPF PPS base rate by percentages specified in section 1886(s)(3) of the Act for rate years beginning in 2010 through the RY beginning in 2019. For the RY beginning in 2014 (that is, FY 2015), the reduction is 0.3 percentage point. We are proposing to implement the productivity adjustment and ''other adjustment'' in this FY 2015 IPF PPS proposed rule.

In summary, we propose to base the FY 2015 market basket update, which is used to determine the applicable percentage increase for the IPF payments, on the most recent estimate of the FY 2008-based RPL market basket (currently estimated to be 2.7 percent based on IGI's first quarter 2014 forecast). We propose to then reduce this percentage increase by the current estimate of the MFP adjustment for FY 2015 of 0.4 percentage point (the 10-year moving average of MFP for the period ending FY 2015 based on IGI's first quarter 2014 forecast). Following application of the MFP, we propose to further reduce the applicable percentage increase by 0.3 percentage point, as required by section 1886(s)(3) of the Act. The current estimate of the proposed FY 2015 IPF update is 2.0 percent (2.7 percent market basket update, less 0.4 percentage point MFP adjustment, less 0.3 percentage point ''other'' adjustment). Furthermore, we also are proposing that if more recent data are subsequently available (for example, a more recent estimate of the market basket and MFP adjustment), we would use such data, if appropriate, to determine the FY 2015 market basket update and MFP adjustment in the final rule.

D. Proposed Labor-Related Share

Due to variations in geographic wage levels and other labor-related costs, we believe that payment rates under the IPF PPS should continue to be adjusted by a geographic wage index, which would apply to the labor-related portion of the Federal per diem base rate (hereafter referred to as the labor-related share).

The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market. Based on our definition of the labor-related share, we include in the labor-related share the sum of the relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Business Support Services, All Other: Labor-related Services, and a portion of the Capital-Related cost weight.

Therefore, to determine the proposed labor-related share for the IPF PPS for FY 2015, we used the FY 2008-based RPL market basket cost weights relative importance to determine the labor-related share for the IPF PPS. This estimate of the FY 2015 labor-related share is based on IGI's first quarter 2014 forecast, which is the same forecast used to derive the FY 2015 market basket update.

Table 1 below shows the FY 2015 relative importance labor-related share using the FY 2008-based RPL market basket along with the FY 2014 relative importance labor-related share.

TABLE 1—PROPOSED FY 2015 RELATIVE IMPORTANCE LABOR-RELATED SHARE AND THE FY 2014 RELATIVE IMPORTANCE LABOR-RELATED SHARE BASED ON THE FY 2008-BASED RPL MARKET BASKET

	FY 2014 relative importance labor-related share [1]	Proposed FY 2015 relative importance labor-related share [2]
Wages and Salaries	48.394	48.409
Employee Benefits	12.963	13.016
Professional Fees: Labor-Related	2.065	2.065
Administrative and Business Support Services	0.415	0.417
All Other: Labor-Related Services	2.080	2.070
Subtotal	65.917	65.977
Labor-Related Portion of Capital Costs (46%)	3.577	3.561

TABLE 1—PROPOSED FY 2015 RELATIVE IMPORTANCE LABOR-RELATED SHARE AND THE FY 2014 RELATIVE IMPORTANCE LABOR-RELATED SHARE BASED ON THE FY 2008-BASED RPL MARKET BASKET—Continued

	FY 2014 relative importance labor-related share [1]	Proposed FY 2015 relative importance labor-related share [2]
Total Labor-Related Share	69.494	69.538

1. Published in the FY 2014 IPF PPS notice (78 FR 46738) and based on IHS Global Insight, Inc.'s second quarter 2013 forecast of the FY 2008-based RPL market basket.
2. Based on IHS Global Insight, Inc.'s first quarter 2014 forecast of the FY 2008-based RPL market basket.

The proposed labor-related share for FY 2015 is the sum of the FY 2015 relative importance of each labor-related cost category, and would reflect the different rates of price change for these cost categories between the base year (FY 2008) and FY 2015. The sum of the relative importance for FY 2015 for operating costs (Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Business Support Services, and All Other: Labor-related Services) is 65.977 percent, as shown in Table 1 above. The portion of Capital-related cost that is influenced by the local labor market is estimated to be 46 percent. Since the relative importance for Capital-Related Costs is 7.742 percent of the FY 2008-based RPL market basket in FY 2015, we take 46 percent of 7.742 percent to determine the labor-related share of Capital-related cost for FY 2015. The result is 3.561 percent, which we add to 65.977 percent for the operating cost amount to determine the total labor-related share for FY 2015. Therefore, the proposed labor-related share for the IPF PPS in FY 2015 is 69.538 percent. This labor-related share is determined using the same general methodology as employed in calculating all previous IPF labor-related shares (see, for example, 69 FR 66952 through 66953). Furthermore, we are also proposing that if more recent data are subsequently available (for example, a more recent estimate of the labor-related share), we would use such data, if appropriate, to determine the FY 2015 labor-related share in the final rule. The wage index and the labor-related share are reflected in budget-neutrality adjustments.

V. Proposed Updates to the IPF PPS for FY 2015 (Beginning October 1, 2014)

The IPF PPS is based on a standardized Federal per diem base rate calculated from the IPF average per diem costs and adjusted for budget-neutrality in the implementation year. The Federal per diem base rate is used as the standard payment per day under the IPF PPS and is adjusted by the patient-level and facility-level adjustments that are applicable to the IPF stay. A detailed explanation of how we calculated the average per diem cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

A. Determining the Standardized Budget-Neutral Federal Per Diem Base Rate

Section 124(a)(1) of the BBRA required that we implement the IPF PPS in a budget-neutral manner. In other words, the amount of total payments under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, we calculated the budget-neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) methodology had the IPF PPS not been implemented. A step-by-step description of the methodology used to estimate payments under the TEFRA payment system appears in the November 2004 IPF PPS final rule (69 FR 66926).

Under the IPF PPS methodology, we calculated the final Federal per diem base rate to be budget-neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle. We updated the average cost per day to the midpoint of the IPF PPS implementation period (that is, October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

Next, we standardized the IPF PPS Federal per diem base rate to account for the overall positive effects of the IPF PPS payment adjustment factors by dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. Additional information concerning this standardization can be found in the November 2004 IPF PPS final rule (69 FR 66932) and the RY 2006 IPF PPS final rule (71 FR 27045). We then reduced the standardized Federal per diem base rate to account for the outlier policy, the stop loss provision, and anticipated behavioral changes. A complete discussion of how we calculated each component of the budget-neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and in the May 2006 IPF PPS final rule (71 FR 27044 through 27046). The final standardized budget-neutral Federal per diem base rate established for cost reporting periods beginning on or after January 1, 2005 was calculated to be $575.95.

The Federal per diem base rate has been updated in accordance with applicable statutory requirements and 42 CFR 412.428 through publication of annual notices or proposed and final rules. These documents are available on the CMS Web site at *http://www.cms.hhs.gov/InpatientPsychFacilPPS/*. A detailed discussion on the standardized budget-neutral Federal per diem base rate and the electroconvulsive therapy (ECT) rate appears in the August 2013 IPF PPS update notice (78 FR 46738 through 46739).

B. Proposed FY 2015 Update of the Federal Per Diem Base Rate and Electroconvulsive Therapy (ECT) Rate

In accordance with section 1886(s)(2)(A)(ii) of the Act, which requires the application of an ''other adjustment,'' described in section 1886(s)(3) of the Act (specifically, section 1886(s)(3)(C)) for RY 2014 that reduces the update to the IPF PPS base rate for the FY beginning in Calendar Year (CY) 2014, we are proposing to adjust the IPF PPS update by a 0.3 percentage point reduction for FY 2015. In addition, in accordance with section 1886(s)(2)(A)(i) of the Act, which requires the application of the productivity adjustment that reduces the update to the IPF PPS base rate for the FY beginning in CY 2014, we are proposing to adjust the IPF PPS update by a 0.4 percentage point reduction for FY 2015.

The current (that is, FY 2014) Federal per diem base rate is $713.19 and the ECT base rate is $307.04. For FY 2015, we are proposing to apply an update of 2.0 percent (that is the proposed FY 2008-based RPL market basket increase for FY 2015 of 2.7 percent less the proposed productivity adjustment of 0.4 percentage point less the 0.3 percentage point required under section1886(s)(3)(C) of the Act), and the wage index budget-neutrality factor of 1.0003 (as discussed in section VI.C.1. of this proposed rule) to the FY 2014 Federal per diem base rate of $713.19, yielding a proposed Federal per diem base rate of $727.67 for FY 2015. Similarly, we are proposing to apply the 2.0 percent payment update, and the 1.0003 wage index budget-neutrality factor to the FY 2014 ECT base rate, yielding a proposed ECT base rate of $313.27 for FY 2015.

As noted above, section 1886(s)(4) of the Act requires the establishment of a quality data reporting program for the IPF PPS beginning in RY 2014. We finalized new requirements for quality reporting for IPFs in the ''Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2014 Rates'' proposed rule published on May 10, 2013 (78 FR 27486, 27734 through 27744) and final rule published on August 19, 2013 (78 FR 50496, 50887 through 50903). Section 1886(s)(4)(A)(i) of the Act requires that, for RY 2014 and each subsequent rate year, the Secretary shall reduce any annual update to a standard Federal rate for discharges occurring during the rate year by 2.0 percentage points for any IPF that does not comply with the quality data submission requirements with respect to an applicable year. Therefore, we are proposing to apply a 2.0 percentage point reduction to the Federal per diem base rate and the ECT base rate as follows:

For IPFs that fail to submit quality reporting data under the IPFQR program, we are applying a 0 percent annual update (that is 2 percent reduced by 2 percentage points in accordance with section 1886(s)(4)(A)(ii) of the Act) and the wage index budget-neutrality factor of 1.0003 to the FY 2014 Federal per diem base rate of $713.19, yielding a Federal per diem base rate of $713.40 for FY 2015.

Similarly, we are applying the 0 percent annual update and the 1.0003 wage index budget-neutrality factor to the FY 2014 ECT base rate of $307.04, yielding an ECT base rate of $307.13 for FY 2015.

In the FY 2014 IPPS/LTCH PPS final rule (78 FR50496), we adopted two new measures for the FY 2016 payment determination and subsequent years for the IPFQR Program. We also finalized a request for voluntary information whereby IPFs will be asked to provide information on the patient experience of care survey. For the FY 2016 payment determination and subsequent years, we are proposing to add two new measures to those already adopted for the FY 2016 payment determination and subsequent years. For the FY 2017 payment determination and subsequent years, we are proposing to adopt four new measures.

VI. Proposed Update of the IPF PPS Adjustment Factors

A. Overview of the IPF PPS Adjustment Factors

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 MedPAR data file, which contained 483,038 cases. For a more detailed description of the data file used for the regression analysis, see the November 2004 IPF PPS final rule (69 FR 66935 through 66936). While we have since used more recent claims data to simulate payments to set the fixed dollar loss threshold amount for the outlier policy and to assess the impact of the IPF PPS updates, we continue to use the regression-derived adjustment factors established in 2005 for FY 2015.

As we stated previously, we have begun an analysis of more current IPF claims and cost report data however; we are not proposing refinements to the IPF PPS in this proposed rule. Once our analysis is complete, we will propose to update the adjustment factors in a future notice of proposed rulemaking. However, we continue to monitor claims and payment data independently from cost report data to assess issues, to determine whether changes in case-mix or payment shifts have occurred among freestanding governmental, non-profit and private psychiatric hospitals, and psychiatric units of general hospitals, and CAHs and other issues of importance to IPFs.

On April 1, 2014, the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93) was enacted. Section 212 of PAMA, titled ''Delay in Transition from ICD–9 to ICD–10 Code Sets,'' provides that ''[t]he Secretary of Health and Human Services may not, prior to October 1, 2015, adopt ICD–10 code sets as the standard for code sets under section 1173(c) of the Social Security Act (42 U.S.C. 1320d–2(c)) and § 162.1002 of title 45, Code of Federal Regulations.'' As of now, the Secretary has not implemented this provision under HIPAA. We are proposing the conversion of ICD–9–CM to ICD–10–CM/PCS codes for the IPF PPS in this proposed rule, but in light of PAMA, the effective date of those changes would be the date when ICD–10 becomes the required medical data code set for use on Medicare claims, whenever that date may be. Until that time, we will continue to require use of the ICD–9–CM codes for reporting the MS–DRG and comorbidity adjustment factors for IPF services.

B. Proposed Patient-Level Adjustments

The IPF PPS includes payment adjustments for the following patient-level characteristics: Medicare Severity diagnosis related groups (MS–DRGs) assignment of the patient's principal diagnosis, selected comorbidities, patient age, and the variable per diem adjustments.

1. Proposed Adjustment for MS–DRG Assignment

We believe it is important to maintain the same diagnostic coding and DRG classification for IPFs that are used under the IPPS for providing psychiatric care. For this reason, when the IPF PPS was implemented for cost reporting periods beginning on or after January 1, 2005, we adopted the same diagnostic code set (ICD–9–CM) and DRG patient classification system (that is, the CMS DRGs) that were utilized at the time under the IPPS. In the May 2008 IPF PPS notice (73 FR 25709), we discussed CMS's effort to better recognize resource use and the severity of illness among patients. CMS adopted the new MS–DRGs for the IPPS in the FY 2008 IPPS final rule with comment period (72 FR 47130). In the 2008 IPF PPS notice (73 FR 25716) we provided a crosswalk to reflect changes that were made under the IPF PPS to adopt the new MS–DRGs. For a detailed description of the mapping changes from the original DRG adjustment categories to the current MS–DRG adjustment categories, we refer readers to the May 2008 IPF PPS notice (73 FR 25714).

The IPF PPS includes payment adjustments for designated psychiatric DRGs assigned to the claim based on the patient's principal diagnosis. The DRG adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). The coefficient values and adjustment factors were derived from the regression analysis. Mapping the DRGs to the MS–DRGs resulted in the current 17 IPF–MS–DRGs, instead of the original 15 DRGs,

for which the IPF PPS provides an adjustment. For FY 2015, as we did in FY 2013 (77 FR 47231) and FY 2014 (78 FR 46741 through 46741), we propose to make a payment adjustment for psychiatric diagnoses that group to one of the 17 MS–IPF–DRGs listed in Table 2. Psychiatric principal diagnoses that do not group to one of the 17 designated DRGs would still receive the Federal per diem base rate and all other applicable adjustments, but the payment would not include a DRG adjustment.

In the Standards for Electronic Transaction final rule, published in the **Federal Register** on August 17, 2000 (65 FR 50312), the Department adopted the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) as the HIPAA designated code set for reporting diseases, injuries, impairments, other health related problems, their manifestations, and causes of injury. Therefore, on January 1, 2005 when the IPF PPS began, we used ICD–9–CM as the designated code set for the IPF PPS. IPF claims with a principal diagnosis included in Chapter Five of the ICD–9–CM are paid the Federal per diem base rate and all other applicable adjustments, including any applicable DRG adjustment. However, as we indicated in the FY 2014 IPF PPS notice (78 FR 46741), in accordance with the requirements of the final rule published in the **Federal Register** on September 5, 2012 (77 FR 54664), we will be discontinuing the use of ICD–9–CM codes. We are proposing the conversion of ICD–9–CM to ICD–10–CM/PCS codes for the IPF PPS in this proposed rule, but in light of PAMA, the effective date of those changes would be the date when ICD–10 becomes the required medical data code set for use on Medicare claims. Until that time, we will continue to require use of the ICD–9–CM codes for reporting the MS–DRGs for IPF services. The ICD–10–CM/PCS coding guidelines are available through the CMS Web site at:

www.cms.gov/Medicare/Coding/ICD10/downloads/pcs_2012_guidelines.pdf and *http://www.cms.gov/Medicare/Coding/ICD10/index.html?redirect=/ICD10* or on the CDC's Web site at *www.cdc.gov/nchs/data/icd10/10cmguidelines2012.pdf.*

Every year, changes to the ICD–10–CM and the ICD–10–PCS coding system will be addressed in the IPPS proposed and final rules. The changes to the codes are effective October 1 of each year and must be used by acute care hospitals as well as other providers to report diagnostic and procedure information. The IPF PPS has always incorporated ICD–9–CM coding changes made in the annual IPPS update and will continue to do so for the ICD–10–CM and ICD–10–PCS coding changes. We will continue to publish coding changes in a Transmittal/Change Request, similar to how coding changes are announced by the IPPS and LTCH PPS. The coding changes relevant to the IPF PPS are also published in the IPF PPS proposed and final rules, or in IPF PPS update notices. In 42 CFR 412.428(e), we indicate that CMS will publish information pertaining to the annual update for the IPF PPS, which includes describing the ICD–9–CM coding changes and DRG classification changes discussed in the annual update to the hospital IPPS regulations. We are proposing to update 42 CFR 412.428(e) to indicate that we will describe the ICD–10–CM coding changes and DRG classification changes discussed in the annual update to the hospital IPPS regulations when ICD–10–CM/PCS becomes the required medical data code set for use on Medicare claims.

The ICD–9–CM/PCS coding changes are reflected in the FY 2015 GROUPER, Version 32.0, effective for IPPS discharges occurring on or after October 1, 2014 through September 30, 2015. The GROUPER Version 32.0 software package assigns each case to an MS–DRG on the basis of the diagnosis and procedure codes and demographic information (that is, age, sex, and discharge status). The Medicare Code Editor (MCE) version 32.0 has also been converted to use ICD–9–CM/PCS codes for IPPS discharges on or after October 1, 2014. For additional information on the GROUPER version 32.0 and the MCE 32.0 see Transmittal-XXXX dated XXXX.

The IPF PPS has always used the same GROUPER and MCE as the IPPS. We have posted a Definitions Manual of the ICD–10 MS–DRGs Version 31.0–R (an updated ICD–10 MS–DRGs version 31.0) on the ICD–10 MS–DRG Conversion Project Web site at: *http://www.cms.hhs.gov/Medicare/Coding/ICD10/ICD-10-MS-DRG-Conversion-Project.html.* We also prepared a document that describes changes made from Version 31.0 to Version 31.0–R. We will continue to share ICD–10–MS–DRG conversion activities with the public through this Web site.

The MS–DRGs were converted so that the MS–DRG assignment logic uses ICD–10–CM/PCS codes directly. When a provider submits a claim for discharges, the ICD–10–CM/PCS diagnosis and procedure codes will be assigned to the correct MS–DRG. The MS–DRGs were converted with a single overarching goal: that MS–DRG assignment for a given patient record is the same after ICD–10–CM implementation as it would be if the same record had been coded in ICD–9–CM and submitted prior to ICD–10–CM/PCS implementation. This goal is referred to as replication, and every effort was made to achieve this goal.

The General Equivalence Mappings (GEMs) were used to assist in converting the ICD–9–CM-based MS–DRGs to ICD–10–CM/PCS. The majority of ICD–9–CM codes (greater than 80 percent) have straightforward translation alternative(s) in ICD–10–CM/PCS, where the diagnoses or procedures classified to a given ICD–9–CM code are replaced by a number of (typically more specific) ICD–10–CM/PCS codes and assigned to the same MS–DRG as the ICD–9–CM code they are replacing. Further information on the assessment of ICD–10–CM/PCS MS–DRGs and financial impact can be found on the CMS ICD–10 Web site at: *http://www.cms.hhs.gov/Medicare/Coding/ICD10/ICD-10-MS-DRG-Conversion-Project.html.*

Questions concerning the MS–DRGs should be directed to Patricia E. Brooks, Co-Chairperson, ICD–10–CM Coordination and Maintenance Committee, CMS, Center for Medicare Management, Hospital and Ambulatory Policy Group, Division of Acute Care, *patricia.brooks2@cms.hhs.gov,* Mailstop C4–08–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Use of the General Equivalence Mappings To Assist in Direct Conversion

For the FY 2015 update, we are not making changes to the MS–IPF–DRG adjustment factors. That is, we do not intend to re-run the regression analysis to update the 17 IPF MS–DRG adjustment factors. The General Equivalence Mappings (GEMs) were used to assist in converting the ICD–9–CM-based MS–DRGs to ICD–10–CM/PCS. For this update, we are proposing the ICD–10–CM/PCS codes that would be used for the MS–DRG payment adjustment. Further information for the ICD–10–CM/PCS MS–DRG conversion project can be found on the CMS ICD–10–CM Web site at *http://www.cms.hhs.gov/Medicare/Coding/ICD10/ICD-10-MS-DRG-Conversion-Project.html.*

We are proposing that the MS–IPF–DRG adjustment factors (as shown in Table 2) would continue to be paid for discharges occurring in FY 2015. The MS–IPF–DRG adjustment factors would be updated on October 1, 2014, using the ICD–9–CM/PCS code set. We are also proposing the conversion of ICD–9–CM/PCS codes to ICD–10–CM/PCS codes for the IPF PPS in this proposed rule but in light of PAMA, the effective date of those changes would be the date

when ICD–10–CM/PCS becomes the required medical data code set for use on Medicare claims.

TABLE 2—PROPOSED FY 2015 CURRENT MS–IPF–DRGS APPLICABLE FOR THE PRINCIPAL DIAGNOSIS ADJUSTMENT

MS–DRG	MS–DRG descriptions	Adjustment factor
056	Degenerative nervous system disorders w MCC	1.05
057	Degenerative nervous system disorders w/o MCC	1.05
080	Nontraumatic stupor & coma w MCC	1.07
081	Nontraumatic stupor & coma w/o MCC	1.07
876	O.R. Procedure w principal diagnoses of mental illness	1.22
880	Acute adjustment reaction & psychosocial dysfunction	1.05
881	Depressive neuroses	0.99
882	Neuroses except depressive	1.02
883	Disorders of personality & impulse control	1.02
884	Organic disturbances & mental retardation	1.03
885	Psychoses	1.00
886	Behavioral & developmental disorders	0.99
887	Other mental disorder diagnoses	0.92
894	Alcohol/drug abuse or dependence, left AMA	0.97
895	Alcohol/drug abuse or dependence w rehabilitation therapy	1.02
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	0.88
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	0.88

2. Proposed Payment for Comorbid Conditions

The intent of the comorbidity adjustments is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain concurrent medical or psychiatric conditions that are expensive to treat. In the May 2011 IPF PPS final rule (76 FR 26451 through 26452), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD–9–CM diagnosis codes that generate a comorbid condition payment adjustment under the IPF PPS for RY 2012 (76 FR 26451).

Comorbidities are specific patient conditions that are secondary to the patient's principal diagnosis and that require treatment during the stay. Diagnoses that relate to an earlier episode of care and have no bearing on the current hospital stay are excluded and must not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment received, length of stay (LOS), or both treatment and LOS.

For each claim, an IPF may receive only one comorbidity adjustment within a comorbidity category, but it may receive an adjustment for more than one comorbidity category. Current billing instructions require IPFs to enter the full, that is, the complete ICD–9–CM codes for up to 24 additional diagnoses if they co-exist at the time of admission or develop subsequently and impact the treatment provided. Billing instructions will require that IPFs enter the full ICD–10–CM/PCS codes. The effective date of this change would be the date when ICD–10–CM/PCS becomes the required medical data code set for use on Medicare claims.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by IPFs in FY 2002. The principal diagnoses were used to establish the DRG adjustments and were not accounted for in establishing the comorbidity category adjustments, except where ICD–9–CM ''code first'' instructions apply. As we explained in the May 2011 IPF PPS final rule (76 FR 265451), the ''code first'' rule applies when a condition has both an underlying etiology and a manifestation due to the underlying etiology. For these conditions, ICD–9–CM has a coding convention that requires the underlying conditions to be sequenced first followed by the manifestation. Whenever a combination exists, there is a ''use additional code'' note at the etiology code and a ''code first'' note at the manifestation code.

The same principle holds for ICD–10–CM as for ICD–9–CM. Whenever a combination exists, there is a ''use additional code'' note in the ICD–10–CM codebook pertaining to the etiology code, and a ''code first'' code pertaining to the manifestation code. We provide a ''code first'' table in Addendum C of this proposed rule for reference that highlights the same or similar manifestation codes where the ''code first'' instructions apply in ICD–10–CM that were present in ICD–9–CM. In the ''code first'' table, pertaining to ICD–10–CM codes F02.80, F02.81 and F05, where individual examples of possible etiologies are listed in the codebook, in the interest of inclusiveness, all ICD–10–CM examples are included in addition to the comparable ICD–10–CM translations of examples listed in the ICD–9–CM codebook for the same manifestations. Also, in the interest of inclusiveness, an ICD–10–CM manifestation code F45.42 ''Pain disorder with related psychological factors'', is included in the IPF PPS ''code first'' table even though it contains a ''code also'' instruction rather than a ''code first'' instruction, but is included in this version of the table for information purposes only. The proposed list of ICD–10–CM codes that we identified as ''code first'' can be located in Addendum C in this proposed rule.

As discussed in the MS–DRG section, it is our policy to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care. The 17 comorbidity categories formerly defined using ICD–9–CM codes have been converted to ICD–10–CM/PCS. The goal for converting the comorbidity categories is referred to as replication, meaning that the payment adjustment for a given patient encounter is the same after ICD–10–CM implementation as it would be if the same record had been coded in ICD–9–CM and submitted prior to ICD–10–CM/PCS implementation. All conversion efforts were made with the intent of achieving this goal. The effective date of this change would be the date when ICD–10–CM/PCS becomes the required

medical data code set for use on Medicare claims.

Direct Conversion of Comorbidity Categories

We converted the ICD–9–CM codes for the IPF PPS Comorbidity Payment Adjustment Categories to ICD–10–CM/PCS codes. When an IPF submits a claim for discharges the ICD–10–CM/PCS codes would be assigned to the correct comorbidity categories. The same method of direct conversion to ICD–10–CM/PCS for replication of ICD–9–CM based payment applications has been implemented by policy groups throughout CMS to convert applications to ICD–10–CM/PCS, including the MS–DRGs.

Use of the General Equivalence Mappings To Assist in Direct Conversion

As with the other policy groups mentioned above, the General Equivalence Mappings (GEMs) were used to assist in converting ICD–9–CM-based applications to ICD–10–CM/PCS. Further information concerning the GEMs can be found on the CMS ICD–10 Web site at: *http://www.cms.gov/Medicare/Coding/ICD10/2014-ICD-10-CM-and-GEMs.html*.

The majority of ICD–9–CM codes (greater than 80 percent) have straightforward translation alternative(s) in ICD–10–CM/PCS, where the diagnoses or procedures classified to a given ICD–9–CM code are replaced by a number of possibly more specific ICD–10–CM/PCS codes, and those ICD–10–CM/PCS codes capture the intent of the payment policy.

In rare instances, ICD–10–CM has discontinued an area of detail in the classification. For example, this is the case with the concept of ''malignant hypertension'' in the Cardiac Conditions comorbidity category. Malignant hypertension is no longer classified separately in codes that specify heart failure, such as ICD–9–CM code 404.03 Hypertensive heart and chronic kidney disease, malignant, with heart failure and with chronic kidney disease stage V or end-stage renal disease. This code, in the Cardiac Conditions comorbidity category, has no corresponding code in the ICD–10–CM Cardiac Conditions comorbidity category. Instead, all sub-types of hypertension in the presence of heart disease or chronic kidney disease are classified to a single code in ICD–10–CM that specifies the level of heart and kidney function, such as I13.2 Hypertensive heart and chronic kidney disease with heart failure and with stage 5 chronic kidney disease, or end stage renal disease. Discussed below are the comorbidity categories where the crosswalk between ICD–9–CM and ICD–10–CM diagnosis codes is less than straightforward. For instance, in some cases, the use of combination codes in one code set is represented as two separate codes in the other code set.

Conversion of Gangrene and Uncontrolled Diabetes Mellitus With or Without Complications Comorbidity Categories

In the Gangrene comorbidity category, there are new ICD–10–CM combination codes not present in ICD–9–CM. Therefore, we are proposing to include many more ICD–10–CM codes in the comorbidity definitions than were included using ICD–9–CM codes so that the comorbidity category using ICD–10–CM codes is a complete and accurate replication of the category using ICD–9–CM codes.

The ICD–9–CM version of the comorbidity category Uncontrolled Diabetes Mellitus With or Without Complications contains combination codes with extra information that is not relevant to the clinical intent of the category. All patients with uncontrolled diabetes are eligible for the payment adjustment, regardless of whether they have additional diabetic complications. The diagnosis of uncontrolled diabetes is coded separately in ICD–10–CM. As a result, only two ICD–10–CM codes are needed to achieve complete and accurate replication of the comorbidity category definition using ICD–9–CM codes.

Conversion of the Gangrene Comorbidity Category

Currently, two ICD–9–CM codes are used for the Gangrene comorbidity category: 440.24 Atherosclerosis of native arteries of the extremities with gangrene and 785.4 Gangrene.

The first code, 440.24, is a combination code and specifies patients with underlying peripheral vascular disease and a current acute manifestation of gangrene. This is the only ICD–9–CM combination code that specifies gangrene in addition to the underlying cause. Also, a number of ICD–10–CM codes exist for gangrene and they are all included in the ICD–10–CM comorbidity category. The ICD–10–CM codes specify anatomic site in more detail. An example is given below:

- I70.261 Atherosclerosis of native arteries of extremities with gangrene, right leg
- I70.262 Atherosclerosis of native arteries of extremities with gangrene, left leg
- I70.263 Atherosclerosis of native arteries of extremities with gangrene, bilateral legs
- I70.268 Atherosclerosis of native arteries of extremities with gangrene, other extremity

In addition, many ICD–10–CM codes specify gangrene in combination with diabetes. We propose to include these codes in the comorbidity category to ensure that a patient with diabetes complicated by gangrene receives the same payment adjustment for the condition when it is coded in ICD–10 as if it had been coded in ICD–9–CM.

Conversion of the Uncontrolled Diabetes Mellitus With or Without Complications Comorbidity Category

Where ICD–9–CM uses combination codes for uncontrolled diabetes, ICD–10–CM classifies diabetes that is out of control in a separate, standalone code. Unlike ICD–9–CM, ICD–10–CM does not have additional codes that specify out of control diabetes in combination with a complication such as, for example, diabetic chronic kidney disease. The result is that the comorbidity category Uncontrolled Diabetes Mellitus With or Without Complications is simpler to define using ICD–10–CM codes than ICD–9–CM codes.

ICD–10–CM has changed the classification of a diagnosis of uncontrolled diabetes in two ways that affect conversion of the Uncontrolled Diabetes comorbidity category:

1. ICD–10–CM no longer uses the term ''uncontrolled'' in reference to diabetes.
2. ICD–10–CM classifies diabetes that is poorly controlled in a separate, standalone code.

ICD–10–CM does not use the term ''uncontrolled'' in codes that classify diabetes patients. Instead, ICD–10–CM codes specify diabetes ''with hyperglycemia'' as the new terminology for classifying patients whose diabetes is ''poorly controlled'' or ''inadequately controlled'' or ''out of control.'' We believe these are appropriate codes to capture the intent of the Uncontrolled Diabetes comorbidity category. Therefore, to ensure that all patients who qualified for the Uncontrolled Diabetes comorbidity payment adjustment using ICD–9–CM codes will also qualify for the payment adjustment using ICD–10–CM codes, we propose that two ICD–10–CM codes specifying diabetes with hyperglycemia will be used for the payment adjustment for Uncontrolled Diabetes Mellitus With or Without Complications: E10.65 Type 1 diabetes mellitus with hyperglycemia, and E11.65 Type 2 diabetes mellitus with hyperglycemia.

Other Differences Between ICD–9–CM and ICD–10–CM Affecting Conversion of Comorbidity Categories

Two other comorbidity categories in the IPF PPS required careful review and additional formatting of the corresponding ICD–10–CM codes in order to replicate the clinical intent of the comorbidity category. In the Drug and/or Alcohol Induced Mental Disorders comorbidity category and the Poisoning comorbidity category, significant structural changes in the way that comparable codes are classified in ICD–10–CM made it more difficult to list the diagnoses in ICD–10–CM code ranges, as was possible in ICD–9–CM. Because comparable codes are not classified contiguously in the ICD–10–CM classification scheme, the resulting proposed list of codes for this comorbidity category is much longer than the comorbidity category using ICD–9–CM codes.

Conversion of the Drug and/or Alcohol Induced Mental Disorders Comorbidity Category

ICD–10–CM has changed the classification of applicable conditions in two ways that affect conversion of the Drug and/or Alcohol Induced Mental Disorders comorbidity category:

1. ICD–10–CM does not use the term ''pathological'' in reference to drug or alcohol intoxication, rather it only uses the phrase ''with intoxication.''

2. ICD–10–CM contains separate, detailed codes for specific drug-induced manifestations of mental disorder. ICD–10–CM codes specify the particular drug and whether the pattern of use is documented as use, abuse, or dependence.

First, this comorbidity category currently contains ICD–9–CM code 292.2 Pathological drug intoxication. To ensure that all patients who qualified for the comorbidity payment adjustment under ICD–9–CM code 292.2 will also qualify under the ICD–10–CM version of the same comorbidity category, we propose that the 89 ICD–10–CM codes specifying ''with intoxication'' qualify for the payment adjustment. An example of the ICD–10–CM codes for a diagnosis of cocaine abuse with current intoxication is provided below. All of these codes would be eligible for the payment adjustment.

- F14.120 Cocaine abuse with intoxication, uncomplicated
- F14.121 Cocaine abuse with intoxication with delirium
- F14.122 Cocaine abuse with intoxication with perceptual disturbance
- F14.129 Cocaine abuse with intoxication, unspecified

Next, ICD–10–CM contains separate, detailed codes by drug for specific drug-induced manifestations of mental disorder, such as drug-induced psychotic disorder with hallucinations. What was a single code in ICD–9–CM, 292.12 Drug-induced psychotic disorder with hallucinations, maps to 24 comparable codes in ICD–10–CM. We propose to include all of these more specific ICD–10–CM codes in the comorbidity category. We believe they are necessary for replication of the clinical intent of the comorbidity category so that all patients with a drug-induced psychotic disorder with hallucinations coded on the claim are eligible for the payment adjustment. Because the ICD–10–CM codes are not listed contiguously in the classification, they cannot be formatted as a range of codes and therefore must be listed as single codes in the comorbidity category definition.

The situation described above is similar for ICD–9–CM code 292.0 Drug withdrawal. ICD–10–CM contains separate, detailed codes by drug specifying that the patient is in withdrawal. We propose to include all of these more specific ICD–10–CM codes in the comorbidity category. We believe they are necessary for replication of the clinical intent of the comorbidity category, so that all patients with a drug withdrawal code on the claim are eligible for the payment adjustment. Likewise, because the ICD–10–CM drug withdrawal codes are not listed contiguously in the classification, they cannot be formatted as a range of codes and so must be listed as single codes in the comorbidity category definition.

Conversion of the Poisoning Comorbidity Category

In ICD–10–CM, the Injury and Poisoning chapter has added an axis of classification for every injury or poisoning diagnosis code, which specifies additional information about the current encounter. This creates three unique codes for each injury or poisoning diagnosis, marked by a different letter in the seventh character of the code:

1. The seventh character ''A'' in the code indicates that the poisoning is a current diagnosis in its ''acute phase.''

2. The seventh character ''D'' in the code indicates that the poisoning is no longer in its ''acute phase,'' but that the patient is receiving aftercare for the earlier poisoning.

3. The seventh character ''S'' in the code indicates that the patient no longer requires care for any aspect of the poisoning itself, but that the patient is receiving care for a late effect of the poisoning.

The intent of the Poisoning comorbidity category is to include only those patients with a current diagnosis of poisoning. If the intent had been to include patients requiring only aftercare for an earlier, resolved case of poisoning, or for care associated with late effects of poisoning that occurred sometime in the past, the comorbidity category would have included ICD–9–CM aftercare codes or late effect codes, but it does not. Only acute poisoning codes from the ICD–9–CM classification are included. Therefore, we propose that the Poisoning comorbidity category only includes ICD–10–CM poisoning codes with a seventh character extension ''A,'' to indicate that the poisoning is documented as a current diagnosis.

In addition, ICD–10–CM poisoning codes specify the circumstances of the poisoning, whether documented as accidental, self-harm, assault, or undetermined, as shown in the heroin poisoning example below. We propose to include all of these more specific ICD–10–CM codes in the comorbidity category for replication of the clinical intent of the comorbidity category so that all patients with a current diagnosis of poisoning coded on the claim would be eligible for the payment adjustment, as shown in the heroin poisoning example below:

- T40.1X1A Poisoning by heroin, accidental (unintentional), initial encounter
- T40.1X2A Poisoning by heroin, intentional self-harm, initial encounter
- T40.1X3A Poisoning by heroin, assault, initial encounter
- T40.1X4A Poisoning by heroin, undetermined, initial encounter

ICD–10–CM classifies poisoning by substance, alongside separate codes for adverse effect or underdosing of the same substance. Because the poisoning codes are not listed contiguously in the classification, they cannot be formatted as a range of codes and therefore must be listed as single codes in the comorbidity category definition.

Proposed Elimination of Codes for Nonspecific Conditions Based on Side of the Body (Laterality)

We believe that highly descriptive coding provides the best and clearest way to document a patient's condition and the appropriateness of the admission and treatment in an IPF. Therefore, whenever possible, we believe that the most specific code that describes a medical disease, condition, or injury should be used to document

the patient's diagnoses. Generally, ''unspecified'' codes are used when they most accurately reflect what is known about the patient's condition at the time of that particular encounter (for example, there is a lack of information about a specific type of organism causing an illness). However, site of illness at the time of the medical encounter is an important determinant in assessing a patient's principal or secondary diagnosis. For this reason, we believe that specific diagnosis codes that narrowly identify anatomical sites where disease, injury, or condition exist should be used when coding patients' diagnoses whenever these codes are available. Furthermore, on the same note, we believe that one should also code to the highest specificity (use the full ICD–10–CM/PCS code).

In accordance with these principles, we propose to remove site unspecified codes from the IPF PPS ICD–10–CM/PCS codes in instances in which more specific codes are available as the clinician should be able to identify a more specific diagnosis based on clinical assessment at the medical encounter. For example, the initial GEMS translation included non-specific codes such as ICD–10–CM code C44.111 ''Basal Cell carcinoma of skin of unspecified eyelid, including canthus.'' Under our proposal:

C44.111 Basal Cell Carcinoma of skin of unspecified eyelid would not be accepted.

C44.112 Basal Cell Carcinoma of skin right eyelid would be accepted.

C44.119 Basal Cell Carcinoma of skin left eyelid would be accepted.

We are proposing to remove these non-specific codes whenever a more specific diagnosis could be identified by the clinician performing the assessment. For the example code C44.111, we are proposing to delete this code because the clinician should be able to identify which eye had the basal cell carcinoma, and therefore would report the condition using the code that specifies the right or left eye.

We are proposing to remove a total of 153 ICD–10–CM site unspecified codes involving the following comorbidity categories: Oncology -93 ICD–10–CM codes, Gangrene-6 ICD–10–CM codes and Severe Musculoskeletal and Connective Tissue—54 ICD–10–CM codes. The site unspecified IPF PPS ICD–10–CM codes that we are proposing to remove are listed below in Tables 3 through 5.

TABLE 3—PROPOSED SITE UNSPECIFIED ICD–10–CM CODES TO BE REMOVED FROM THE ONCOLOGY TREATMENT COMORBIDITY CATEGORY

ICD–10–CM Diagnosis	Code title
C40.00	Malignant neoplasm of scapula and long bones of unspecified upper limb.
C40.10	Malignant neoplasm of short bones of unspecified upper limb.
C40.20	Malignant neoplasm of long bones of unspecified lower limb.
C40.30	Malignant neoplasm of short bones of unspecified lower limb.
C40.80	Malignant neoplasm of overlapping sites of bone and articular cartilage of unspecified limb.
C40.90	Malignant neoplasm of unspecified bones and articular cartilage of unspecified limb.
C43.10	Malignant melanoma of unspecified eyelid, including canthus.
C43.20	Malignant melanoma of unspecified ear and external auricular canal.
C43.60	Malignant melanoma of unspecified upper limb, including shoulder.
C43.70	Malignant melanoma of unspecified lower limb, including hip.
C44.101	Unspecified malignant neoplasm of skin of unspecified eyelid, including canthus.
C44.111	Basal cell carcinoma of skin of unspecified eyelid, including canthus.
C44.121	Squamous cell carcinoma of skin of unspecified eyelid, including canthus.
C44.191	Other specified malignant neoplasm of skin of unspecified eyelid, including canthus.
C44.201	Unspecified malignant neoplasm of skin of unspecified ear and external auricular canal.
C44.211	Basal cell carcinoma of skin of unspecified ear and external auricular canal.
C44.221	Squamous cell carcinoma of skin of unspecified ear and external auricular canal.
C44.601	Unspecified malignant neoplasm of skin of unspecified upper limb, including shoulder.
C44.611	Basal cell carcinoma of skin of unspecified upper limb, including shoulder.
C44.621	Squamous cell carcinoma of skin of unspecified upper limb, including shoulder.
C44.691	Other specified malignant neoplasm of skin of unspecified upper limb, including shoulder.
C44.701	Unspecified malignant neoplasm of skin of unspecified lower limb, including hip.
C44.711	Basal cell carcinoma of skin of unspecified lower limb, including hip.
C44.721	Squamous cell carcinoma of skin of unspecified lower limb, including hip.
C44.791	Other specified malignant neoplasm of skin of unspecified lower limb, including hip.
C47.10	Malignant neoplasm of peripheral nerves of unspecified upper limb, including shoulder.
C47.20	Malignant neoplasm of peripheral nerves of unspecified lower limb, including hip.
C49.10	Malignant neoplasm of connective and soft tissue of unspecified upper limb, including shoulder.
C49.20	Malignant neoplasm of connective and soft tissue of unspecified lower limb, including hip.
C4A.10	Merkel cell carcinoma of unspecified eyelid, including canthus.
C4A.20	Merkel cell carcinoma of unspecified ear and external auricular canal.
C4A.60	Merkel cell carcinoma of unspecified upper limb, including shoulder.
C4A.70	Merkel cell carcinoma of unspecified lower limb, including hip.
C50.019	Malignant neoplasm of nipple and areola, unspecified female breast.
C50.029	Malignant neoplasm of nipple and areola, unspecified male breast.
C50.119	Malignant neoplasm of central portion of unspecified female breast.
C50.129	Malignant neoplasm of central portion of unspecified male breast.
C50.219	Malignant neoplasm of upper-inner quadrant of unspecified female breast.
C50.229	Malignant neoplasm of upper-inner quadrant of unspecified male breast.
C50.319	Malignant neoplasm of lower-inner quadrant of unspecified female breast.
C50.329	Malignant neoplasm of lower-inner quadrant of unspecified male breast.
C50.419	Malignant neoplasm of upper-outer quadrant of unspecified female breast.
C50.429	Malignant neoplasm of upper-outer quadrant of unspecified male breast.
C50.519	Malignant neoplasm of lower-outer quadrant of unspecified female breast.
C50.529	Malignant neoplasm of lower-outer quadrant of unspecified male breast.

TABLE 3—PROPOSED SITE UNSPECIFIED ICD–10–CM CODES TO BE REMOVED FROM THE ONCOLOGY TREATMENT COMORBIDITY CATEGORY—Continued

ICD–10–CM Diagnosis	Code title
C50.619	Malignant neoplasm of axillary tail of unspecified female breast.
C50.629	Malignant neoplasm of axillary tail of unspecified male breast.
C50.819	Malignant neoplasm of overlapping sites of unspecified female breast.
C50.829	Malignant neoplasm of overlapping sites of unspecified male breast.
C50.919	Malignant neoplasm of unspecified site of unspecified female breast.
C50.929	Malignant neoplasm of unspecified site of unspecified male breast.
C69.00	Malignant neoplasm of unspecified conjunctiva.
C69.10	Malignant neoplasm of unspecified cornea.
C69.50	Malignant neoplasm of unspecified lacrimal gland and duct.
C69.60	Malignant neoplasm of unspecified orbit.
C69.80	Malignant neoplasm of overlapping sites of unspecified eye and adnexa.
C69.90	Malignant neoplasm of unspecified site of unspecified eye.
C76.40	Malignant neoplasm of unspecified upper limb.
C76.50	Malignant neoplasm of unspecified lower limb.
D03.10	Melanoma in situ of unspecified eyelid, including canthus.
D03.20	Melanoma in situ of unspecified ear and external auricular canal.
D03.60	Melanoma in situ of unspecified upper limb, including shoulder.
D03.70	Melanoma in situ of unspecified lower limb, including hip.
D04.10	Carcinoma in situ of skin of unspecified eyelid, including canthus.
D04.20	Carcinoma in situ of skin of unspecified ear and external auricular canal.
D04.60	Carcinoma in situ of skin of unspecified upper limb, including shoulder.
D04.70	Carcinoma in situ of skin of unspecified lower limb, including hip.
D05.00	Lobular carcinoma in situ of unspecified breast.
D05.10	Intraductal carcinoma in situ of unspecified breast.
D05.80	Other specified type of carcinoma in situ of unspecified breast.
D05.90	Unspecified type of carcinoma in situ of unspecified breast.
D09.20	Carcinoma in situ of unspecified eye.
D16.00	Benign neoplasm of scapula and long bones of unspecified upper limb.
D16.10	Benign neoplasm of short bones of unspecified upper limb.
D16.20	Benign neoplasm of long bones of unspecified lower limb.
D16.30	Benign neoplasm of short bones of unspecified lower limb.
D17.20	Benign lipomatous neoplasm of skin and subcutaneous tissue of unspecified limb.
D21.10	Benign neoplasm of connective and other soft tissue of unspecified upper limb, including shoulder.
D21.20	Benign neoplasm of connective and other soft tissue of unspecified lower limb, including hip.
D22.10	Melanocytic nevi of unspecified eyelid, including canthus.
D22.20	Melanocytic nevi of unspecified ear and external auricular canal.
D22.60	Melanocytic nevi of unspecified upper limb, including shoulder.
D22.70	Melanocytic nevi of unspecified lower limb, including hip.
D23.10	Other benign neoplasm of skin of unspecified eyelid, including canthus.
D23.20	Other benign neoplasm of skin of unspecified ear and external auricular canal.
D23.60	Other benign neoplasm of skin of unspecified upper limb, including shoulder.
D23.70	Other benign neoplasm of skin of unspecified lower limb, including hip.
D24.9	Benign neoplasm of unspecified breast.
D31.00	Benign neoplasm of unspecified conjunctiva.
D31.50	Benign neoplasm of unspecified lacrimal gland and duct.
D31.60	Benign neoplasm of unspecified site of unspecified orbit.
D31.90	Benign neoplasm of unspecified part of unspecified eye.
D48.60	Neoplasm of uncertain behavior of unspecified breast.

TABLE 4—PROPOSED SITE UNSPECIFIED ICD–10–CM CODES TO BE REMOVED FROM THE GANGRENE COMORBIDITY CATEGORY

ICD10	ICD10 Description
I70269	Atherosclerosis of native arteries of extremities with gangrene, unspecified extremity.
I70369	Atherosclerosis of unspecified type of bypass graft(s) of the extremities with gangrene, unspecified extremity.
I70469	Atherosclerosis of autologous vein bypass graft(s) of the extremities with gangrene, unspecified extremity.
I70569	Atherosclerosis of nonautologous biological bypass graft(s) of the extremities with gangrene, unspecified extremity.
I70669	Atherosclerosis of nonbiological bypass graft(s) of the extremities with gangrene, unspecified extremity.
I70769	Atherosclerosis of other type of bypass graft(s) of the extremities with gangrene, unspecified extremity.

TABLE 5—PROPOSED SITE UNSPECIFIED ICD–10–CM CODES TO BE REMOVED FROM THE SEVERE MUSCULOSKELETAL AND CONNECTIVE TISSUE DISEASES CATEGORY

ICD10	ICD10 Description
M8600	Acute hematogenous osteomyelitis, unspecified site.
M86019	Acute hematogenous osteomyelitis, unspecified shoulder.

TABLE 5—PROPOSED SITE UNSPECIFIED ICD–10–CM CODES TO BE REMOVED FROM THE SEVERE MUSCULOSKELETAL AND CONNECTIVE TISSUE DISEASES CATEGORY—Continued

ICD10	ICD10 Description
M86029	Acute hematogenous osteomyelitis, unspecified humerus.
M86039	Acute hematogenous osteomyelitis, unspecified radius and ulna.
M86049	Acute hematogenous osteomyelitis, unspecified hand.
M86059	Acute hematogenous osteomyelitis, unspecified femur.
M86069	Acute hematogenous osteomyelitis, unspecified tibia and fibula.
M86079	Acute hematogenous osteomyelitis, unspecified ankle and foot.
M8610	Other acute osteomyelitis, unspecified site.
M86119	Other acute osteomyelitis, unspecified shoulder.
M86129	Other acute osteomyelitis, unspecified humerus.
M86139	Other acute osteomyelitis, unspecified radius and ulna.
M86149	Other acute osteomyelitis, unspecified hand.
M86159	Other acute osteomyelitis, unspecified femur.
M86169	Other acute osteomyelitis, unspecified tibia and fibula.
M86179	Other acute osteomyelitis, unspecified ankle and foot.
M8620	Subacute osteomyelitis, unspecified site.
M86219	Subacute osteomyelitis, unspecified shoulder.
M86229	Subacute osteomyelitis, unspecified humerus.
M86239	Subacute osteomyelitis, unspecified radius and ulna.
M86249	Subacute osteomyelitis, unspecified hand.
M86259	Subacute osteomyelitis, unspecified femur.
M86269	Subacute osteomyelitis, unspecified tibia and fibula.
M86279	Subacute osteomyelitis, unspecified ankle and foot.
M8630	Chronic multifocal osteomyelitis, unspecified site.
M86319	Chronic multifocal osteomyelitis, unspecified shoulder.
M86329	Chronic multifocal osteomyelitis, unspecified humerus.
M86339	Chronic multifocal osteomyelitis, unspecified radius and ulna.
M86349	Chronic multifocal osteomyelitis, unspecified hand.
M86359	Chronic multifocal osteomyelitis, unspecified femur.
M86369	Chronic multifocal osteomyelitis, unspecified tibia and fibula.
M86379	Chronic multifocal osteomyelitis, unspecified ankle and foot.
M8640	Chronic osteomyelitis with draining sinus, unspecified site.
M86419	Chronic osteomyelitis with draining sinus, unspecified shoulder.
M86429	Chronic osteomyelitis with draining sinus, unspecified humerus.
M86439	Chronic osteomyelitis with draining sinus, unspecified forearm.
M86449	Chronic osteomyelitis with draining sinus, unspecified hand.
M86459	Chronic osteomyelitis with draining sinus, unspecified femur.
M86469	Chronic osteomyelitis with draining sinus, unspecified lower leg.
M86479	Chronic osteomyelitis with draining sinus, unspecified ankle and foot.
M8650	Other chronic hematogenous osteomyelitis, unspecified site.
M86519	Other chronic hematogenous osteomyelitis, unspecified shoulder.
M86529	Other chronic hematogenous osteomyelitis, unspecified humerus.
M86539	Other chronic hematogenous osteomyelitis, unspecified forearm.
M86549	Other chronic hematogenous osteomyelitis, unspecified hand.
M86559	Other chronic hematogenous osteomyelitis, unspecified femur.
M86569	Other chronic hematogenous osteomyelitis, unspecified lower leg.
M8660	Other chronic osteomyelitis, unspecified site.
M86619	Other chronic osteomyelitis, unspecified shoulder.
M86629	Other chronic osteomyelitis, unspecified upper arm.
M86639	Other chronic osteomyelitis, unspecified forearm.
M86649	Other chronic osteomyelitis, unspecified hand.
M86679	Other chronic osteomyelitis, unspecified ankle and foot.
M868x9	Other osteomyelitis, unspecified sites.

There are some site unspecified ICD–10–CM codes that we are not proposing to remove. In the case where the site unspecified code is the only available ICD–10–CM code, that is when a laterality code (site specific code) is not available, the site unspecified code will not be removed and it would be appropriate to submit that code.

Currently, IPFs are receiving the comorbidity adjustment using the ICD–9–CM diagnosis codes for the comorbidity categories shown in Table 6 below.

TABLE 6—FY 2014 CURRENT DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES

Description of comorbidity	ICD–9–CM Diagnoses codes	Adjustment factor
Developmental Disabilities	317, 3180, 3181, 3182, and 319	1.04
Coagulation Factor Deficits	2860 through 2864	1.13
Tracheostomy	51900 through 51909 and V440	1.06

TABLE 6—FY 2014 CURRENT DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES—Continued

Description of comorbidity	ICD–9–CM Diagnoses codes	Adjustment factor
Renal Failure, Acute	5845 through 5849, 63630, 63631, 63632, 63730, 63731, 63732, 6383, 6393, 66932, 66934, 9585.	1.11
Renal Failure, Chronic	40301, 40311, 40391, 40402, 40412, 40413, 40492, 40493, 5853, 5854, 5855, 5856, 5859,586, V4511, V4512, V560, V561, and V562.	1.11
Oncology Treatment	1400 through 2399 with a radiation therapy code 92.21–92.29 or chemotherapy code 99.25.	1.07
Uncontrolled Diabetes-Mellitus with or without complications.	25002, 25003, 25012, 25013, 25022, 25023, 25032, 25033, 25042, 25043, 25052, 25053, 25062, 25063, 25072, 25073, 25082, 25083, 25092, and 25093.	1.05
Severe Protein Calorie Malnutrition	260 through 262	1.13
Eating and Conduct Disorders	3071, 30750, 31203, 31233, and 31234	1.12
Infectious Disease	01000 through 04110, 042, 04500 through 05319, 05440 through 05449, 0550 through 0770, 0782 through 07889, and 07950 through 07959.	1.07
Drug and/or Alcohol Induced Mental Disorders.	2910, 2920, 29212, 2922, 30300, and 30400	1.03
Cardiac Conditions	3910, 3911, 3912, 40201, 40403, 4160, 4210, 4211, and 4219	1.11
Gangrene	44024 and 7854	1.10
Chronic Obstructive Pulmonary Disease	49121, 4941, 5100, 51883, 51884, V4611, V4612, V4613 and V4614	1.12
Artificial Openings—Digestive and Urinary	56960 through 56969, 9975, and V441 through V446	1.08
Severe Musculoskeletal and Connective Tissue Diseases.	6960, 7100, 73000 through 73009, 73010 through 73019, and 73020 through 73029	1.09
Poisoning	96500 through 96509, 9654, 9670 through 9699, 9770, 9800 through 9809, 9830 through 9839, 986, 9890 through 9897.	1.11

For FY 2015, we are proposing to apply the 17 comorbidity categories for which we provide an adjustment as shown in Table 6 above. We are also proposing the ICD–10–CM/PCS codes and adjustment factors shown in Table 7 below, as well as, the removal of 153 site unspecified ICD–10–CM codes in Tables 3 through 5 above. However, the effective date of those changes would be the date when ICD–10–CM/PCS becomes the required medical data code set for use on Medicare claims.

TABLE 7—FY 2015 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES

Description of comorbidity	ICD–10–CM Diagnoses codes	Adjustment factor
Developmental Disabilities	F70 through F79	1.04
Coagulation Factor Deficits	D66 through D682	1.13
Tracheostomy	J9500 through J9509, and Z930	1.06
Renal Failure, Acute	N170 through N179, O0482, O0732, O084 O904, and T795XXA	1.11
Renal Failure, Chronic	I120, I1311 through I132, N183 through N19, Z4901 through Z4931, Z9115, and Z992.	1.11
Oncology Treatment	C000 through C866, C882 through C964, C96A, C96Z, C969 through D471, D473, D47Z1 through D47Z9, D479 through D499, K317, K635, Q8500, and Q8501 through Q8509, with a radiation therapy code from ICD–10–PCS tables 08H through 0YH with a sixth character device value 1 Radioactive Element, ICD–10–PCS table CW7, ICD–10–PCS tables D00 through DW0, ICD–10–PCS tables D01 through DW1, tables D0Y through DWY, or a chemotherapy code from ICD–10–PCS table 3E0 with a sixth character substance value 0 Antineoplastic and a seventh character qualifier 5 Other Antineoplastic.	1.07
Uncontrolled Diabetes-Mellitus with or without complications.	E1065 and E1165	1.05
Severe Protein Calorie Malnutrition	E40 through E43	1.13
Eating and Conduct Disorders	F5000 through F5002, F509, F631, F6381, and F911	1.12
Infectious Disease	A150 through A269, A280 through A329, A35 through A439, A46 through A480, A482 through A488, A491, A70 through A740, A7489, A800 through A99, B0050 through B0059, B010 through B0229, B03 through B069, B08010 through B0809, B0820 through B2799, B330 through B333, B338, B341, B471 through B479, B950 through B955, B958, B9730 through B9739, G032, I673, J020, J0300, J0301, J202, K9081, L081, L444, M60009, and R1111.	1.07

TABLE 7—FY 2015 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES—Continued

Description of comorbidity	ICD–10–CM Diagnoses codes	Adjustment factor
Drug and/or Alcohol Induced Mental Disorders.	Alcohol dependence with intoxication and/or withdrawal F10121, F10220 through F10229, F10231, and F10921. Drug withdrawal F1193, F1123, F13230 through F13239, F13930 through F13939, F1423, F1523, F1593, F17203, F17213, F17223, F17293, F19230 through F19239, and F19930 through F19939. Drug-induced psychotic disorder with hallucinations F11251, F11151, F11951, F12151, F12251, F13151, F12951, F13251, F13951, F14151, F14251, F14951, F15151, F15251, F15951, F16151, F16251, F16951, F18151, F18251, F18951, F19151, F19251, and F19951. Drug intoxication F11220 through F11229, F11920 through F11929, F12120 through F12129, F12220 through F12229, F12920 through F12929, F13120 through F13129, F13220 through F13229, F13920 through F13929, F14120 through F14129, F14220 through F14229, F14920 through F14929, F15120 through F15129, F15220 through F15229, F15920 through F15929, F16120 through F16129, F16220 through F16229, F16920 through F16929, F18120 through F18129, F18220 through F18229, F18920 through F18929, F19120 through F19129, F19220 through F19229, F19230 through F19239, and F19920 through F19929. Opioid dependence not listed above F1120, F1124, F11250, F11259, F11281 through F11288, F1129.	1.03
Cardiac Conditions	I010 through I012, I110, I270, I330 through I339, and I39	1.11
Gangrene	E0852, E0952, E1052, E1152, E1352, I70261 through I70269, I70361 through I70369, I70461 through I70469, I70561 through I70569, I70661 through I70669, I70761 through I70769, I7301, and I96.	1.10
Chronic Obstructive Pulmonary Disease	J441, J470 through J471, J860, J95850, J9610 through J9622, and Z9911 through Z9912.	1.12
Artificial Openings—Digestive and Urinary	K9400 through K9419, N990, N99520 through N99538, N9981, N9989, and Z931 through Z936.	1.08
Severe Musculoskeletal and Connective Tissue Diseases.	L4050 through L4059, M320 through M329, M4620 through M4628, and M8600 through M869.	1.09
Poisoning	Note: Only includes the codes below with seventh character A specifying initial encounter. T391X1 through T391X4, T400X1 through T400X4, T401X1 through T401X4, T402X1 through T402X4, T403X1 through T403X4, T404X1 through T404X4, T40601 through T40604, T40691 through T40694, T407X1 through T407X4, T408X1 through T408X4, T40901 through T40904, T40991 through T40994, T410X1 through T410X4, T411X1 through T411X4, T41201 through T41204, T41291 through T41294, T413X1 through T413X4, T4141X through T4144X, T423X1 through T423X4, T424X1 through T424X4, T426X1 through T426X4, T4271X through T4274X, T428X1 through T428X4, T43011 through T43014, T43021 through T43024, T431X1 through T431X4, T43201 through T43204, T43211 through T43214, T43221 through T43224, T43291 through T43294, T433X1 through T433X4, T434X1 through T434X4, T43501 through T43504, T43591 through T43594, T43601 through T43604, T43611 through T43614, T43621 through T43624, T43631 through T43634, T43691 through T43694, T438X1 through T438X4, T4391X through T4394X, T505X1 through T505X4, T510X1 through T5194X, T510X1 through T510X4, T5391X through T5394X, T540X1 through T5494X, T550X1 through T551X4, T560X1 through T560X4, T571X1 through T571X4, T5801X through T5804X, T5811X through T5814X, T582X1 through T582X4, T588X1 through T588X4, T5891X through T5894X, T600X1 through T600X4, T601X1 through T601X4, T602X1 through T602X4, T6041X through T6094X, T63001 through T6394X, T6401X through T6484X, T650X1 through T650X4, T651X1 through T651X4.	1.11

3. Proposed Patient Age Adjustments

As explained in the November 2004 IPF PPS final rule (69 FR 66922), we analyzed the impact of age on per diem cost by examining the age variable (that is, the range of ages) for payment adjustments.

In general, we found that the cost per day increases with age. The older age groups are more costly than the under 45 age group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant.

For FY 2015, we are proposing to continue to use the patient age adjustments currently in effect as shown in Table 8 below.

TABLE 8—AGE GROUPINGS AND ADJUSTMENT FACTORS

Age	Adjustment factor
Under 45	1.00
45 and under 50	1.01
50 and under 55	1.02
55 and under 60	1.04
60 and under 65	1.07
65 and under 70	1.10
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

4. Proposed Variable Per Diem Adjustments

We explained in the November 2004 IPF PPS final rule (69 FR 66946) that the regression analysis indicated that per diem cost declines as the LOS increases. The variable per diem adjustments to the Federal per diem base rate account for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF.

We used a regression analysis to estimate the average differences in per diem cost among stays of different lengths. As a result of this analysis, we established variable per diem adjustments that begin on day 1 and

decline gradually until day 21 of a patient's stay. For day 22 and thereafter, the variable per diem adjustment remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying emergency department (ED). If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section VII.C.5 of this proposed rule.

For FY 2015, we are proposing to continue to use the variable per diem adjustment factors currently in effect as shown in Table 9 below. A complete discussion of the variable per diem adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

TABLE 9—VARIABLE PER DIEM ADJUSTMENTS

Day-of-stay	Adjustment factor
Day 1—IPF Without a Qualifying ED	1.19
Day 1—IPF With a Qualifying ED	1.31
Day 2	1.12
Day 3	1.08
Day 4	1.05
Day 5	1.04
Day 6	1.02
Day 7	1.01
Day 8	1.01
Day 9	1.00
Day 10	1.00
Day 11	0.99
Day 12	0.99
Day 13	0.99
Day 14	0.99
Day 15	0.98
Day 16	0.97
Day 17	0.97
Day 18	0.96
Day 19	0.95
Day 20	0.95
Day 21	0.95
After Day 21	0.92

C. Facility-Level Adjustments

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

1. Proposed Wage Index Adjustment

a. Background

As discussed in the May 2006 IPF PPS final rule (71 FR 27061) and in the May 2008 (73 FR 25719) and May 2009 IPF PPS notices (74 FR 20373), in order to provide an adjustment for geographic wage levels, the labor-related portion of an IPF's payment is adjusted using an appropriate wage index. Currently, an IPF's geographic wage index value is determined based on the actual location of the IPF in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) and (C).

b. Proposed Wage Index for FY 2015

Since the inception of the IPF PPS, we have used the pre-reclassified, pre-floor hospital wage index in developing a wage index to be applied to IPFs because there is not an IPF-specific wage index available and we believe that IPFs generally compete in the same labor market as acute care hospitals so the pre-reclassified, pre-floor inpatient acute care hospital wage index should be reflective of labor costs of IPFs. As discussed in the May 2006 IPF PPS final rule for FY 2007 (71 FR 27061 through 27067), under the IPF PPS, the wage index is calculated using the IPPS wage index for the labor market area in which the IPF is located, without taking into account geographic reclassifications, floors, and other adjustments made to the wage index under the IPPS. For a complete description of these IPPS wage index adjustments, please see the CY 2013 IPPS/LTCH PPS final rule (77 FR 53365 through 53374). We are proposing to continue that practice for FY 2015.

We apply the wage index adjustment to the labor-related portion of the Federal rate, which is currently estimated to be 69.538 percent. This percentage reflects the labor-related relative importance of the FY 2008-based RPL market basket for FY 2015 (see section V.C. of this proposed rule).

Changes to the wage index are made in a budget-neutral manner so that updates do not increase expenditures. For FY 2015, we are proposing to apply the most recent hospital wage index (that is, the FY 2014 pre-floor, pre-reclassified hospital wage index which is the most appropriate index as it best reflects the variation in local labor costs of IPFs in the various geographic areas) using the most recent hospital wage data (that is, data from hospital cost reports for the cost reporting period beginning during FY 2010), and applying an adjustment in accordance with our budget-neutrality policy. This policy requires us to estimate the total amount of IPF PPS payments for FY 2014 using the labor-related share and the wage indices from FY 2014 divided by the total estimated IPF PPS payments for FY 2015 using the labor-related share and wage indices from FY 2015. The estimated payments are based on FY 2013 IPF claims, inflated to the appropriate FY. This quotient is the wage index budget-neutrality factor, and it is applied in the update of the Federal per diem base rate for FY 2015 in addition to the market basket described in section VI.B. of this proposed rule. The wage index budget-neutrality factor for FY 2015 is 1.0003. The wage index applicable for FY 2015 appears in Table 1 and Table 2 in Addendum B of this proposed rule.

In the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061–27067), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB Core-Based Statistical Area (CBSA) geographic designations, we did not provide a separate transition for the CBSA-based wage index since the IPF PPS was already in a transition period from TEFRA payments to PPS payments.

As was the case in FY 2014, for FY 2015, we will continue to use the CBSA geographic designations. The updated FY 2015 CBSA-based wage index values are presented in Tables 1 and 2 in Addendum B of this proposed rule. A complete discussion of the CBSA labor market definitions appears in the May 2006 IPF PPS final rule (71 FR 27061 through 27067).

In keeping with established IPF PPS wage index policy, we propose to use the FY 2014 pre-floor, pre-reclassified hospital wage index (which is based on data collected from hospital cost reports submitted by hospitals for cost reporting periods beginning during FY 2010) to adjust IPF PPS payments beginning October 1, 2014.

c. OMB Bulletins

OMB publishes bulletins regarding CBSA changes, including changes to CBSA numbers and titles. In the May 2008 IPF PPS notice, we incorporated the CBSA nomenclature changes published in the most recent OMB bulletin that applies to the hospital wage index used to determine the current IPF PPS wage index and stated that we expect to continue to do the same for all the OMB CBSA nomenclature changes in future IPF PPS rules and notices, as necessary (73 FR 25721). The OMB bulletins may be accessed online at *http://www.whitehouse.gov/omb/bullentins/index.html.*

In accordance with our established methodology, we have historically adopted any CBSA changes that are published in the OMB bulletin that corresponds with the hospital wage index used to determine the IPF PPS

wage index. For FY 2015, we use the FY 2014 pre-floor, pre-reclassified hospital wage index to adjust the IPF PPS payments. On February 28, 2013, OMB issued OMB Bulletin No. 13–01, which establishes revised delineations of statistical areas based on OMB standards published in the **Federal Register** on June 28, 2010 and 2010 Census Bureau data. Because the FY 2014 pre-floor, pre-reclassified hospital wage index was finalized prior to the issuance of this Bulletin, the FY 2014 pre-floor, pre-reclassified hospital wage index does not reflect OMB's new area delineations based on the 2010 Census and, thus, the FY 2015 IPF PPS wage index will not reflect the OMB changes.

CMS intends to propose changes to the hospital wage index based on this OMB Bulletin in the FY 2015 IPPS/LTCH PPS proposed rule, as stated in the FY 2014 IPPS/LTCH PPS proposed rule (78 FR 27552 through 27553). Therefore, we anticipate that the OMB Bulletin changes will be reflected in the FY 2015 hospital wage index. Because we base the IPF PPS wage index on the hospital wage index from the prior year, we anticipate that the OMB Bulletin changes would be reflected in the FY 2016 IPPS PPS wage index.

2. Proposed Adjustment for Rural Location

In the November 2004 IPF PPS final rule, we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis, which indicated that the per diem cost of rural facilities was 17 percent higher than that of urban facilities after accounting for the influence of the other variables included in the regression. For FY 2015, we are proposing to apply a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C). A complete discussion of the adjustment for rural locations appears in the November 2004 IPF PPS final rule (69 FR 66954).

3. Proposed Teaching Adjustment

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(1)(iii) to establish a facility-level adjustment for IPFs that are, or are part of, teaching hospitals. The teaching adjustment accounts for the higher indirect operating costs experienced by hospitals that participate in graduate medical education (GME) programs. The payment adjustments are made based on the ratio of the number of full-time equivalent (FTE) interns and residents training in the IPF and the IPF's average daily census.

Medicare makes direct GME payments (for direct costs such as resident and teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under a PPS, and those paid under the TEFRA rate-of-increase limits. These direct GME payments are made separately from payments for hospital operating costs and are not part of the IPF PPS. The direct GME payments do not address the estimated higher indirect operating costs teaching hospitals may face.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching programs. We calculated the teaching adjustment based on the IPF's ''teaching variable,'' which is one plus the ratio of the number of FTE residents training in the IPF (subject to limitations described below) to the IPF's average daily census (ADC).

We established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment. The cap limits the number of FTE residents that teaching IPFs may count for the purpose of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train. We calculated the number of FTE residents that trained in the IPF during a ''base year'' and used that FTE resident number as the cap. An IPF's FTE resident cap is ultimately determined based on the final settlement of the IPF's most recent cost report filed before November 15, 2004 (that is, the publication date of the IPF PPS final rule).

In the regression analysis, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant. A complete discussion of how the teaching adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the May 2008 IPF PPS notice (73 FR 25721).

As with other adjustment factors derived through the regression analysis, we do not plan to rerun the regression analysis until we analyze IPF PPS data. Therefore, in this proposed rule, for FY 2015, we are proposing to retain the coefficient value of 0.5150 for the teaching adjustment to the Federal per diem base rate.

a. FTE Intern and Resident Cap Adjustment

CMS had been asked by the IPF industry to reconsider the original IPF teaching policy and permit a temporary increase in the FTE resident cap when an IPF increases the number of FTE residents it trains due to the acceptance of displaced residents (residents that are training in an IPF or a program before the IPF or program closed) when another IPF closes or closes its medical residency training program.

To help us assess how many IPFs had been, or were expected to be adversely affected by their inability to adjust their caps under § 412.424(d)(1)(iii) and under these situations, we specifically requested public comment from IPFs in the May 1, 2009 IPF PPS notice (74 FR 20376 through 20377). A summary of the comments and our responses can be reviewed in the April 30, 2010 IPF PPS notice (75 FR 23106 through 23117). All of the commenters recommended that CMS modify the IPF PPS teaching adjustment policy, supporting a policy change that would permit the IPF PPS residency cap to be temporarily adjusted when that IPF trains displaced residents due to closure of an IPF or closure of an IPF's medical residency training program(s). The commenters recommended a temporary resident cap adjustment policy similar to the policies applied in similar contexts for acute care hospitals.

We agreed with the commenters so, in the May 6, 2011 IPF PPS final rule (76 FR 26455), we adopted the temporary resident cap adjustment policies described below, similar to the temporary adjustments to the FTE cap used for acute care hospitals.

b. Temporary Adjustment to the FTE Cap To Reflect Residents Added Due to Hospital Closure

In the May 6, 2011 IPF PPS final rule (76 FR 26455), we added a new § 412.424(d)(1)(iii)(F)(1) to allow a temporary adjustment to an IPF's FTE cap to reflect residents added because of another IPF's closure on or after July 1, 2011, to be effective for cost reporting periods beginning on or after July 1, 2011. For purposes of this policy, we adopted the IPPS definition of ''closure of a hospital'' in 42 CFR 413.79(h) to

mean the IPF terminates its Medicare provider agreement as specified in 42 CFR 489.52. The regulations permit an adjustment to an IPF's FTE cap if the IPF meets the following criteria: (1) The IPF is training displaced residents from another IPF that closed on or after July 1, 2011; and (2) no later than 60 days after the hospital first begins training the displaced residents, the IPF that is training the displaced residents from the closed IPF submits a request for a temporary adjustment to its FTE cap to its Medicare Administrative Contractor (MAC), and documents that the IPF is eligible for this temporary adjustment to its FTE cap by identifying the residents who have come from the closed IPF and have caused the requesting IPF to exceed its cap, (or the IPF may already be over its cap) and specifies the length of time that the adjustment is needed.

After the displaced residents leave the IPF's training program or complete their residency program, the IPF's cap would revert to its original level. Further, the total amount of temporary cap adjustments that can be distributed to all receiving hospitals cannot exceed the cap amount of the IPF that closed.

c. Temporary Adjustment to FTE To Cap Reflect Residents Affected by Residency Program Closure

In the May 6, 2011 final rule (76 FR 26455), we added a new § 412.424(d)(1)(iii)(F)(*2*) providing that if an IPF that ceases training residents in a residency training program(s) agrees to temporarily reduce its FTE cap, we would allow another IPF to receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of another IPF's residency training program. For purposes of this policy on closed residency programs, we apply the IPPS definition of ''closure of a hospital residency training program'' to mean that the hospital ceases to offer training for residents in a particular approved medical residency training program as specified in § 413.79(h). The methodology for adjusting the caps for the ''receiving IPF'' and the ''IPF that closed its program'' is described below.

i. Receiving IPF

The regulations at § 412.424(d)(1)(iii)(F)(*2*)(*i*) allow an IPF to receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of another IPF's residency training program for cost reporting periods beginning on or after July 1, 2011 if—

- The IPF is training additional residents from the residency training program of an IPF that closed its program on or after July 1, 2011.
- No later than 60 days after the IPF begins to train the residents, the IPF submits to its MAC a request for a temporary adjustment to its FTE cap, documents that the IPF is eligible for this temporary adjustment by identifying the residents who have come from another IPF's closed program and have caused the IPF to exceed its cap, (or the IPF may already be in excess of its cap), specifies the length of time the adjustment is needed, and submits to its MAC a copy of the FTE cap reduction statement by the IPF closing the residency training program.

ii. IPF That Closed Its Program

The regulations at § 412.424(d)(1)(iii)(F)(*2*)(*ii*) provide that an IPF that agrees to train residents who have been displaced by the closure of another IPF's resident teaching program may receive a temporary FTE cap adjustment only if the IPF that closed a program:

- Temporarily reduces its FTE cap based on the number of FTE residents in each program year, training in the program at the time of the program's closure.
- No later than 60 days after the residents who were in the closed program begin training at another IPF, submits to its MAC a statement signed and dated by its representative that specifies that it agrees to the temporary reduction in its FTE cap to allow the IPF training the displaced residents to obtain a temporary adjustment to its cap; identifies the residents who were training at the time of the program's closure; identifies the IPFs to which the residents are transferring once the program closes; and specifies the reduction for the applicable program years.

A complete discussion on the temporary adjustment to the FTE cap to reflect residents added due to hospital closure and by residency program appears in the January 27, 2011 IPF PPS proposed rule (76 FR 5018 through 5020) and the May 6, 2011 IPF PPS final rule (76 FR 26453 through 26456).

4. Proposed Cost of Living Adjustment for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the county in which the IPF is located. As we explained in the November 2004 IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had per diem costs that were disproportionately higher than other IPFs. Other Medicare PPSs (for example, the IPPS and LTCH PPS) adopted a cost of living adjustment (COLA) to account for the cost differential of care furnished in Alaska and Hawaii.

We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii would improve payment equity for these facilities. As a result of this analysis, we provided a COLA in the November 2004 IPF PPS final rule.

A COLA for IPFs located in Alaska and Hawaii is made by multiplying the nonlabor-related portion of the Federal per diem base rate by the applicable COLA factor based on the COLA area in which the IPF is located.

The COLA factors are published on the Office of Personnel Management (OPM) Web site (*http://www.opm.gov/oca/cola/rates.asp*).

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR 591.207, the OPM established the following COLA areas:

- City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;
- City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;
- City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;
- Rest of the State of Alaska.

As stated in the November 2004 IPF PPS final rule, we update the COLA factors according to updates established by the OPM. However, sections 1911 through 1919 of the Nonforeign Area Retirement Equity Assurance Act, as contained in subtitle B of title XIX of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Pub. L. 111–84, October 28, 2009), transitions the Alaska and Hawaii COLAs to locality pay. Under section 1914 of Public Law 111–84, locality pay is being phased in over a 3-year period beginning in January 2010, with COLA rates frozen as of the date of enactment, October 28, 2009, and then proportionately reduced to reflect the phase-in of locality pay.

When we published the proposed COLA factors in the January 2011 IPF PPS proposed rule (76 FR 4998), we inadvertently selected the FY 2010 COLA rates which had been reduced to account for the phase-in of locality pay. We did not intend to propose the reduced COLA rates because that would have understated the adjustment. Since the 2009 COLA rates did not reflect the phase-in of locality pay, we finalized the FY 2009 COLA rates for RY 2010

through RY 2014 and indicated our intent to address the COLA in FY 2015. Currently, IPFs located in Alaska and Hawaii receive the updated COLA factors based on the COLA area in which the IPF is located as shown in Table 10 below.

TABLE 10—COLA FACTORS FOR ALASKA AND HAWAII IPFS

Area	Cost of living adjustment factor
Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	1.23
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.23
City of Juneau and 80-kilometer (50-mile) radius by road	1.23
Rest of Alaska	1.25
Hawaii:	
City and County of Honolulu	1.25
County of Hawaii	1.18
County of Kauai	1.25
County of Maui and County of Kalawao	1.25

(The above factors are based on data obtained from the U.S. Office of Personnel Management Web site at: *http://www.opm.gov/oca/cola/rates.asp*.)

In the FY 2013 IPPS/LTCH final rule (77 FR 53700 through 53701), CMS established a methodology for FY 2014 to update the COLA factors for Alaska and Hawaii. Under that methodology, we use a comparison of the growth in the Consumer Price Indices (CPIs) in Anchorage, Alaska and Honolulu, Hawaii relative to the growth in the overall CPI as published by the Bureau of Labor Statistics (BLS) to update the COLA factors for all areas in Alaska and Hawaii, respectively. As discussed in the FY 2013 IPPS/LTCH proposed rule (77 FR 28145), because BLS publishes CPI data for only Anchorage, Alaska and Honolulu, Hawaii, our methodology for updating the COLA factors uses a comparison of the growth in the CPIs for those cities relative to the growth in the overall CPI to update the COLA factors for all areas in Alaska and Hawaii, respectively. We believe that the relative price differences between these cities and the United States (as measured by the CPIs mentioned above) are generally appropriate proxies for the relative price differences between the ''other areas'' of Alaska and Hawaii and the United States.

The CPIs for ''All Items'' that BLS publishes for Anchorage, Alaska, Honolulu, Hawaii, and for the average U.S. city are based on a different mix of commodities and services than is reflected in the nonlabor-related share of the IPPS market basket. As such, under the methodology we established to update the COLA factors, we calculated a ''reweighted CPI'' using the CPI for commodities and the CPI for services for each of the geographic areas to mirror the composition of the IPPS market basket nonlabor-related share. The current composition of BLS' CPI for ''All Items'' for all of the respective areas is approximately 40 percent commodities and 60 percent services. However, the nonlabor-related share of the IPPS market basket is comprised of 60 percent commodities and 40 percent services. Therefore, under the methodology established for FY 2014 in the FY 2013 IPPS/LTCH PPS final rule, we created reweighted indexes for Anchorage, Alaska, Honolulu, Hawaii, and the average U.S. city using the respective CPI commodities index and CPI services index and applying the approximate 60/40 weights from the IPPS market basket. This approach is appropriate because we would continue to make a COLA for hospitals located in Alaska and Hawaii by multiplying the nonlabor-related portion of the standardized amount by a COLA factor.

Under the COLA factor update methodology established in the FY 2014 IPPS/LTCH final rule, we adjust payments made to hospitals located in Alaska and Hawaii by incorporating a 25-percent cap on the CPI-updated COLA factors. We note that OPM's COLA factors were calculated with a statutorily mandated cap of 25 percent, and since at least 1984, we have exercised our discretionary authority to adjust Alaska and Hawaii payments by incorporating this cap. In keeping with this historical policy, we would continue to use such a cap, as our proposal is based on OPM's COLA factors. We believe this approach is appropriate because our CPI-updated COLA factors use the 2009 OPM COLA factors as a basis.

We believe it is appropriate to adopt the same methodology for the COLA factors applied under the IPPS because IPFs are hospitals with a similar mix of commodities and services. In addition, we think it is appropriate to have a consistent policy approach with that of other hospitals in Alaska and Hawaii. Therefore, we are proposing to adopt the cost of living adjustment factors shown in Table 11 below for IPFs located in Alaska and Hawaii.

TABLE 11—COST-OF-LIVING ADJUSTMENT FACTORS: ALASKA AND HAWAII HOSPITALS AREA COLA FACTOR

Area	Cost of living adjustment factor
Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	1.23
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.23
City of Juneau and 80-kilometer (50-mile) radius by road	1.23
Rest of Alaska	1.25
Hawaii:	
City and County of Honolulu	1.25
County of Hawaii	1.19

TABLE 11—COST-OF-LIVING ADJUSTMENT FACTORS: ALASKA AND HAWAII HOSPITALS AREA COLA FACTOR—Continued

Area	Cost of living adjustment factor
County of Kauai	1.25
County of Maui and County of Kalawao	1.25

5. Proposed Adjustment for IPFs With a Qualifying Emergency Department (ED)

The IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. We provide an adjustment to the Federal per diem base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs incurred by a freestanding psychiatric hospital with a qualifying ED or a distinct part psychiatric unit of an acute care hospital or a CAH for preadmission services otherwise payable under the Medicare Outpatient Prospective Payment System (OPPS) furnished to a beneficiary on the date of the beneficiary's admission to the hospital and during the day immediately preceding the date of admission to the IPF (see § 413.40(c)(2)) and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with one exception described below), regardless of whether a particular patient receives preadmission services in the hospital's ED.

The ED adjustment is incorporated into the variable per diem adjustment for the first day of each stay for IPFs with a qualifying ED. That is, IPFs with a qualifying ED receive an adjustment factor of 1.31 as the variable per diem adjustment for day 1 of each stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable per diem adjustment for day 1 of each patient stay.

The ED adjustment is made on every qualifying claim except as described below. As specified in § 412.424(d)(1)(v)(B), the ED adjustment is not made when a patient is discharged from an acute care hospital or CAH and admitted to the same hospital's or CAH's psychiatric unit. We clarified in the November 2004 IPF PPS final rule (69 FR 66960) that an ED adjustment is not made in this case because the costs associated with ED services are reflected in the DRG payment to the acute care hospital or through the reasonable cost payment made to the CAH.

Therefore, when patients are discharged from an acute care hospital or CAH and admitted to the same hospital or CAH's psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable per diem adjustment for the first day of the patient's stay in the IPF.

For FY 2015, we are proposing to retain the 1.31 adjustment factor for IPFs with qualifying EDs. A complete discussion of the steps involved in the calculation of the ED adjustment factor appears in the November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the May 2006 IPF PPS final rule (71 FR 27070 through 27072).

D. Other Payment Adjustments and Policies

1. Outlier Payments

The IPF PPS includes an outlier adjustment to promote access to IPF care for those patients who require expensive care and to limit the financial risk of IPFs treating unusually costly patients. In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per-case payment for IPF stays that are extraordinarily costly. Providing additional payments to IPFs for extremely costly cases strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be incurred in treating patients who require more costly care and, therefore, reduce the incentives for IPFs to under-serve these patients.

We make outlier payments for discharges in which an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the Federal per diem payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1 through 9 of the stay (consistent with the median LOS for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare PPSs) might provide an incentive under the IPF per diem payment system to increase LOS in order to receive additional payments.

After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount of $10,245 through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target. Each year when we update the IPF PPS, we simulate payments using the latest available data to compute the fixed dollar loss threshold so that outlier payments represent 2 percent of total projected IPF PPS payments.

a. Proposed Update to the Outlier Fixed Dollar Loss Threshold Amount

In accordance with the update methodology described in § 412.428(d), we propose to update the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the Federal per diem base rate for all other cases that are not outlier cases.

Based on an analysis of the latest available data (that is, FY 2013 IPF claims) and rate increases, we believe it is necessary to update the fixed dollar loss threshold amount in order to maintain an outlier percentage that equals 2 percent of total estimated IPF PPS payments.

In the May 2006 IPF PPS final rule (71 FR 27072), we describe the process by which we calculate the outlier fixed dollar loss threshold amount. We are not proposing changes to this process for FY 2015. We begin by simulating aggregate payments with and without an outlier policy, and applying an iterative process to determine an outlier fixed dollar loss threshold amount that will result in estimated outlier payments being equal to 2 percent of total estimated payments under the simulation. Based on this process, using the FY 2013 claims data, we estimate that IPF outlier payments as a percentage of total estimated payments are approximately 1.9 percent in FY

2014. Thus, we propose to update the FY 2015 IPF outlier threshold amount to ensure that estimated FY 2015 outlier payments are approximately 2 percent of total estimated IPF payments. The outlier fixed dollar loss threshold amount of $10,245 for FY 2014 would be changed to $10,125 for FY 2015 to increase estimated outlier payments and thereby maintain estimated outlier payments at 2 percent of total estimated aggregate IPF payments for FY 2015.

b. Proposed Update to IPF Cost-to-Charge Ratio Ceilings

Under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount plus the IPF PPS amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported charges on the discharge bill by its overall cost-to-charge ratio (CCR). This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. In the June 2003 IPPS final rule (68 FR 34494), we implemented changes to the IPPS policy used to determine CCRs for acute care hospitals because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs in order to ensure that aberrant CCR data did not result in inappropriate outlier payments.

As we indicated in the November 2004 IPF PPS final rule (69 FR 66961), because we believe that the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS, we adopted a method to ensure the statistical accuracy of CCRs under the IPF PPS. Specifically, we adopted the following procedure in the November 2004 IPF PPS final rule: We calculated two national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas. We computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs using the most recent CCRs entered in the CY 2014 Provider Specific File.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR average (either rural or urban). The upper threshold CCR for IPFs in FY 2015 is 1.8823 for rural IPFs, and 1.7049 for urban IPFs, based on CBSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate and we assign the appropriate national (either rural or urban) median CCR to the IPF.

We apply the national CCRs to the following situations:

++ New IPFs that have not yet submitted their first Medicare cost report. We continue to use these national CCRs until the facility's actual CCR can be computed using the first tentatively or final settled cost report.

++ IPFs whose overall CCR is in excess of 3 standard deviations above the corresponding national geometric mean (that is, above the ceiling).

++ Other IPFs for which the MAC obtains inaccurate or incomplete data with which to calculate a CCR.

We are not proposing to make any changes to the application of the national CCRs or to the procedures for updating the CCR ceilings in FY 2015. However, we are proposing to update the FY 2015 national median and ceiling CCRs for urban and rural IPFs based on the CCRs entered in the latest available IPF PPS Provider Specific File. Specifically, for FY 2015, and to be used in each of the three situations listed above, using the most recent CCRs entered in the CY 2014 Provider Specific File we estimate the national median CCR of 0.6220 for rural IPFs and the national median CCR of 0.4700 for urban IPFs. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations.

A complete discussion regarding the national median CCRs appears in the November 2004 IPF PPS final rule (69 FR 66961 through 66964).

2. Future Refinements

For RY 2012, we identified several areas of concern for future refinement and we invited comments on these issues in our RY 2012 proposed and final rules. For further discussion of these issues and to review the public comments, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432).

As we have indicated throughout this proposed rule, we have delayed making refinements to the IPF PPS until we have completed a thorough analysis of IPF PPS data on which to base those refinements. Specifically, we explained that we will delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. We have begun the necessary analysis to better understand IPF industry practices so that we may refine the IPF PPS as appropriate. Using more recent data, we plan to re-run the regression analyses and the patient-and facility-level adjustments. While we are not proposing refinements in this proposed rule, we expect that in the rulemaking for FY 2017 we will be ready to present the results of our analysis.

VII. Secretary's Recommendations

Section 1886(e)(4)(A) of the Act requires the Secretary, taking into consideration the recommendations of the Medicare Payment Advisory Committee (MedPAC), to recommend update factors for inpatient hospital services (including IPFs) for each FY that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Section 1886(e)(5) of the Act requires the Secretary to publish the recommended and final update factors in the **Federal Register**.

In the past, the Secretary's recommendations and a discussion about the MedPAC recommendations for the IPF PPS were included in the IPPS proposed and final rules. The market basket update for the IPF PPS was also included in the IPPS proposed and final rules, as well as in the IPF PPS annual update.

Beginning in FY 2013, however, we have only published the market basket update for the IPF PPS in the annual IPF PPS FY update and not in the IPPS proposed and final rules. In addition, for any years in which MedPAC makes recommendations for the IPF PPS, those recommendations will be addressed in the IPF PPS update.

MedPAC did not make any recommendations for the IPF PPS for FY 2015. For the update to the IPF PPS standard Federal rate for FY 2015, see section IV B. of this proposed rule.

VIII. Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program

1. Statutory Authority

Section 1886(s)(4) of the Act, as added and amended by sections 3401(f) and 10322(a) of the Affordable Care Act, requires the Secretary to implement a quality reporting program for inpatient psychiatric hospitals and psychiatric units. Section 1886(s)(4)(A)(i) of the Act requires that, for rate year (RY) 2014 and each subsequent rate year, the Secretary shall reduce any annual update to a standard Federal rate for discharges occurring during the rate year by 2.0 percentage points for any inpatient psychiatric hospital or psychiatric unit that does not comply with quality data submission requirements with respect to an applicable rate year.

As noted above, section 1886(s)(4)(A)(i) of the Act uses the term ''rate year.'' Beginning with the annual update of the inpatient psychiatric facility prospective payment system (IPF PPS) that took effect on July 1, 2011 (RY 2012), we aligned the IPF PPS update with the annual update of the ICD–9–CM codes, which are effective on October 1 of each year. The change allows for annual payment updates and the ICD–9–CM coding update to occur on the same schedule and appear in the same **Federal Register** document, thus making updating rules more administratively efficient. To reflect the change to the annual payment rate update cycle, we revised the regulations at 42 CFR 412.402 to specify that, beginning October 1, 2012, the rate year update period would be the 12-month period of October 1 through September 30, which we refer to as a fiscal year (FY) (76 FR 26435). For more information regarding this terminology change, we refer readers to section III. of the RY 2012 IPF PPS final rule (76 FR 26434 through 26435).

As provided in section 1886(s)(4)(A)(ii) of the Act, the application of the reduction for failure to report under section 1886(s)(4)(A)(i) of the Act may result in an annual update of less than 0.0 percent for a fiscal year, and may result in payment rates under section 1886(s)(1) of the Act being less than the payment rates for the preceding year. In addition, section 1886(s)(4)(B) of the Act requires that the application of the reduction to a standard Federal rate update be noncumulative across fiscal years. Thus, any reduction applied under section 1886(s)(4)(A) of the Act will apply only with respect to the fiscal year rate involved and the Secretary shall not take into account the reduction in computing the payment amount under the system described in section 1886(s)(1) of the Act for subsequent years.

Section 1886(s)(4)(C) of the Act requires that, for FY 2014 (October 1, 2013, through September 30, 2014) and each subsequent year, each psychiatric hospital and psychiatric unit shall submit to the Secretary data on quality measures as specified by the Secretary. The data shall be submitted in a form and manner, and at a time, specified by the Secretary. Under section 1886(s)(4)(D)(i) of the Act, measures selected for the quality reporting program must have been endorsed by the entity with a contract under section 1890(a) of the Act. The National Quality Forum (NQF) currently holds this contract.

Section 1886(s)(4)(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 entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. Pursuant to section 1886(s)(4)(D)(iii) of the Act, the Secretary shall publish the measures applicable to the FY 2014 IPFQR Program no later than October 1, 2012.

Section 1886(s)(4)(E) of the Act requires the Secretary to establish procedures for making public the data submitted by inpatient psychiatric hospitals and psychiatric units under the IPFQR Program. These procedures must ensure that a facility has the opportunity to review its data prior to the data being made public. The Secretary must report quality measures that relate to services furnished by the psychiatric hospitals and units on the CMS Web site.

2. Application of the Payment Update Reduction for Failure To Report for the FY 2015 Payment Determination and Subsequent Years

Beginning in FY 2014, section 1886(s)(4)(A)(i) of the Act requires the application of a 2.0 percentage point reduction to the applicable annual update to a Federal standard rate for those psychiatric hospitals and psychiatric units that fail to comply with the quality reporting requirements implemented in accordance with section 1886(s)(4)(C) of the Act, as detailed below. The application of the reduction may result in an annual update for a fiscal year that is less than 0.0 percent and in payment rates for a fiscal year being less than the payment rates for the preceding fiscal year. Pursuant to section 1886(s)(4)(B) of the Act, any such reduction is not cumulative and will apply only to the fiscal year involved. In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53678), we adopted requirements regarding the application of the payment reduction to the annual update of the standard Federal rate for failure to report data on measures selected for the FY 2014 payment determination and subsequent years and added new regulatory text at 42 CFR 412.424 to codify these requirements.

3. Covered Entities

In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53645), we established that the IPFQR Program's quality reporting requirements cover those psychiatric hospitals and psychiatric units paid under Medicare's IPF PPS (42 CFR 412.404(b)). Generally, psychiatric hospitals and psychiatric units within acute care and critical access hospitals that treat Medicare patients are paid under the IPF PPS. For more information on the application of, and exceptions to, payments under the IPF PPS, we refer readers to section IV. of the November 15, 2004 IPF PPS final rule (69 FR 66926). As we noted in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53645), we use the term ''inpatient psychiatric facility'' (IPF) to refer to both inpatient psychiatric hospitals and psychiatric units. This usage follows the terminology that we have used in the past in our IPF PPS regulations (42 CFR 412.402).

4. Considerations in Selecting Quality Measures

In implementing the IPFQR Program, our overarching objective is to support the HHS National Quality Strategy (NQS) and CMS Quality Strategy's goal for better health care for individuals, better health for populations, and lower costs for health care services. More information on the CMS Quality Strategy can be found at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.html.* Implementation of the IPFQR Program works to achieve the goals of the CMS Quality Strategy by promoting transparency around the quality of care provided at IPFs to support patient decision-making and drive quality improvement, as well as to further the alignment of quality measurement and improvement goals at IPFs with those of other health care providers.

For purposes of the IPFQR Program, section 1886(s)(4)(D)(i) of the Act requires that any measure specified by the Secretary must have been endorsed by the entity with a contract under section 1890(a) of the Act. However, the statutory requirements under section 1886(s)(4)(D)(ii) of the Act provide an exception 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 entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed provided due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

We seek to collect data in a manner that balances the need for information related to the full spectrum of quality performance and the need to minimize the burden of data collection and reporting. We have focused on measures that have high impact and support CMS and HHS priorities for improved quality and efficiency of care provided by IPFs. We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53645 through 53646) for a detailed discussion of the considerations taken into account for measure development and selection.

Measures proposed for the program were included in a publicly available document entitled ''List of Measures under Consideration for December 1, 2013'' in compliance with section 1890A(a)(2) of the Act, and they were reviewed by the MAP in its ''MAP Pre-Rulemaking Report: 2014 Recommendations on Measures for More than 20 Federal Programs,'' which is available on the NQF Web site a *http://www.qualityforum.org/Setting_Priorities/Partnership/Measure_Applications_Partnership.aspx.* We considered the input and recommendations provided by the MAP in selecting measures to propose for the IPFQR Program at this time.

5. Quality Measures

a. Proposed Quality Measures for the FY 2016 Payment Determination and Subsequent Years

In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53646 through 53652), we adopted six chart-abstracted IPF quality measures for the FY 2014 payment determination and subsequent program years.

We note that, at the time that we adopted the measures in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53258), providers were using ICD–9–CM codes. We are proposing the conversion of ICD–9–CM to ICD–10–CM/PCS codes for the IPF PPS in this proposed rule, but in light of PAMA, the effective date of those changes would be the date when ICD–10 becomes the required medical data code set for use on Medicare claims. We do not anticipate that this change will have substantive effects on any measures at this time. CMS will update the user manual, discussed further in section V below to reflect any necessary measure updates. Generally, measures adopted for the IPFQR Program will remain in the Program for all subsequent years, unless and until specifically stated otherwise (such as, for example, through removal or replacement).

In the FY 2014 IPPS/LTCH PPS final rule (78 FR 50890 through 50895), we added one new chart-abstracted measure for the IPFQR Program: Alcohol Use Screening (SUB–1) (NQF #1661). We also added one new claims-based measure: Follow-Up After Hospitalization for Mental Illness (FUH) (NQF #0576). Both measures apply to the FY 2016 payment determination and subsequent years, unless and until we change them through future rulemaking.

The table below sets out the previously adopted measures.

TABLE 12—PREVIOUSLY ADOPTED QUALITY MEASURES FOR THE IPFQR PROGRAM

National quality strategy priority	NQF No.	Measure ID	Measure description
Patient Safety	0640	HBIPS–2	Hours of Physical Restraint Use *
	0641	HBIPS–3	Hours of Seclusion Use *
Clinical Quality of Care	0552	HBIPS–4	Patients Discharged on Multiple Antipsychotic Medications *
	0560	HBIPS–5	Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification *
	1661	SUB–1	Alcohol Use Screening **
	0576	FUH	Follow-Up After Hospitalization for Mental Illness **
Care Coordination	0557	HBIPS–6	Post-Discharge Continuing Care Plan Created *
	0558	HBIPS–7	Post-Discharge Continuing Care Plan Transmitted to Next Level of Care Provider Upon Discharge *

* Quality measures adopted in the FY 2013 IPPS/LTCH PPS final rule for the FY 2014 payment determination and subsequent years.
** Quality measures adopted in the FY 2014 IPPS/LTCH PPS final rule for the FY 2016 payment determination and subsequent years.

We note that in the FY 2014 IPPS/LTCH PPS final rule (78 FR 50896 through 50897 and 50900), we also adopted for the FY 2016 payment determination and subsequent years a voluntary collection of information—IPF Assessment of Patient Experience of Care (now renamed Assessment of Patient Experience of Care), which was to be collected using a Web-Based Measures Tool, and which would not affect an IPF's FY 2016 payment determination. We also noted that we intend to propose to make this a mandatory measure in future rulemaking (78 FR 50897), which we do in this proposed rule.

b. Proposed Quality Measures for the FY 2016 Payment Determination and Subsequent Years

We are proposing to add two new measures to the IPFQR Program to those already adopted for the FY 2016 payment determination and subsequent years: (1) Assessment of Patient Experience of Care; and (2) Use of an Electronic Health Record. We are not proposing to remove or replace any of the previously adopted measures from the IPFQR Program for FY 2016. These two measures will be captured in the IPF Web-based Measure Tool, which can be accessed through the QualityNet home page at: *http://www.qualitynet.org/dcs/ContentServer?pagename=QnetPublic/Page/QnetHomepage.* The Tool will be updated so when IPFs submit their data for FY 2016 (between July 1, 2015 and August 15, 2015) there will be a place to provide responses to these two structural measures.

1. Assessment of Patient Experience of Care

Improvement of experience of care for patients, families, and caregivers is one of our objectives within the CMS Quality Strategy and is not currently addressed in the IPFQR Program. Surveys of individuals about their experience in all health care settings provide important information as to whether or not high-quality, person-centered care is actually provided and address elements of service delivery that matter most to recipients of care.

We included the measure ''Inpatient Consumer Survey (ICS) Consumer Evaluation of Inpatient Behavioral Healthcare Services'' (NQF #0726) in our ''List of Measures under Consideration for December 1, 2102.'' The measure would have gathered clients' evaluation of their inpatient care based on six domains—outcome, dignity, rights, treatment, environment, and empowerment. The MAP provided input on the measure and supported its inclusion in the IPFQR Program. However, we did not propose to adopt

the measure in the FY 2014 IPPS/LTCH PPS proposed rule for several reasons, including potential reporting and information collection burdens in a new program, and compatibility with the content and format of other similar CMS beneficiary surveys (78 FR 27740 and 78 FR 50896). We also recognized the challenges of measuring patient experience of care, particularly for involuntary cases and geriatric psychiatric patients suffering from dementia. In addition, we recognized that IPFs may have developed their own survey instruments, which we wanted to learn more about prior to requiring collection of a patient experience of care survey for the IPFQR (78 FR 50897). Instead, we indicated our intention to pursue the adoption of a standardized measure of patient experience of care for the IPFQR program in the near future.

In the final rule, in an effort to proceed cautiously with the selection of an assessment instrument and collection protocol, and as an intermediate measure, we implemented a voluntary collection of information on whether IPFs administer a detailed assessment of patient experience of care using a standardized collection protocol and a structured instrument. If the IPFs answered ''Yes,'' we also asked them to indicate the name of the survey that they administer. We indicated our intention to propose to change this request for voluntary information into a mandatory measure in future rulemaking. We are now proposing to make this request a required structural measure for the FY 2016 payment determination.

The measure ''Inpatient Psychiatric Facility Routinely Assesses Patient Experience of Care'' (now, ''Assessment of Patient Experience of Care'') was included on our ''List of Measures under Consideration for December 1, 2013.'' The measure asks IPFs whether they routinely assess patient experience of care using a standardized collection protocol and a structured instrument. The MAP supported this measure, but encouraged its eventual replacement with a robust survey of patient experience and a measure based on consumer-reported information, such as a CAHPS tool. We believe the reporting of this measure will begin to provide information on a priority area of the HHS National Quality Strategy that is currently unaddressed in the IPFQR program, that of patient and family engagement and experience of care. Further, the information gathered through the collection of this measure will be helpful in the development of a standardized survey of patient assessment of care that we intend to develop as a successor to this measure.

Because this is a structural measure that does not depend on systems for collecting and abstracting individual patient information, only requires simple attestation, and does not require extended time to prepare to report, we believe that it will not be burdensome to IPFs. Accordingly, we are proposing to include it as a mandatory measure for the FY 2016 payment determination, a year earlier than for other measures proposed in this rule that are dependent on these systems.

The proposed measure is currently not NQF-endorsed. Section 1886(s)(4)(D)(ii) of the Act authorizes the Secretary to specify a measure that is not endorsed by the NQF as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. We attempted to find available measures that have been endorsed or adopted by a consensus organization and found no other feasible and practical measures on the topic of patient experience of care for the IPF setting. Therefore, we believe that the Assessment of Patient Experience of Care proposed measure meets the measure selection exception requirement under section 1886(s)(4)(D)(ii) of the Act.

2. Use of an Electronic Health Record (EHR)

In 2009, as part of the Health Information Technology for Economic and Clinical Health (HITECH) Act, incentives were provided to encourage eligible hospitals and eligible professionals to adopt EHR systems. The widespread adoption of these systems holds the potential to support multiple goals of CMS' quality strategy, including making care safer and more affordable, and promoting coordination of care. One review of over a hundred studies of the effects of EHRs showed that nearly all demonstrated positive overall results.[1] These results were most frequently demonstrated in the areas of efficiency and effectiveness of care, patient safety and satisfaction, and process of care.[2]

Positive results such as these depend in part on the ways in which an EHR system is used. EHRs can facilitate the use of clinical decision support tools, physician order entry systems, and health information exchange. The concept of ''meaningful use'' of EHRs captures the goals for which incentive payments are made. These goals include: Quality improvement, safety, and efficiency; health disparities reduction; patient and family engagement; care coordination improvement and population health; and maintenance of the privacy and security of patient health information.[3]

We believe that a measure of the degree of EHR implementation provides important information about an element of IPF service delivery shown to be associated with the delivery of quality care. Further, we believe that it provides useful information to consumers and others in choosing among different facilities.

A key issue in EHR adoption and implementation is the use of this technology to support health information exchange. HHS has a number of initiatives designed to encourage and support the adoption of health information technology and promote nationwide health information exchange to improve health care. The Office of the National Coordinator for Health Information Technology (ONC) and CMS work to promote the adoption of health information technology. Through a number of activities, HHS is promoting the adoption of ONC-certified electronic health records (EHRs) developed to support secure, interoperable health information exchange. While ONC-certified EHRs are not yet available for IPFQRs and other providers who are not eligible for the Medicare and Medicaid EHR Incentive Programs, ONC has requested that the HIT Policy Committee (a Federal Advisory Committee) explore the expansion of EHR certification under the ONC HIT Certification Program, focusing on EHR certification criteria needed for long-term and post-acute care (including LTCHs), and behavioral health care providers. ONC has also proposed a Voluntary 2015 Edition EHR Certification rule (79 FR 10880) that would increase the flexibility in ONC's regulatory structure to more easily accommodate health IT certification for other types of health care settings where individual or institutional health care providers are not typically eligible to qualify for the Medicare and Medicaid EHR Incentive Programs.

We believe that the use of certified EHRs by IPFs (and other providers ineligible for the Medicare and

[1] M.B. Buntin, M.F. Burke, M.C. Hoaglin et al., ''The Benefits of Health Information Technology: A Review of the Recent Literature Shows Predominantly Positive Results,'' Health Affairs, March 2011 30(3):464–71.

[2] Ibid.

[3] HealthIT.gov, ''EHR Incentives & Certification: Meaningful Use Definition & Objectives.'' [Internet Cited 2014 February 11]. Available from *http://www.healthit.gov/providers-professionals/meaningful-use-definition-objectives.*

Medicaid EHR Incentive programs) can effectively and efficiently help providers improve internal care delivery practices, support the exchange of important information across care partners and during transitions of care, and could enable the reporting of electronically specified clinical quality measures (eCQMs) (as described elsewhere in this rule). More information on the proposed rule on voluntary 2015 Edition EHR Certification, identification of EHR certification criteria and development of standards applicable to IPFQRs can be found at:

- *http://www.healthit.gov/policy-researchers-implementers/standards-and-certification-regulations*
- *http://www.healthit.gov/facas/FACAS/health-it-policy-committee/hitpc-workgroups/certificationadoption*
- *http://wiki.siframework.org/LCC+LTPAC+Care+Transition+SWG*
- *http://wiki.siframework.org/Longitudinal+Coordination+of+Care*

We included the measure, ''IPF Use of an Electronic Health Record Meeting Stage 1 or Stage 2 Meaningful Use Criteria'' (now, ''Use of an Electronic Health Record'') in the ''List of Measures under Consideration for December 1, 2013.'' The measure would assess the degree to which facilities employ EHR systems in their service program and use such systems to support health information exchange at times of transitions in care. It is a structural measure that only requires the facility to attest to which one of the following statements best describes the facility's highest level typical use of an EHR system (excluding the billing system) during the reporting period, and whether this use includes the exchange of interoperable health information with a health information service provider:

a. The facility most commonly used paper documents or other forms of information exchange (e.g., email) NOT involving transfer of health information using EHR technology at times of transitions in care.

b. The facility most commonly exchanged health information using non-certified EHR technology (i.e., not certified under the ONC HIT Certification Program) at times of transitions in care.

c. The facility most commonly exchanged health information using certified EHR technology (certified under the ONC HIT Certification Program) at times of transitions in care.

We would also ask IPFs to indicate whether transfers of health information at times of transitions in care included the exchange of interoperable health information with a health information service provider (HISP).

In its 2014 report:

(*https://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=74634*), the MAP concluded that it does not support this measure because it does not adequately address any current needs of the program. The MAP noted that psychiatric hospitals were excluded from the EHR Incentive Programs and imposing the measure criteria is not realistic. The MAP also expressed concerns about using quality reporting programs to collect data on systems and infrastructure and suggested that the American Hospital Association's survey of hospitals may be a better source for this type of data.

We disagree with the MAP's contention that the purpose of this measure is to collect data on systems and infrastructure. The purpose of the measure is to assess the use of processes for the collection, use, and transmission of medical information that have been demonstrated to impact the quality of care, rather than to collect data on systems and infrastructure. As we have described above, many studies document the benefits of EHR use on multiple dimensions related to health care quality, and to multiple goals of CMS' quality strategy. Additionally, this is a structural measure that does not depend on systems for collecting and abstracting individual patient information and, therefore, is not burdensome on IPFs. Accordingly, we are proposing to adopt it as a measure for FY 2016 payment determination, a year earlier than for other measures proposed in this rule that are dependent on such systems.

The Use of an Electronic Health Record proposed measure is not NQF-endorsed. Section 1886(s)(4)(D)(ii) of the Act authorizes the Secretary to specify a measure that is not endorsed by the NQF as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. We attempted to find available measures that have been endorsed or adopted by a consensus organization and found no other feasible and practical measures on the topic of the degree to which facilities employ an EHR system in their program. Therefore, we believe that the Use of an Electronic Health Record proposed measure meets the measure selection exception requirement under section 1886(s)(4)(D)(ii) of the Act.

c. Proposed Quality Measures for the FY 2017 Payment Determination and Subsequent Years

We are proposing to add four quality measures to the IPFQR Program for the FY 2017 payment determination and subsequent years: (1) Influenza Immunization (IMM–2); (2) Influenza Vaccination Coverage Among Healthcare Personnel; (3) Tobacco Use Screening (TOB–1); and (4) Tobacco Use Treatment Provided or Offered (TOB–2) and Tobacco Use Treatment (TOB–2a).

1. Influenza Immunization (IMM–2) (NQF #1659)

Increasing influenza (flu) vaccination can reduce unnecessary hospitalizations and secondary complications, particularly among high risk populations such as the elderly.[4] Each year, approximately 226,000 people in the U.S. are hospitalized with complications from influenza, and between 3,000 and 49,000 die from the disease and its complications.[5]

Vaccination is the most effective method for preventing influenza virus infection and its potentially severe complications, and vaccination is associated with reductions in influenza among all age groups.[6] The Advisory Committee on Immunization Practices (ACIP) recommends seasonal influenza vaccination for all persons six months of age and older, thereby stressing the importance of influenza prevention. Evidence from a Veteran's Affairs locked behavioral psychiatric unit with 26 patients and 40 staff during an influenza outbreak demonstrates significant room for improvement in vaccination rates among IPFs.[7] In this study, 54 percent of the patients had not been vaccinated, and 36 percent of nonvaccinated patients manifested symptoms as compared with 25 percent of vaccinated patients.[8] We believe that the adoption of a measure that assesses influenza immunization in the IPF

[4] Centers for Disease Control and Prevention. ''People at High Risk of Developing Flu-Related Complications.'' [Internet Cited 2014 February 11]. Available from *http://www.cdc.gov/flu/about/disease/high_risk.htm.*

[5] Thompson W.W., Shay D.K., Weintraub E., Brammer L, Cox N, Anderson L.J., Fukuda. ''Mortality associated with influenza and respiratory syncytial virus in the United States.'' JAMA. 2003 January 8; 289 (2): 179–186.

[6] Centers for Disease Control and Prevention. Newsroom press release February 24, 2010. ''CDC's Advisory Committee on Immunization Practices (ACIP) Recommends Universal Annual Influenza Vaccination.'' [Internet Cited 2010 March 3]. Available from *http://www.cdc/media/pressrel/2010/r100224.htm.*

[7] Risa K.J., et al. ''Influenza outbreak management on a locked behavioral health unit.'' Am J Infect Control 2009;37:76–8.

[8] Ibid.

setting not only works toward reducing the rate of influenza infection, but also affords consumers and others useful information in choosing among different facilities.

We included the Influenza Immunization (NQF #1659) measure in the ''List of Measures under Consideration for December 1, 2013.'' The Influenza Immunization (IMM–2) chart-abstracted measure assesses inpatients, age 6 months and older, discharged during October, November, December, January, February, or March, who are screened for influenza vaccination status and vaccinated prior to discharge, if indicated. The numerator includes discharges that were screened for influenza vaccine status and were vaccinated prior to discharge, if indicated. The denominator includes inpatients, age 6 months and older, discharged during October, November, December, January, February, or March. The measure excludes patients who: Expire prior to hospital discharge or have an organ transplant during the current hospitalization; have a length of stay greater than 120 days; are transferred or discharged to another acute care hospital; or leave Against Medical Advice (AMA). We refer readers to *https://www.qualityforum.org/QPS/1659* for further technical specifications.

The MAP gave conditional support for the measure, concluding that it is not ready for implementation because it needs more experience or testing. In its 2014 final report, the MAP recognized that influenza immunization is important for healthcare personnel and patients, but cautioned that CDC and CMS need to collaborate on adjusting specifications for reporting from psychiatric units before the measure can be included in the IPFQR Program. CMS does not agree with this recommendation. Given previous experience with the use of this measure in inpatient settings and the clarity of specifications for it, CMS does not believe that additional experience or testing is needed before implementing this measure in IPFs, or that specifications need to be further adjusted for these facilities. We also believe that comments concerning collaboration with CDC largely apply to the following measure for influenza vaccination among healthcare personnel, which is explained in the discussion for that measure.

We believe that the IMM–2 proposed measure meets the measure selection criterion under section 1886(s)(4)(D)(ii) of the Act. This section 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 entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

This measure is not NQF-endorsed in the IPF setting and we could not find any other comparable measure that is specifically endorsed for the IPF setting. However, we believe that this measure is appropriate for the assessment of the quality of care furnished by IPFs for the reasons discussed above. Further, this measure has been endorsed by NQF for the ''Hospital/Acute care facility'' setting. Although not explicitly endorsed for use in IPF settings, we believe that the characteristics of IPFs as distinct part units of hospitals or freestanding hospitals are similar enough to hospitals/acute care facilities that this measure may be appropriately used in such facilities. Finally, the adoption of this measure in the IPFQR Program aligns with the Hospital Inpatient Quality Reporting (HIQR) Program, which also includes this measure in its measure set.

2. Influenza Vaccination Coverage Among HealthCare Personnel (NQF #0431)

Healthcare personnel (HCP) can serve as vectors for influenza transmission because they are at risk for both acquiring influenza from patients and transmitting it to patients, and HCP often come to work when ill.[9] An early report of HCP influenza infections during the 2009 H1N1 influenza pandemic estimated that 50 percent of infected HCP had contracted the influenza virus from patients or coworkers in the health care setting.[10] Influenza virus infection is common among HCP, with evidence suggesting that nearly one-quarter of HCP were infected during influenza season, but few recalled having influenza.[11] While it is difficult to precisely assess HCP influenza vaccination rates among IPFs because of varying state policies requiring hospitals to collect and report HCP vaccination coverage rates, evidence from a Veterans Affairs locked behavioral psychiatric unit with 26 patients and 40 staff during an influenza outbreak demonstrates significant room for improvement.[12] In this study, only 55 percent of all staff had been vaccinated, and 22 percent of nonvaccinated staff manifested symptoms as compared with 18 percent of vaccinated staff.[13] We believe that the adoption of a measure that assesses influenza vaccination among HCP in the IPF setting not only works toward improving the rate at which nonvaccinated HCPs manifest symptoms as compared with vaccinated HCPs, but also affords consumers and others useful information in choosing among different facilities.

We included the Influenza Vaccination Coverage Among Healthcare Personnel (NQF #0431) measure in the ''List of Measures under Consideration for December 1, 2013.'' The proposed measure assesses the percentage of HCP who receive the influenza vaccination. The measure is designed to ensure that reported HCP influenza vaccination percentages are consistent over time within a single healthcare facility, as well as comparable across facilities. The numerator includes HCP in the denominator population who, during the time from October 1 (or when the vaccine became available) through March 31 of the following year:

a. Received an influenza vaccination administered at the healthcare facility, or reported in writing (paper or electronic) or provided documentation that influenza vaccination was received elsewhere; or

b. Were determined to have a medical contraindication/condition of severe allergic reaction to eggs or to other component(s) of the vaccine, or history of Guillain-Barre Syndrome within 6 weeks after a previous influenza vaccination; or

c. Declined influenza vaccination; or

d. Had an unknown vaccination status or did not otherwise fall under any of the abovementioned numerator categories.

The denominator includes the number of HCP working in the healthcare facility for at least one working day between October 1 and March 31 of the following year, regardless of clinical responsibility or patient contact, and is calculated

[9] Wilde J.A., McMillan J.A., Serwint J, et al. ''Effectiveness of influenza vaccine in healthcare professionals: A randomized trial.'' JAMA 1999; 281: 908–913.

[10] Harriman K, Rosenberg J, Robinson S, et al. ''Novel influenza A (H1N1) virus infections among health-care personnel—United States, April-May 2009.'' Morb Mortal Wkly Rep. 2009; 58(23): 641–645.

[11] Elder AG, O'Donnell B, McCruden EA, et al. ''Incidence and recall of influenza in a cohort of Glasgow health-care workers during the 1993–4 epidemic: Results of serum testing and questionnaire.'' BMJ. 1996; 313:1241–1242.

[12] Risa K.J., et al. ''Influenza outbreak management on a locked behavioral health unit.'' Am J Infect Control 2009;37:76–8.

[13] Ibid.

separately for employees, licensed independent practitioners, and adult students/trainees and volunteers. The measure has no exclusions. We refer readers to *https://www.qualityforum.org/QPS/0431* and the Centers for Disease Control and Prevention's (CDC) Web site (*http://www.cdc.gov/nhsn/PDFs/HPS-manual/vaccination/HPS-flu-vaccine-protocol.pdf*) for further technical specifications.

The MAP gave conditional support for the measure, concluding that it is not ready for implementation because it needs more experience or testing. In its 2014 report, the MAP recognized that influenza immunization is important for healthcare personnel and patients, but cautioned that CDC and CMS need to collaborate on adjusting specifications for reporting from psychiatric units before the measure can be included in the IPFQR Program. CMS does not agree with this recommendation. As explained for the IMM–2 measure, given previous experience with the use of this measure and the clarity of its specifications, CMS does not believe that additional experience or testing is needed before implementing this measure in IPFs, or that specifications need to be further adjusted for these facilities. In response to comments concerning collaboration with CDC, CDC and CMS have conferred on this issue and language has been added to the description of this measure below that clarifies that IPFs will use the CDC National Healthcare Safety Network (NHSN) infrastructure and protocol to report the measure for IPFQR Program purposes. Neither CMS nor CDC believes that there are any coordination issues remaining for the implementation of this measure.

We believe that the Influenza Vaccination Coverage Among HealthCare Personnel proposed measure meets the measure selection criterion under section 1886(s)(4)(D)(ii) of the Act. This section 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 entity with a contract under section 1890(a) of the Act, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

This measure is not NQF-endorsed in the IPF setting and we could not find any other comparable measure that is specifically endorsed for the IPF setting. However, we believe that this measure is appropriate for the assessment of the quality of care furnished by IPFs for the reasons discussed above. Further, this measure has been endorsed by NQF for the ''Hospital/Acute care facility'' setting. Although not explicitly endorsed for use in IPF settings, we believe that the characteristics of IPFs as distinct part units of hospitals or freestanding hospitals mean that this measure may be appropriately used in such facilities.

We propose that IPFs use the CDC National Healthcare Safety Network (NHSN) infrastructure and protocol to report the measure for IPFQR Program purposes. We propose that IPF reporting of HCP influenza vaccination summary data to NHSN would begin for the 2015–2016 influenza season, from October 1, 2015, to March 31, 2016, with a reporting deadline of May 15, 2016. Although the collection period for this measure extends into the first quarter of the following calendar year, this measure data would be included with other measures that would be required for FY 2017 payment determination. Similarly, reporting for subsequent years would include results for the influenza season that begins in the last quarter of the applicable calendar year's reporting.

The adoption of this measure in IPFQR will align with both the HIQR and HOQR Programs. The Influenza Vaccination Coverage Among Healthcare Personnel (HCP) (NQF #0431) measure was finalized for the Hospital IQR program in the FY 2012 IPPS/LTCH PPS final rule (76 FR 51636), and the Hospital Outpatient Quality Reporting (HOQR) in the CY 2014 OPPS/ASC final rule (78 FR 75099), and the Ambulatory Surgical Center Quality Reporting (ASCQR) Program in the CY 2013 Hospital Outpatient Prospective Payment final rule (77 FR 68495).

We are aware of public concerns about the burden of separately collecting healthcare personnel (HCP) influenza vaccination status across inpatient and outpatient settings, in particular, distinguishing between the inpatient and outpatient setting personnel for reporting purposes. We also understand that some are unclear about how the measure would be reported to CDC's NHSN.

We believe reporting a single vaccination count for each healthcare facility by each individual facility's CMS Certification Number (CCN) would be less burdensome to IPFs than requiring them to distinguish between their inpatient and outpatient personnel. Therefore, we propose that, beginning with the 2015–2016 influenza season, IPFs would collect and report all HCP under each individual IPF's CCN and submit this single number to CDC's NHSN. Using the CCN would simplify data collection for healthcare facilities with multiple care settings. For each CMS CCN, a percentage of the HCP who received an influenza vaccination would be calculated and publically reported, so the public would know what percentage of the HCP have been vaccinated in each IPF. We believe this proposal would provide meaningful data that would help inform the public and healthcare facilities while improving the quality of care. Specific details on data submission for this measure can be found in an Operational Guidance available at: *http://www.cdc.gov/nhsn/acute-care-hospital/hcp-vaccination/* and at *http://www.cdc.gov/nhsn/acute-care-hospital/index.html.*

3. Tobacco Use Screening (TOB–1) (NQF #1651)

Tobacco use is currently the single greatest cause of disease in the U.S., accounting for more than 435,000 deaths annually.[14] Smoking is a known cause of multiple cancers, heart disease, stroke, complications of pregnancy, chronic obstructive pulmonary disease, other respiratory problems, poorer wound healing, and many other diseases.[15] This health issue is especially important for persons with mental illness and substance use disorders. One study has estimated that these individuals are twice as likely to smoke as the rest of the population, and account for nearly half of the total cigarette consumption in the U.S.[16] Tobacco use also creates a heavy cost to both individuals and society. Smoking-attributable health care expenditures are estimated at $96 billion per year in direct medical expenses and $97 billion in lost productivity.[17]

[14] Centers for Disease Control and Prevention. Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000–2004.'' Morb Mortal Wkly Rep. 2008. 57(45): 1226–1228. Available at: *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm.*

[15] U.S. Department of Health and Human Services. ''The health consequences of smoking: A report of the Surgeon General.'' Atlanta, GA, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2004.

[16] Lasser K, Boyd JW, Woolhandler S, Himmelstein, D.U., McCormick D, Bor D.H. Smoking and mental illness: A population-based prevalence study. JAMA. 2000;284(20):2606–2610.

[17] Centers for Disease Control and Prevention. ''Best Practices for Comprehensive Tobacco Control Programs—2007.'' Atlanta, GA, Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic

Continued

Strong and consistent evidence demonstrates that timely tobacco dependence interventions for patients using tobacco can significantly reduce the risk of suffering from tobacco-related disease, as well as provide improved health outcomes for those already suffering from a tobacco-related disease.[18] Research demonstrates that tobacco users hospitalized with psychiatric illnesses who enter into treatment can successfully overcome their tobacco dependence.[19] Evidence also suggests that tobacco cessation treatment does not increase, and may even decrease, the risk of rehospitalization for tobacco users hospitalized with psychiatric illnesses.[20] Research further demonstrates that effective tobacco cessation support across the care continuum can be provided with only a minimal additional effort and without harm to the mental health recovery process.[21] We believe that the adoption of a measure that assesses tobacco use screening among patients of IPFs encourages the uptake of tobacco cessation treatment and its attendant benefits. We further believe that the reporting of this measure would afford consumers and others useful information in choosing among different facilities.

The Tobacco Use Screening (TOB–1) chart-abstracted proposed measure assesses hospitalized patients who are screened within the first three days of admission for tobacco use (cigarettes, smokeless tobacco, pipe, and cigar) within the previous 30 days. The numerator includes the number of patients who were screened for tobacco use status within the first 3 days of admission. The denominator includes the number of hospitalized inpatients 18 years of age and older. The measure excludes patients who: Are less than 18 years of age; are cognitively impaired; have a duration of stay less than or equal to 3 days, or greater than 120 days; or have *Comfort Measures Only* documented.

We refer readers to: *http://www.jointcommission.org/specifications_manual_for_national_hospital_inpatient_quality_measures.aspx* for further details on measure specifications.

In the ''List of Measure under Consideration for December 1, 2013,'' we originally proposed a similar measure to that proposed here, which was ''Preventive Care & Screening: Tobacco Use: Screening & Cessation Intervention (NQF 0028).'' However, the MAP determined that this measure did not meet the needs of the program and instead recommended we adopt an alternate measure from the Joint Commissions suite of measures for inpatient settings, which we are now proposing. This measure, and the following one (TOB–2 and 2a), best reflect the activities encompassed by the original NQF 0028 measure.

The proposed measure was NQF-endorsed on March 7, 2014, and meets the measure selection criterion under section 1886(s)(4)(D)(i) of the Act.

4. Tobacco Use Treatment Provided or Offered (TOB–2) and Tobacco Use Treatment (TOB–2a) (NQF #1654)

As stated in our discussion of the proposed TOB–1 measure, tobacco use is currently the single greatest cause of disease in the U.S. We also indicated that research demonstrates that timely tobacco cessation treatment for hospitalized tobacco users with psychiatric illnesses may decrease the risk of rehospitalization, have only a minimal additional effort, and not harm the mental health recovery process. We believe that the adoption of a measure that assesses tobacco use screening treatment among IPFs encourages the uptake of tobacco cessation treatment and its attendant benefits. We further believe that the reporting of this measure would afford consumers and others useful information in choosing among different facilities.

The Tobacco Use Treatment Provided or Offered (TOB–2) and Tobacco Use Treatment (TOB–2a) chart-abstracted proposed measure is reported as an overall rate that includes all patients to whom tobacco use treatment was provided, or offered and refused, and a second rate, a subset of the first, which includes only those patients who received tobacco use treatment. The overall rate, TOB–2, assesses patients identified as tobacco product users within the past 30 days who receive or refuse practical counseling to quit, and receive or refuse Food and Drug Administration (FDA)-approved cessation medications during the first 3 days following admission. The numerator includes the number of patients who received or refused practical counseling to quit, and received or refused FDA-approved cessation medications during the first 3 days after admission.

The second rate, TOB–2a, assesses patients who received counseling and medication, as well as those who received counseling and had reason for not receiving the medication during the first 3 days following admission. The numerator includes the number of patients who received practical counseling to quit and received FDA-approved cessation medications during the first 3 days after admission.

The denominator for both TOB–2 and TOB–2a includes the number of hospitalized inpatients 18 years of age and older identified as current tobacco users. The measure excludes patients who: Are less than 18 years of age; are cognitively impaired; are not current tobacco users; refused or were not screened for tobacco use during the hospital stay; have a duration of stay less than or equal to 3 days, or greater than 120 days; or have *Comfort Measures Only* documented.

We refer readers to:*http://www.jointcommission.org/specifications_manual_for_national_hospital_inpatient_quality_measures.aspx* for further details on measure specifications.

As with the proposed TOB–1 measure, and for the same reasons, we are proposing this measure on the recommendation of the MAP.

The proposed measure was NQF-endorsed on March 7, 2014, and meets the measure selection criteria under section 1886(s)(4)(D)(i) of the Act. We also note that we are not proposing to adopt at this time two other tobacco treatment measures that are part of the set from which TOB–1, TOB–2 and TOB2a are taken. This is because the two measures we are proposing best encompass the activities that we originally proposed to measure through the use of the NQF 0028 measure, and best assess activities demonstrated to produce positive results in tobacco use reduction. Additionally, we believe that the other measures represent a significantly greater collection and reporting burden. We welcome comments on this choice as well as any other alternatives for measurement of this area.

d. Summary of Proposed Measures

In addition to the eight measures that we previously finalized for the IPFQR Program, we are proposing two additional new measures for reporting for the FY 2016 payment determination and subsequent years. We are also proposing four additional new measures

Disease Prevention and Health Promotion, Office on Smoking and Health, 2007.

[18] U.S. Department of Health and Human Services. ''The health consequences of smoking: A report of the Surgeon General.'' Atlanta, GA, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2004.

[19] Prochaska, J.J., et al. ''Efficacy of Initiating Tobacco Dependence Treatment in Inpatient Psychiatry: A Randomized Controlled Trial.'' Am. J. Pub. Health. 2013 August 15; e1–e9.

[20] Ibid.

[21] Ibid.

for the FY 2017 payment determination and subsequent years. The tables below list the proposed new measures for the FY 2016 and FY 2017 payment determinations and subsequent years.

TABLE 13—PROPOSED NEW QUALITY MEASURES FOR THE IPFQR PROGRAM FOR FY 2016 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

National quality strategy priority	NQF No.	Measure ID	Measure description
Patient- and Caregiver-Centered Experience of Care	N/A	N/A	Assessment of Patient Experience of Care.
Effective Communication and Coordination of Care	N/A	N/A	Use of an Electronic Health Record.

TABLE 14—PROPOSED NEW QUALITY MEASURES FOR THE IPFQR PROGRAM FOR FY 2017 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

National quality strategy priority	NQF No.	Measure ID	Measure description
Population/Community Health	1659	IMM–2	Influenza Immunization.
Population/Community Health	0431	N/A	Influenza Vaccination Coverage Among Healthcare Personnel.
Clinical Quality of Care	1651	TOB–1	Tobacco Use Screening.
Clinical Quality of Care	1654	TOB–2 TOB–2a	Tobacco Use Treatment Provided or Offered and Tobacco Use Treatment.

We welcome public comments on the Assessment of Patient Experience of Care, Use of an Electronic Health Record, IMM–2, Influenza Vaccination Coverage Among Healthcare Personnel, TOB–1, and TOB–2 proposed measures.

e. Additional Proposed Procedural Requirements for the FY 2017 Payment Determination and Subsequent Years

In addition to the quality measures that we have described above, we are proposing that IPFs must, beginning with reporting for the FY 2017 payment determination, submit to CMS aggregate population counts for Medicare and non-Medicare discharges by age group, diagnostic group, and quarter, and sample size counts for measures for which sampling is performed (as is allowed for in HBIPS–4–7, and SUB–1). These requirements are separate from those described under subsection c of the section entitled ''Form, Manner, and Timing of Quality Data Submission.'' That subsection describes the population, sample size, and minimum reporting case threshold requirements for individual measures, while this section describes the collection of general population and sampling data that will assist in determining compliance with those requirements. We believe that it is vital for IPFs to accurately determine and submit to CMS their population and sampling size data in order for CMS to assess IPFs' data reporting completeness for their total population, both Medicare and non-Medicare. In addition to helping us better assess the quality and completeness of measure data, we expect that this information will improve our ability to assess the relevance and impact of potential future measures. For example, understanding that the size of subgroups of patients addressed by a particular measure varies greatly over time could be helpful in assessing the stability of reported measure values, and subsequent decisions concerning measure retention. Similarly, better understanding of the size of particular subgroups in the overall population will assist us in making choices among potential future measures specific to a particular subgroup (e.g., those with depression).

We further propose that the form, manner, and timing of this submission would follow the policies discussed at section VIII. of this preamble, and that failure to provide this information would be subject to the 2.0 percentage point reduction in the annual update for any IPF that does not comply with quality data submission requirements, pursuant to section 1886(s)(4)(A)(i) of the Act.

f. Maintenance of Technical Specifications for Quality Measures

We will provide a user manual that will contain links to measure specifications, data abstraction information, data submission information, a data submission mechanism known as the Web-based Measures Tool, and other information necessary for IPFs to participate in the IPFQR Program. This manual will be posted on the QualityNet Web site at: *https://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier2&cid=1228772250192*. We will maintain the technical specifications for the quality measures by updating this manual periodically and including detailed instructions for IPFs to use when collecting and submitting data on the required measures. These updates will be accompanied by notifications to IPFQR Program participants, providing sufficient time between the change and effective dates in order to allow users to incorporate changes and updates to the measure specifications into data collection systems.

Many of the quality measures used in different Medicare and Medicaid reporting programs are endorsed by the National Quality Forum (NQF). As part of its regular maintenance process for endorsed performance measures, the NQF requires measure stewards to submit annual measure maintenance updates and undergo maintenance of endorsement review every 3 years. In the measure maintenance process, the measure steward (owner/developer) is responsible for updating and maintaining the currency and relevance of the measure and will confirm existing or minor specification changes with NQF on an annual basis. NQF solicits information from measure stewards for annual reviews, and it reviews measures for continued endorsement in a specific 3-year cycle.

We note that NQF's annual or triennial maintenance processes for endorsed measures may result in the NQF requiring updates to the measures in order to maintain endorsement status. We believe that it is important to have in place a subregulatory process to incorporate nonsubstantive updates required by the NQF into the measure specifications we have adopted for the HAC Reduction Program, so that these measures remain up-to-date.

The NQF regularly maintains its endorsed measures through annual and triennial reviews, which may result in the NQF making updates to the measures. We believe that it is important to have in place a subregulatory process to incorporate non-substantive updates required by the NQF into the measure specifications we have adopted for the IPFQR Program so that these measures remain up-to-date. We also recognize that some changes the NQF might require to its endorsed measures are substantive in nature and might not be appropriate for adoption using a subregulatory process. Therefore, in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53503 through 53505), we finalized a policy under which we will use a subregulatory process to make only non-substantive updates to measures used for the IPFQR Program (77 FR 53653). With respect to what constitutes substantive versus non-substantive changes, we expect to make this determination on a case-by-case basis. Examples of non-substantive changes to measures might include updated diagnosis or procedure codes, medication updates for categories of medications, broadening of age ranges, and exclusions for a measure (such as the addition of a hospice exclusion to the 30-day mortality measures). We believe that non-substantive changes may include updates to NQF-endorsed measures based upon changes to guidelines upon which the measures are based. As stated in the FY 2013 IPPS/LTCH PPS final rule, we will revise the manual so that it clearly identifies the updates and provides links to where additional information on the updates can be found. We will also post the updates on the QualityNet Web site at *https://www.QualityNet.org.* We will provide 6 months for facilities to implement changes where changes to the data collection systems would be necessary.

We will continue to use rulemaking to adopt substantive updates required by the NQF to the endorsed measures we have adopted for the IPFQR Program. Examples of changes that we might consider to be substantive would be those in which the changes are so significant that the measure is no longer the same measure, or when a standard of performance assessed by a measure becomes more stringent (for example: Changes in acceptable timing of medication, procedure/process, or test administration). Another example of a substantive change would be where the NQF has extended its endorsement of a previously endorsed measure to a new setting, such as extending a measure from the inpatient setting to hospice. These policies regarding what is considered substantive versus non-substantive would apply to all measures in the IPFQR Program. We also note that the NQF process incorporates an opportunity for public comment and engagement in the measure maintenance process.

We believe this policy adequately balances our need to incorporate technical updates to all IPFQR Program measures in the most expeditious manner possible while preserving the public's ability to comment on updates that so fundamentally change an endorsed measure that it is no longer the same measure that we originally adopted. We invite public comments on this proposal.

6. New Quality Measures for Future Years

As we have previously indicated, we seek to develop a comprehensive set of quality measures to be available for widespread use for informed decision-making and quality improvement in the inpatient psychiatric facilities setting. Therefore, through future rulemaking, we intend to propose new measures that will help further our goal of achieving better health care and improved health for Medicare beneficiaries who obtain inpatient psychiatric services through the widespread dissemination and use of quality information.

As part of the 2013 Measures under Consideration (*http://www.qualityforum.org/Setting_Priorities/Partnership/Measures_Under_Consideration_List.aspx*), we identified ten possible measures for the IPFQR Program. We have proposed four of these measures for adoption in this proposed rule. Five of the measures are currently undergoing testing, and we anticipate that one or more would be proposed for adoption in the near future. These measures are:

- Suicide Risk Screening completed within one day of admission
- Violence Risk Screening completed within one day of admission
- Drug Use Screening completed within one day of admission
- Alcohol Use Screening completed within one day of admission
- Metabolic Screening

We also are currently planning to develop a 30-day psychiatric readmission measure. Similar to readmission measures currently in use for other CMS quality reporting programs such as the Hospital Inpatient Quality Reporting Program, we envision that this measure would encompass all 30-day readmissions for discharges from IPFs, including readmissions for non-psychiatric diagnoses. Additionally, we intend to develop a standardized survey of patient experience of care tailored for use in inpatient psychiatric settings, but also sharing elements with similar surveys in use in other CMS reporting programs.

We further anticipate that we will recommend additional measures for development or adoption in the future. We intend to develop a measure set that effectively assesses IPF quality across the range of services and diagnoses, encompasses all of the goals of the CMS quality strategy, addresses measure gaps identified by the MAP and others, and minimizes collection and reporting burden. Finally, we may propose the removal of some measures in the future, should one or more no longer reflect significant variation in quality among IPFs, or prove to be less effective than alternative measures in measuring the intended focus area.

We welcome public comments on any aspect of these plans for measure development, recommendations for adoption of other measures for the IPFQR Program, particularly related to measures of access, or suggestions for domains or topics for future measure development.

7. Proposed Public Display and Review Requirements

Section 1886(s)(4)(E) of the Act requires the Secretary to establish procedures for making the data submitted under the IPFQR Program available to the public. The statute also requires that these procedures shall ensure that an IPF has the opportunity to review the data that is to be made public with respect to the IPF prior to the data being made public.

In the FY 2014 IPPS/LTCH PPS final rule (78 FR 50897 through 50898), we adopted our proposal to change our policies to better align the IPFQR Program preview and display periods with those under the Hospital IQR Program. For the FY 2014 payment determination and subsequent years, we adopted our proposed policy to publicly display the submitted data on a CMS Web site in April of each calendar year following the start of the respective payment determination year. In other words, the public display period for the FY 2014 payment determination would be April 2014; the public display periods for the FY 2015 and FY 2016 payment determinations would be April 2015 and April 2016 respectively, and so forth. We also adopted our proposed policy that the preview period for the FY 2014 payment determination and subsequent years be modified from

September 20 through October 19 (78 FR 50898) to 30 days, approximately twelve weeks prior to the public display of the data. The table below sets out the public display timeline.

TABLE 15—PUBLIC DISPLAY TIMELINE

Payment determination (fiscal year)	Reporting period (calendar year)	Public display (calendar year)
2015	Q2 2013 (April 1, 2013–June 30, 2013) Q3 2013 (July 1, 2013–September 30, 2013). Q4 2013 (October 1, 2013–December 31, 2013).	April 2015.
2016	Q1 2014 (January 1, 2014–March 31, 2014) Q2 2014 (April 1, 2014–June 30, 2014). Q3 2014 (July 1, 2014–September 30, 2014). Q4 2014 (October 1, 2014–December 31, 2014).	April 2016.
2017	Q1 2015 (January 1, 2015–March 31, 2015) Q2 2015 (April 1, 2015–June 30, 2015). Q3 2015 (July 1, 2015–September 30, 2015). Q4 2015 (October 1, 2015–December 31, 2015).	April 2017.

Although we have listed the public display timeline only for the FY 2015 through FY 2017 payment determinations, we wish to clarify that this policy applies to the FY 2015 payment determination and subsequent years. We are not proposing any changes to these policies.

8. Form, Manner, and Timing of Quality Data Submission

a. Procedural and Submission Requirements

Section 1886(s)(4)(C) of the Act requires that, for the FY 2014 payment determination and subsequent years, each IPF shall submit to the Secretary data on quality measures as specified by the Secretary. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary. As required by section 1886(s)(4)(A) of the Act, for any IPF that fails to submit quality data in accordance with section 1886(s)(4)(C) of the Act, the Secretary will reduce the annual update to a standard Federal rate for discharges occurring in such fiscal year by 2.0 percentage points. In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53655 through 53656), we finalized a policy requiring that IPFs submit aggregate data on measures on an annual basis via the Web-Based Measures Tool found in the IPF section on the QualityNet Web site. The complete data submission requirements, submission deadlines, and data submission mechanism, known as the Web-Based Measures Tool, are posted on the QualityNet Web site at: *http://www.qualitynet.org/.* The data input forms on the QualityNet Web site for submission require aggregate data for each separate quarter. Therefore, IPFs need to track and maintain quarterly records for their data. In that final rule, we also clarified that this policy applies to all subsequent years, unless and until we change our policy through future rulemaking.

In order to participate in the IPFQR Program, in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53654 through 53655) and in the FY 2014 IPPS/LTCH PPS final rule (77 FR 50898 through 50899), we required IPFs to comply with certain procedural requirements. We refer readers to the FY 2014 IPPS/LTCH PPS final rule (77 FR 50898 through 50899) for further details on specific procedural requirements.

We are not proposing any changes to this policy.

b. Reporting Periods and Submission Timeframes

In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53655 through 53657), we established reporting periods and submission timeframes for the FY 2014, FY 2015, and FY 2016 payment determinations, but we did not require any data validation approach. However, as we stated in that final rule, we encourage IPFs to use a validation method and conduct their own analysis. In that final rule, we also explained that the reporting periods for the FY 2014 and FY 2015 payment determinations were 6 and 9 months, respectively, to allow us to achieve a 12-month (calendar year) reporting period for the FY 2016 payment determination. In the FY 2014 IPPS/LTCH PPS final rule (78 FR 50901), we clarified that the policy we adopted for the FY 2016 payment determination also applies to the FY 2017 payment determination and subsequent years unless we change it through rulemaking. We also indicated that the submission timeframe is between July 1 and August 15 of the calendar year in which the applicable payment determination year begins.

We are not proposing any changes to this submission timeframe, which we finalized in the FY 2014 IPPS/LTCH PPS final rule for all future payment determinations. IPFs will have the opportunity to review and correct data that they have submitted during the entirety of July 1–August 15. We have summarized this information in the table below.

TABLE 16—QUALITY REPORTING PERIODS AND SUBMISSION TIMEFRAMES FOR THE FY 2015 PAYMENT DETERMINATION AND SUBSEQUENT YEARS

Payment determination (fiscal year)	Reporting period for services provided (calendar year)	Data submission timeframe
Quality Reporting Periods and Submission Timeframes for the FY 2015 Payment Determination and Subsequent Years		
FY 2015	Q2 2013 (April 1, 2013–June 30, 2013) Q3 2013 (July 1, 2013–September 30, 2013). Q4 2013 (October 1, 2013–December 31, 2013).	July 1, 2014–August 15, 2014.

TABLE 16—QUALITY REPORTING PERIODS AND SUBMISSION TIMEFRAMES FOR THE FY 2015 PAYMENT DETERMINATION AND SUBSEQUENT YEARS—Continued

Payment determination (fiscal year)	Reporting period for services provided (calendar year)	Data submission timeframe
FY 2016	Q1 2014 (January 1, 2014–March 31, 2014) Q2 2014 (April 1, 2014–June 30, 2014). Q3 2014 (July 1, 2014–September 30, 2014). Q4 2014 (October 1, 2014–December 31, 2014).	July 1, 2015–August 15, 2015.
FY 2017	Q1 2015 (January 1, 2015–March 31, 2015) Q2 2015 (April 1, 2015–June 30, 2015). Q3 2015 (July 1, 2015–September 30, 2015). Q4 2015 (October 1, 2015–December 31, 2015).	July 1, 2016–August 15, 2016.

We have adopted the timeframes discussed above for all future payment years of the program, and these timeframes will remain in place unless and until we change them through future rulemaking. Therefore, our policy with respect to reporting timeframes is that the reporting period is the calendar year preceding the calendar year in which the payment determination year begins. The data submission timeframe is between July 1 and August 15 of the calendar year in which the applicable payment determination year begins. We will continue to provide charts with the specific reporting and data submission timeframes for future years as we approach those years.

c. Population, Sampling, and Minimum Case Threshold

In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53657 through 53658), for the FY 2014 payment determination and subsequent years, we finalized our proposed policy that participating IPFs must meet specific population, sample size, and minimum reporting case threshold requirements as specified in TJC's Specifications Manual. We refer readers to the FY 2014 IPPS/LTCH PPS final rule (78 FR 58901 through 58902). We are not proposing any changes to this policy. We refer participating IPFs to TJC's Specifications Manual (*https://manual.jointcommission.org/bin/view/Manual/WebHome*) for measure-specific population, sampling, and minimum case threshold requirements.

d. Data Accuracy and Completeness Acknowledgement (DACA) Requirements

In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53658), we finalized our proposed DACA policy for the FY 2014 payment determination and subsequent years. We refer readers to that final rule for further details on DACA policies.

We are not proposing any changes to the quarterly reporting periods and DACA deadline. Therefore, we will continue our adopted policy that the deadline for submission of the DACA form is no later than August 15 prior to the applicable IPFQR Program payment determination year. The table below summarizes these policies and timeframes.

TABLE 17—DACA SUBMISSION DEADLINE

Payment determination (fiscal year)	Reporting period for services provided (calendar year)	Submission timeframe	DACA deadline	Public display
2015	Q2 2013 (April 1, 2013–June 30, 2013) Q3 2013 (July 1, 2013–September 30, 2013). Q4 2013 (October 1, 2013–December 31, 2013).	July 1, 2014–August 15, 2014	August 15, 2014	April 2015.
2016	Q1 2014 (January 1, 2014–March 31, 2014) Q2 2014 (April 1, 2014–June 30, 2014). Q3 2014 (July 1, 2014–September 30, 2014). Q4 2014 (October 1, 2014–December 31, 2014).	July 1, 2015–August 15, 2015	August 15, 2015	April 2016.
2017	Q1 2015 (January 1, 2015–March 31, 2015) Q2 2015 (April 1, 2015–June 30, 2015). Q3 2015 (July 1, 2015–September 30, 2015). Q4 2015 (October 1, 2015–December 31, 2015).	July 1, 2016–August 15, 2016	August 15, 2016	April 2017.

We would like to clarify that the DACA policies adopted in the FY 2013 IPPS/LTCH PPS final rule will continue to apply for the FY 2014 payment determination and subsequent years unless and until we change these policies through our rulemaking process.

9. Reconsideration and Appeals Procedures

In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53658 through 53659), we adopted a reconsideration process, later codified at 42 CFR 412.434, whereby IPFs can request a reconsideration of their payment update reduction in the event that an IPF believes that its annual payment update has been incorrectly reduced for failure to report quality data under the IPFQR Program. We refer readers to that final rule, as well as the FY 2014 IPPS/LTCH PPS final rule (78 FR 50903), for further details on the reconsideration process.

10. Exceptions to Quality Reporting Requirements

In our experience with other quality reporting and/or performance programs, we have noted occasions where participants have been unable to submit required quality data due to extraordinary circumstances that are not within their control (for example, natural disasters). It is our goal to avoid penalizing IPFs in these circumstances or unduly increasing their burden during these times. Therefore, in the FY 2013 IPPS/LTCH PPS final rule (77 FR

53659 through 53660), we adopted a policy that, for the FY 2014 payment determination and subsequent years, IPFs may request, and we may grant, an exception with respect to the reporting of required quality data where extraordinary circumstances beyond the control of the IPF may warrant. We wish to clarify that use of the term ''exception'' in this proposed rule is synonymous with the term ''waiver'' as used in previous rules. We are in the process of revising the Extraordinary Circumstances/Disaster Extension or Waiver Request form (CMS–10432), approved under OMB control number 0938–1171. Revisions to the form are being addressed in the FY 2015 Inpatient Prospective Payment System (IPPS) rule (RIN 0938–AS11; CMS–1607–P) in the section entitled ''Hospital IQR Program Extraordinary Circumstances Extensions or Exemptions''. These efforts will work to facilitate alignment across CMS quality reporting programs.

When an exception is granted, IPFs will not incur payment reductions for failure to comply with IPFQR Program requirements. This process does not preclude us from granting exceptions, including extensions, to IPFs that have not requested them, should we determine that an extraordinary circumstance affects an entire region or locale. We refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53659 through 53660), as well as the FY 2014 IPPS/LTCH PPS final rule (78 FR 50903), for further details on this process. We are not proposing any changes to this process.

For the FY 2016 payment determination and subsequent years, we are proposing to add an Extraordinary Circumstances Exception to the IPFQR Program in order to align with similar exceptions provided for in other CMS quality reporting programs. Under this exception, we are proposing that we may grant a waiver or extension to IPFs if we determine that a systemic problem with one of our data collection systems directly affects the ability of the IPFs to submit data. Because we do not anticipate that these types of systemic errors will occur often, we do not anticipate granting a waiver or extension on this basis frequently. If we make the determination to grant a waiver or extension, we are proposing to communicate this decision through routine communication channels to IPFs, vendors, and quality improvement organizations (QIOs) by means of, for example, memoranda, emails, and notices on the QualityNet Web site.

We welcome public comment on this proposal.

IX. 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 are soliciting public comment on each of the section 3506(c)(2)(A)-required issues for the following information collection requirements (ICRs):

A. ICRs Regarding the Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program

This section IX.A sets out the estimated burden (hours and cost) for inpatient psychiatric facilities (IPFs) to comply with the reporting requirements proposed in this NPRM. It also restates the burden estimated in the FY 2013 and FY 2014 IPPS/LTCH PPS final rules.

In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53644), we finalized policies to implement the IPFQR Program. The Program implements the statutory requirements of section 1886(s)(4) of the Social Security Act, as added by sections 3401(f) and 10322(a) of the Affordable Care Act. One program priority is to help achieve better health and better health care for individuals through the collection of valid, reliable, and relevant measures of quality health care data. The data will be publicly posted and, therefore, available for use in improving health care quality which, in turn, works to further program goals. IPFs can use this quality data for many purposes, including in their risk management programs, patient safety and quality improvement initiatives, and research and development of mental health programs, among others.

As clarified throughout the FY 2014 IPPS/LTCH PPS final rule (78 FR 50887), policies finalized in prior rules will apply to FY 2015 unless and until we change them through future rulemaking. The burden on IPFs includes the time used for chart abstraction and for personnel training on the collection of chart-abstracted data, the aggregation of data, as well as training for the submission of aggregate-level data through QualityNet. We note that, beginning in the FY 2016 payment determination, as set out in this proposed rule, we have proposed to adopt the Assessment of Patient Experience of Care measure, thereby removing the request for voluntary information adopted in the FY 2014 IPPS/LTCH PPS final rule.

Based on current participation rates, we estimate that there will be approximately 574 fewer IPF facilities (or 1,626 facilities) nationwide eligible to participate in the IPFQR Program. Based on previous measure data submission, we further estimate that the average facility submits measure data on 556 cases per year. In total, this calculates to 904,056 cases (aggregate) per year.

In section V of this preamble, we are proposing that, for the FY 2016 payment determination and subsequent years, IPFs must submit data on the following proposed new measures: Assessment of Patient Experience of Care, and Use of an Electronic Health Record. Because both of these measures require only an annual acknowledgement, we anticipate a negligible additional burden on IPFs.

In the same section of this preamble, we are proposing that, for the FY 2017 payment determination and subsequent years, IPFs must submit aggregate data on the following proposed new measures: Influenza Immunization (IMM–2), Influenza Vaccination Coverage Among Healthcare Personnel, Tobacco Use Screening (TOB–1), and Tobacco Use Treatment Provided or Offered (TOB–2) and Tobacco Use Treatment (TOB–2a).

We estimate that the average time spent for chart abstraction per patient for each of these proposed measures is approximately 15 minutes. Assuming an approximately uniform sampling methodology, we estimate (based on prior Program data) that the annual burden for reporting the IMM–2 measure would be 139 hours per year of annual effort per facility (556×0.25). This same calculation also applies to the TOB–1, and TOB–2 and TOB–2a proposed measures. The Influenza Vaccination Coverage Among Healthcare Personnel proposed measure does not allow sampling; therefore, we anticipate that the average facility would be required to abstract approximately 40 healthcare personnel,

totaling an annual effort per facility of 10 hours (40 × 0.25). We anticipate no measurable burden for the Inpatient Psychiatric Facility Routinely Assesses Patient Experience of Care measure and the Use of an Electronic Health Record measure because both require only attestation.

In total, for proposed measures, we estimate an additional 427 hours of annual effort per facility for the FY 2017 payment determination and subsequent years. The following table summarizes the estimated hours (per facility) for each measure.

TABLE 18—ESTIMATED ANNUAL EFFORT PER FACILITY

Measure	Estimated cases (per facility)	Effort (per case)	Annual effort (per facility)
Assessment of Patient Experience of Care	* 0	* n/a	* 0
Use of an Electronic Health Record	* 0	* n/a	* 0
IMM–2	556	** ¼	139
Influenza Vaccination Coverage Among Healthcare Personnel	40	** ¼	10
TOB–1	556	** ¼	139
TOB–2, TOB–2a	556	** ¼	139
Total			427

* New non-measurable attestation burden.
** Hour.

The Bureau of Labor Statistics wage estimate for health care workers that are known to engage in chart abstraction is $31.71/hour. To account for overhead and fringe benefits we have doubled this estimate to $63.42/hour. Considering the 427 hours of annual effort (per facility) for the FY 2017 payment determination and subsequent years, the annual cost is approximately $27,080.34 (63.42 × 427). Across all 1,626 IPFs, the aggregate total is $44,032,632.84 (1,626 × 27,080.34).

The estimated burden for training personnel for data collection and submission for current and future measures is 2 hours per facility. The cost for this training, based on an hourly rate of $63.42, is $126.84 training costs for each IPF (63.42 × 2), which totals $206,241.84 for all facilities (1,626 × 126.84).

Using an estimated 1,626 IPFs nationwide that are eligible for participation in the IPFQR Program, we estimate that the annual hourly burden for the collection, submission, and training of personnel for submitting all quality measures is approximately 429 hours (per IPF) or 697,554 (aggregate) per year. The all-inclusive measure cost for each facility is approximately $27,207.18 (27,080.34 + 126.84) and for all facilities we estimate a cost of $44,238,874.68 (44,032,632.84 + 206,241.84).

In section V of this preamble, for the FY 2017 payment determination, we are proposing that IPFs submit to CMS aggregate population counts for Medicare and non-Medicare discharges by age group, diagnostic group, and quarter, and sample size counts for measures for which sampling is performed (as is allowed for in HBIPS–4 through–7, and SUB–1). We estimate that it will take each facility approximately 2.5 hours to comply with this requirement. The burden across all 1,626 IPFs calculates to 4,065 hours annually (2.5 × 1,626) at a total of $257,802.30 (4,065 × 63.42) or $158.55 per IPF (2.5 × 63.42).

The following tables set out the total estimated burden that IPFs would incur to comply with the proposed reporting requirements for both measure and non-measure data for the FY 2016 and FY 2017 payment determinations.

TABLE 19—SUMMARY OF BURDEN ESTIMATES (OFFICE OF MANAGEMENT AND BUDGET CONTROL NUMBER 0938–1171, CMS–10432) FOR THE FY 2016 PAYMENT DETERMINATION

Fiscal year 2016	Number of measures	Respondents	Facility burden (hours)	Total annual burden (hours)	Labor cost of reporting ($/hr)	Total cost ($)
From this FY 2015 proposed rule.	2 (attestation only)	1,626	0	0	0	0
	training	1,626	0	0	0	0
Total		1,626	0	0	0	0

TABLE 20—SUMMARY OF BURDEN ESTIMATES (OFFICE OF MANAGEMENT AND BUDGET CONTROL NUMBER 0938–1171, CMS–10432) FOR THE FY 2017 PAYMENT DETERMINATION

Fiscal year 2017	Number of measures	Respondents	Facility burden (hours)	Total annual burden (hours)	Labor cost of reporting ($/hr)	Total cost ($)
From this FY 2015 proposed rule.	4	1,626	427 (139 × 3 + 10)	694,302	63.42	44,032,632.84
	2 (attestation only)			0		
	training		2	3,252		206,241.84

TABLE 20—SUMMARY OF BURDEN ESTIMATES (OFFICE OF MANAGEMENT AND BUDGET CONTROL NUMBER 0938–1171, CMS–10432) FOR THE FY 2017 PAYMENT DETERMINATION—Continued

Fiscal year 2017	Number of measures	Respondents	Facility burden (hours)	Total annual burden (hours)	Labor cost of reporting ($/hr)	Total cost ($)
Subtotal		1,626	429	697,554	63.42	44,238,874.68
From this FY 2015 proposed rule.	Non-measure data	1,626	2.50	4,065	63.42	257,802.30
Total		1,626	431.50	701,619	63.42	44,496,676.98

We are not proposing any changes to the administrative, reporting, or submission requirements for the measures previously finalized in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53654 through 53657) and the FY 2014 IPPS/LTCH PPS final rule (78 FR 50898 through 50903), except that we are removing the Request for Voluntary Information—IPF Assessment of Patient Experience of Care section because of the Assessment of Patient Experience of Care proposed measure.

B. Summary of Proposed Burden Adjustments (OCN 0938–1171, CMS–10432)

In the FY 2014 final rule (78 FR 50964), we estimated that the annual hourly burden per IPF for the collection, submission, and training of personnel for submitting all quality measures was approximately 761 hours. This figure represented an estimate for all measures, both previously and newly finalized, in the Program. We further stated that because we were unable to estimate how many IPFs will participate, we could not estimate the aggregate impact.

Because the estimates we present herein, including the estimated annual burden of 431.5 hours per IPF, represent estimates only for proposed measures and non-measure data collection and submission requirements, an accurate comparison with estimates presented in the FY 2014 final rule is not possible.

C. ICRs Regarding the Hospital and Health Care Complex Cost Report (CMS–2552–10)

This proposed rule would not impose any new or revised collection of information requirements associated with CMS–2552–10 (as discussed under preamble section IV.B.). Consequently, the cost report does not require additional OMB review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The report's information collection requirements and burden estimates have been approved by OMB under OCN 0938–0052.

D. ICRs Regarding Exceptions to Quality Reporting Requirements

As discussed in section VIII.10 of this preamble, we are in the process of revising the Extraordinary Circumstances/Disaster Extension or Waiver Request form, currently approved under OMB control number 0938–1171. Revisions to the form are being addressed in the FY 2015 Inpatient Prospective Payment System rule (RIN 0938–AS11, CMS–1607–P). In that rule we propose to update the form's instructions and simplify the form so that a hospital or facility may apply for an extension for all applicable quality reporting programs at the same time.

E. Submission of PRA-Related Comments

We have submitted a copy of this proposed rule to OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/index.html,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you comment on these information collection and recordkeeping requirements, please submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule.

PRA-related comments must be received on/by July 7, 2014.

X. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

XI. Regulatory Impact Analysis

A. Statement of Need

This proposed rule would update the prospective payment rates for Medicare inpatient hospital services provided by IPFs for discharges occurring during the FY beginning October 1, 2014, through September 30, 2015. We are applying the FY 2008-based RPL market basket increase of 2.7 percent, less the productivity adjustment of 0.4 percentage point as required by 1886(s)(2)(A)(i) of the Act, and less the 0.3 percentage point required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(C) of the Act. In this proposed rule, we also address the implementation of the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM/PCS) for the IPF prospective payment system, and describe new quality reporting requirements for the IPFQR Program.

B. Overall Impact

We have examined the impact of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) 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). A regulatory impact analysis (RIA) must be prepared for a major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule is designated as economically ''significant'' under section 3(f)(1) of Executive Order 12866.

We estimate that the total impact of these changes for FY 2015 payments compared to FY 2014 payments will be a net increase of approximately $100 million. This reflects a $95 million increase from the update to the payment rates, as well as a $5 million increase as a result of the update to the outlier threshold amount. Outlier payments are estimated to increase from 1.9 percent in FY 2014 to 2.0 percent in FY 2015.

The RFA requires agencies to analyze options for regulatory relief of small entities if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IPFs and most other providers and suppliers are small entities, either by nonprofit status or having revenues of $7 million to $35.5 million or less in any 1 year, depending on industry classification (for details, refer to the SBA Small Business Size Standards found at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*), or being nonprofit organizations that are not dominant in their markets.

Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs' revenue derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA.

As shown in Table 21, we estimate that the overall revenue impact of this proposed rule on all IPFs is to increase Medicare payments by approximately 2.1 percent. As a result, since the estimated impact of this proposed rule is a net increase in revenue across all categories of IPFs, the Secretary has determined that this proposed rule would have a positive revenue impact on a substantial number of small entities. MACs are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Social Security 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 603 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. As discussed in detail below, the rates and policies set forth in this proposed rule would not have an adverse impact on the rural hospitals based on the data of the 310 rural units and 74 rural hospitals in our database of 1,626 IPFs for which data were available. Therefore, the Secretary has determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 2014, that threshold is approximately $141 million. This proposed rule will not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, of $141 million.

Executive Order 13132 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. As stated above, this proposed rule would not have a substantial effect on state and local governments.

C. Anticipated Effects

We discuss the historical background of the IPF PPS and the impact of this proposed rule on the Federal Medicare budget and on IPFs.

1. Budgetary Impact

As discussed in the November 2004 and May 2006 IPF PPS final rules, we applied a budget neutrality factor to the Federal per diem and ECT base rates to ensure that total estimated payments under the IPF PPS in the implementation period would equal the amount that would have been paid if the IPF PPS had not been implemented. The budget neutrality factor includes the following components: outlier adjustment, stop-loss adjustment, and the behavioral offset. As discussed in the May 2008 IPF PPS notice (73 FR 25711), the stop-loss adjustment is no longer applicable under the IPF PPS.

In accordance with § 412.424(c)(3)(ii), we indicated that we will evaluate the accuracy of the budget neutrality adjustment within the first 5 years after implementation of the payment system. We may make a one-time prospective adjustment to the Federal per diem and ECT base rates to account for differences between the historical data on cost-based TEFRA payments (the basis of the budget neutrality adjustment) and estimates of TEFRA payments based on actual data from the first year of the IPF PPS. As part of that process, we will reassess the accuracy of all of the factors impacting budget neutrality. In addition, as discussed in section VII.C.1 of this proposed rule, we are using the wage index and labor-related share in a budget neutral manner by applying a wage index budget neutrality factor to the Federal per diem and ECT base rates.

Therefore, the budgetary impact to the Medicare program of this proposed rule will be due to the market basket update for FY 2015 of 2.7 percent (see section V.B. of this proposed rule) less the productivity adjustment of 0.4 percentage point required by section 1886(s)(2)(A)(i) of the Act, less the ''other adjustment'' of 0.3 percentage point under sections 1886(s)(2)(A)(ii) and 1886(s)(3)(C) of the Act, and the update to the outlier fixed dollar loss threshold amount.

We estimate that the FY 2015 impact will be a net increase of $100 million in payments to IPF providers. This reflects an estimated $95 million increase from the update to the payment rates and a $5 million increase due to the update to the outlier threshold amount to increase outlier payments from approximately 1.9 percent in FY 2014 to 2.0 percent in FY 2015. This estimate does not include the implementation of the required 2 percentage point reduction of the market basket increase factor for any IPF that fails to meet the IPF quality reporting requirements (as discussed in section 4 below).

2. Impact on Providers

To understand the impact of the changes to the IPF PPS on providers, discussed in this proposed rule, it is necessary to compare estimated payments under the IPF PPS rates and factors for FY 2015 versus those under FY 2014. The estimated payments for FY 2014 and FY 2015 will be 100 percent of the IPF PPS payment, since the transition period has ended and stop-loss payments are no longer paid. We determined the percent change of estimated FY 2015 IPF PPS payments to FY 2014 IPF PPS payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the update to the outlier

fixed dollar loss threshold amount, the labor-related share and wage index changes for the FY 2015 IPF PPS, and the market basket update for FY 2015, as adjusted by the productivity adjustment according to section 1886(s)(2)(A)(i), and the ''other adjustment'' according to sections 1886(s)(2)(A)(ii) and 1886(s)(3)(C) of the Act.

To illustrate the impacts of the FY 2015 changes in this proposed rule, our analysis begins with a FY 2014 baseline simulation model based on FY 2013 IPF payments inflated to the midpoint of FY 2014 using IHS Global Insight Inc.'s most recent forecast of the market basket update (see section IV.C. of this proposed rule); the estimated outlier payments in FY 2014; the CBSA designations for IPFs based on OMB's MSA definitions after June 2003; the FY 2013 pre-floor, pre-reclassified hospital wage index; the FY 2014 labor-related share; and the FY 2014 percentage amount of the rural adjustment. During the simulation, the total estimated outlier payments are maintained at 2 percent of total IPF PPS payments.

Each of the following changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The update to the outlier fixed dollar loss threshold amount.
- The FY 2014 pre-floor, pre-reclassified hospital wage index and FY 2015 labor-related share.
- The market basket update for FY 2015 of 2.7 percent less the productivity adjustment of 0.4 percentage point reduction in accordance with section 1886(s)(2)(A)(i) of the Act and less the ''other adjustment'' of 0.3 percentage point in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(C) of the Act.

Our final comparison illustrates the percent change in payments from FY 2014 (that is, October 1, 2013, to September 30, 2014) to FY 2015 (that is, October 1, 2014, to September 30, 2015) including all the changes in this proposed rule.

TABLE 21—IPF IMPACT TABLE FOR FY 2015

[Projected impacts (% Change in columns 3–6]

Facility by type	Number of facilities	Outlier	CBSA wage index & labor share	Adjusted market basket update [1]	Total percent change [2]
(1)	(2)	(3)	(4)	(5)	(6)
All Facilities	1,626	0.1	0.0	2.0	2.1
Total Urban	1,242	0.1	0.0	2.0	2.1
Total Rural	384	0.1	−0.2	2.0	1.9
Urban unit	829	0.1	0.1	2.0	2.2
Urban hospital	413	0.0	0.0	2.0	2.0
Rural unit	310	0.1	−0.1	2.0	2.0
Rural hospital	74	0.0	−0.3	2.0	1.7
By Type of Ownership:					
Freestanding IPFs					
Urban Psychiatric Hospitals					
Government	129	0.1	0.0	2.0	2.0
Non-Profit	99	0.1	0.2	2.0	2.3
For-Profit	185	0.0	−0.2	2.0	1.8
Rural Psychiatric Hospitals					
Government	36	0.1	0.3	2.0	2.4
Non-Profit	13	0.1	−0.1	2.0	1.9
For-Profit	25	0.0	−0.8	2.0	1.2
IPF Units					
Urban					
Government	129	0.2	0.1	2.0	2.3
Non-Profit	543	0.1	0.1	2.0	2.2
For-Profit	157	0.1	−0.1	2.0	1.9
Rural					
Government	75	0.1	−0.1	2.0	1.9
Non-Profit	169	0.1	−0.1	2.0	1.9
For-Profit	66	0.1	−0.1	2.0	2.0
By Teaching Status:					
Non-teaching	1,427	0.1	0.0	2.0	2.0
Less than 10% interns and residents to beds	108	0.1	0.2	2.0	2.3
10% to 30% interns and residents to beds	68	0.1	0.0	2.0	2.2
More than 30% interns and residents to beds	23	0.2	0.5	2.0	2.7
By Region:					
New England	109	0.1	0.1	2.0	2.2
Mid-Atlantic	251	0.1	0.6	2.0	2.7
South Atlantic	234	0.1	−0.3	2.0	1.7
East North Central	260	0.1	−0.2	2.0	1.9
East South Central	166	0.1	−0.3	2.0	1.8
West North Central	143	0.1	−0.3	2.0	1.8
West South Central	238	0.0	−0.5	2.0	1.6
Mountain	103	0.1	−0.3	2.0	1.7
Pacific	122	0.1	1.0	2.0	3.1
By Bed Size:					
Psychiatric Hospitals					
Beds: 0–24	88	0.0	−0.3	2.0	1.7
Beds: 25–49	67	0.0	−0.1	2.0	1.9

TABLE 21—IPF IMPACT TABLE FOR FY 2015—Continued

[Projected impacts (% Change in columns 3–6]

Facility by type	Number of facilities	Outlier	CBSA wage index & labor share	Adjusted market basket update [1]	Total percent change [2]
(1)	(2)	(3)	(4)	(5)	(6)
Beds: 50–75	88	0.0	−0.1	2.0	2.0
Beds: 76 +	244	0.0	0.0	2.0	2.0
Psychiatric Units					
Beds: 0–24	680	0.1	0.0	2.0	2.1
Beds: 25–49	298	0.1	−0.1	2.0	2.0
Beds: 50–75	102	0.1	0.1	2.0	2.1
Beds: 76 +	59	0.1	0.4	2.0	2.6

[1] This column reflects the payment update impact of the RPL market basket update for FY 2015 of 2.7 percent, a 0.4 percentage point reduction for the productivity adjustment as required by section 1886(s)(2)(A)(i) of the Act, and a 0.3 percentage point reduction in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(C) of the Act.

[2] Percent changes in estimated payments from FY 2014 to FY 2015 include all of the changes presented in this proposed rule. Note, the products of these impacts may be different from the percentage changes shown here due to rounding effects.

3. Results

Table 21 above displays the results of our analysis. The table groups IPFs into the categories listed below based on characteristics provided in the Provider of Services (POS) file, the IPF provider specific file, and cost report data from HCRIS:

- Facility Type
- Location
- Teaching Status Adjustment
- Census Region
- Size

The top row of the table shows the overall impact on the 1,626 IPFs included in this analysis.

In column 3, we present the effects of the update to the outlier fixed dollar loss threshold amount. We estimate that IPF outlier payments as a percentage of total IPF payments are 1.9 percent in FY 2014. Thus, we are adjusting the outlier threshold amount in this proposed rule to set total estimated outlier payments equal to 2 percent of total payments in FY 2015. The estimated change in total IPF payments for FY 2015, therefore, includes an approximate 0.1 percent increase in payments because the outlier portion of total payments is expected to increase from approximately 1.9 percent to 2 percent.

The overall impact of this outlier adjustment update (as shown in column 3 of table 21), across all hospital groups, is to increase total estimated payments to IPFs by 0.1 percent. We do not estimate that any group of IPFs will experience a decrease in payments from this update. The largest increase in payments is estimated to reflect a 0.2 percent increase in payments for urban government IPF units and IPFs located in teaching hospitals with an intern and resident ADC ratio greater than 30 percent.

In column 4, we present the effects of the budget-neutral update to the labor-related share and the wage index adjustment under the CBSA geographic area definitions announced by OMB in June 2003. This is a comparison of the simulated FY 2015 payments under the FY 2014 hospital wage index under CBSA classification and associated labor-related share to the simulated FY 2014 payments under the FY 2013 hospital wage index under CBSA classifications and associated labor-related share. We note that there is no projected change in aggregate payments to IPFs, as indicated in the first row of column 4. However, there will be small distributional effects among different categories of IPFs. For example, we estimate the largest increase in payments to be a 1.0 percent increase for IPFs in the Pacific region and the largest decrease in payments to be a 0.8 percent decrease for rural for-profit IPFs.

Column 5 shows the estimated effect of the update to the IPF PPS payment rates, which includes a 2.7 percent market basket update less the productivity adjustment of 0.4 percentage point in accordance with section 1886(s)(2)(A)(i), and less the 0.3 percentage point in accordance with section 1886(s)(2)(A)(ii) and 1886(s)(3)(C).

Column 6 compares our estimates of the total changes reflected in this proposed rule for FY 2015, to our payments for FY 2014 (without these changes). This column reflects all FY 2015 changes relative to FY 2014. The average estimated increase for all IPFs is approximately 2.1 percent. This estimated net increase includes the effects of the 2.7 percent market basket update adjusted by the productivity adjustment of minus 0.4 percentage point, as required by section 1886(s)(2)(A)(i) of the Act and the ''other adjustment'' of minus 0.3 percentage point, as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(C) of the Act. It also includes the overall estimated 0.1 percent increase in estimated IPF outlier payments from the update to the outlier fixed dollar loss threshold amount. Since we are making the updates to the IPF labor-related share and wage index in a budget-neutral manner, they will not affect total estimated IPF payments in the aggregate. However, they will affect the estimated distribution of payments among providers.

Overall, no IPFs are estimated to experience a net decrease in payments as a result of the updates in this proposed rule. IPFs in urban areas will experience a 2.1 percent increase and IPFs in rural areas will experience a 1.9 percent increase. The largest payment increase is estimated at 3.1 percent for IPFs in the Pacific region. This is due to the larger than average positive effect of the CBSA wage index and labor-related share update for IPFs in this category.

4. Effects of Updates to the IPF QRP

As discussed in section V.B. of this proposed rule and in accordance with section 1886(s)(4)(A)(ii) of the Act, we will implement a 2 percentage point reduction in the FY 2015 increase factor for IPFs that have failed to report the required quality reporting data to us during the most recent IPF quality reporting period. In section V.B. of this proposed rule, we discuss how the 2 percentage point reduction will be applied. Only a few IPFs received the 2 percentage point reduction in the FY 2014 increase factor for failure to meet

program requirements, and we would anticipate that even fewer IPFs would receive the reduction for FY 2015 as IPFs become more familiar with the requirements. Thus, we estimate that this policy will have a negligible impact on overall IPF payments for FY 2015.

For the FY 2016 payment determination, we estimate no additional burden on IPFs as a result of proposed changes in reporting requirements. For the FY 2017 payment determination, we estimate an additional annual burden across all 1,626 IPFs of 701,619 hours, with a total Program cost of $44,496,677. This estimate includes an estimated 3,252 hours annually for training, at an estimated annual cost of $206,241. It also includes an estimated 4,065 hours annually, at an estimated annual cost of $257,802, for IPFs to submit to CMS aggregate population counts for Medicare and non-Medicare discharges by age group, diagnostic group, and quarter, and sample size counts for measures for which sampling is performed. Further discussion of these figures can be found in section IX.

For the FY 2017 payment determination, the applicable reporting period is calendar year (CY) 2015. Assuming that reporting costs are uniformly distributed across the year, three-quarters of those costs would have been incurred in FY 2015, which ends on September 30, 2015. Therefore, the estimated FY 2015 burden for IPFs would be three-quarters of $44,496,677, or approximately $33,372,508.

We intend to closely monitor the effects of this new quality reporting program on IPF providers and help facilitate successful reporting outcomes through ongoing stakeholder education, national trainings, and a technical help desk.

5. Effect on Beneficiaries

Under the IPF PPS, IPFs will receive payment based on the average resources consumed by patients for each day. We do not expect changes in the quality of care or access to services for Medicare beneficiaries under the FY 2015 IPF PPS but we continue to expect that paying prospectively for IPF services would enhance the efficiency of the Medicare program.

D. Alternatives Considered

The statute does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, we are updating the IPF PPS using the methodology published in the November 2004 IPF PPS final rule. No alternative policy options were considered in this proposed rule since this proposed rule simply provides an update to the rates for FY 2015 and transition ICD–9–CM codes to ICD–10–CM codes. Additionally, for the IPFQR Program, alternatives were not considered because the Program, as designed, best achieves quality reporting goals for the inpatient psychiatric care setting, while minimizing associated reporting burdens on IPFs. Lastly, sections VIII.1. and VIII.4. discuss other benefits and objectives of the Program.

E. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), in Table 22 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. The costs for data submission presented in Table 22 are calculated in section IX, which also discusses the benefits of data collection. This table provides our best estimate of the increase in Medicare payments under the IPF PPS as a result of the changes presented in this proposed rule and based on the data for 1,626 IPFs in our database. Furthermore, we present the estimated costs associated with updating the IPFQR program. The increases in Medicare payments are classified as Federal transfers to IPF Medicare providers.

TABLE 22—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers
Change in Estimated Transfers from FY 2014 IPF PPS to FY 2015 IPF PPS:	
Annualized Monetized Transfers	$100 million.
From Whom to Whom?	Federal Government to IPF Medicare Providers
FY 2015 Costs to updating the Quality Reporting Program for IPFs:	
Category	Costs
Annualized Monetized Costs for IPFs to Submit Data (Quality Reporting Program).	33,372,508

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

Dated: April 17, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 24, 2014.

Kathleen Sebelius,

Secretary.

Note: The following Addenda will not appear in the Code of Federal Regulations.

Addendum A—Rate and Adjustment Factors

PER DIEM RATE

Federal Per Diem Base Rate	$727.67
Labor Share (0.69538)	506.01
Non-Labor Share (0.30462)	221.66

PER DIEM RATE APPLYING THE 2 PERCENTAGE POINT REDUCTION

Federal Per Diem Base Rate	$713.40
Labor Share (0.69538)	496.08
Non-Labor Share (0.30462)	217.32

Fixed Dollar Loss Threshold Amount: $10,125.

Wage Index Budget-Neutrality Factor: 1.0003.

FACILITY ADJUSTMENTS

Rural Adjustment Factor	1.17
Teaching Adjustment Factor	0.5150
Wage Index	Pre-reclass Hospital Wage Index (FY2014)

COST OF LIVING ADJUSTMENTS (COLAS)

Area	Cost of living adjustment factor
Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	1.23
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.23
City of Juneau and 80-kilometer (50-mile) radius by road	1.23
Rest of Alaska	1.25
Hawaii:.	
City and County of Honolulu	1.25
County of Hawaii	1.19
County of Kauai	1.25
County of Maui and County of Kalawao	1.25

PATIENT ADJUSTMENTS

ECT—Per Treatment	$313.27
ECT—Per Treatment Applying the 2 Percentage Point Reduction	$307.13

VARIABLE PER DIEM ADJUSTMENTS

	Adjustment factor
Day 1—Facility Without a Qualifying Emergency Department	1.19
Day 1—Facility With a Qualifying Emergency Department	1.31
Day 2	1.12
Day 3	1.08
Day 4	1.05
Day 5	1.04
Day 6	1.02
Day 7	1.01
Day 8	1.01
Day 9	1.00
Day 10	1.00
Day 11	0.99
Day 12	0.99
Day 13	0.99
Day 14	0.99
Day 15	0.98
Day 16	0.97
Day 17	0.97
Day 18	0.96
Day 19	0.95
Day 20	0.95
Day 21	0.95
After Day 21	0.92

AGE ADJUSTMENTS

Age (in years)	Adjustment factor
Under 45	1.00
45 and under 50	1.01
50 and under 55	1.02
55 and under 60	1.04
60 and under 65	1.07
65 and under 70	1.10
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

DRG ADJUSTMENTS

MS–DRG	MS–DRG Descriptions	Adjustment factor
056	Degenerative nervous system disorders w MCC	1.05
057	Degenerative nervous system disorders w/o MCC	
080	Nontraumatic stupor & coma w MCC	1.07
081	Nontraumatic stupor & coma w/o MCC	
876	O.R. procedure w principal diagnoses of mental illness	1.22
880	Acute adjustment reaction & psychosocial dysfunction	1.05
881	Depressive neuroses	0.99
882	Neuroses except depressive	1.02
883	Disorders of personality & impulse control	1.02
884	Organic disturbances & mental retardation	1.03
885	Psychoses	1.00
886	Behavioral & developmental disorders	0.99
887	Other mental disorder diagnoses	0.92
894	Alcohol/drug abuse or dependence, left AMA	0.97
895	Alcohol/drug abuse or dependence w rehabilitation therapy	1.02
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	0.88
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	

COMORBIDITY ADJUSTMENTS

Comorbidity	Adjustment factor
Developmental Disabilities	1.04
Coagulation Factor Deficit	1.13
Tracheostomy	1.06
Eating and Conduct Disorders	1.12
Infectious Diseases	1.07
Renal Failure, Acute	1.11
Renal Failure, Chronic	1.11
Oncology Treatment	1.07
Uncontrolled Diabetes Mellitus	1.05
Severe Protein Malnutrition	1.13
Drug/Alcohol Induced Mental Disorders	1.03
Cardiac Conditions	1.11
Gangrene	1.10
Chronic Obstructive Pulmonary Disease	1.12
Artificial Openings—Digestive & Urinary	1.08
Severe Musculoskeletal & Connective Tissue Diseases	1.09
Poisoning	1.11

Addendum B—FY 2015 CBSA Wage Index Tables

In this addendum, we provide the wage index tables referred to in the preamble to this proposed rule. The tables presented below are as follows:

Table1–FY 2015 Wage Index For Urban Areas Based on CBSA Labor Market Areas.

Table 2–FY 2015 Wage Index Based On CBSA Labor Market Areas For Rural Areas.

TABLE 1—FY 2015 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS

CBSA Code	Urban area (constituent counties)	Wage index
10180	Abilene, TX, Callahan County, TX, Jones County, TX, Taylor County, TX	0.8225
10380	Aguadilla-Isabela-San Sebastián, PR, Aguada Municipio, PR, Aguadilla Municipio, PR, Añasco Municipio, PR, Isabela Municipio, PR, Lares Municipio, PR, Moca Municipio, PR, Rincón Municipio, PR, San Sebastián Municipio, PR.	0.3647
10420	Akron, OH, Portage County, OH, Summit County, OH	0.8521
10500	Albany, GA, Baker County, GA, Dougherty County, GA, Lee County, GA, Terrell County, GA, Worth County, GA.	0.8713
10580	Albany-Schenectady-Troy, NY, Albany County, NY, Rensselaer County, NY, Saratoga County, NY, Schenectady County, NY, Schoharie County, NY.	0.8600
10740	Albuquerque, NM, Bernalillo County, NM, Sandoval County, NM, Torrance County, NM, Valencia County, NM.	0.9663
10780	Alexandria, LA, Grant Parish, LA, Rapides Parish, LA	0.7788
10900	Allentown-Bethlehem-Easton, PA–NJ, Warren County, NJ, Carbon County, PA, Lehigh County, PA, Northampton County, PA.	0.9215
11020	Altoona, PA, Blair County, PA	0.9101
11100	Amarillo, TX, Armstrong County, TX, Carson County, TX, Potter County, TX, Randall County, TX	0.8302
11180	Ames, IA, Story County, IA	0.9425
11260	Anchorage, AK, Anchorage Municipality, AK, Matanuska-Susitna Borough, AK	1.2221
11300	Anderson, IN, Madison County, IN	0.9654
11340	Anderson, SC, Anderson County, SC	0.8766
11460	Arbor, MI, Washtenaw County, MI	1.0086
11500	Anniston-Oxford, AL, Calhoun County, AL	0.7402
11540	Appleton, WI, Calumet County, WI, Outagamie County, WI	0.9445
11700	Asheville, NC, Buncombe County, NC, Haywood County, NC, Henderson County, NC, Madison County, NC	0.8511
12020	Athens-Clarke County, GA, Clarke County, GA, Madison County, GA, Oconee County, GA, Oglethorpe County, GA.	0.9244
12060	Atlanta-Sandy Springs-Marietta, GA, Barrow County, GA, Bartow County, GA, Butts County, GA, Carroll County, GA, Cherokee County, GA, Clayton County, GA, Cobb County, GA, Coweta County, GA, Dawson County, GA, DeKalb County, GA, Douglas County, GA, Fayette County, GA, Forsyth County, GA, Fulton County, GA, Gwinnett County, GA, Haralson County, GA, Heard County, GA, Henry County, GA, Jasper County, GA, Lamar County, GA, Meriwether County, GA, Newton County, GA, Paulding County, GA, Pickens County, GA, Pike County, GA, Rockdale County, GA, Spalding County, GA, Walton County, GA.	0.9452
12100	Atlantic City-Hammonton, NJ, Atlantic County, NJ	1.2258
12220	Auburn-Opelika, AL, Lee County, AL	0.7771
12260	Augusta-Richmond County, GA–SC, Burke County, GA, Columbia County, GA, McDuffie County, GA, Richmond County, GA, Aiken County, SC, Edgefield County, SC.	0.9150
12420	Austin-Round Rock-San Marcos, TX, Bastrop County, TX, Caldwell County, TX, Hays County, TX, Travis County, TX, Williamson County, TX.	0.9576
12540	Bakersfield-Delano, CA, Kern County, CA	1.1579
12580	Baltimore-Towson, MD, Anne Arundel County, MD, Baltimore County, MD, Carroll County, MD, Harford County, MD, Howard County, MD, Queen Anne's County, MD, Baltimore City, MD.	0.9873
12620	Bangor, ME, Penobscot County, ME	0.9710
12700	Barnstable Town, MA, Barnstable County, MA	1.3007
12940	Baton Rouge, LA, Ascension Parish, LA, East Baton Rouge Parish, LA, East Feliciana Parish, LA, Iberville Parish, LA, Livingston Parish, LA, Pointe Coupee Parish, LA, St. Helena Parish, LA, West Baton Rouge Parish, LA, West Feliciana Parish, LA.	0.8078
12980	Battle Creek, MI, Calhoun County, MI	0.9915
13020	Bay City, MI, Bay County, MI	0.9486
13140	Beaumont-Port Arthur, TX, Hardin County, TX, Jefferson County, TX, Orange County, TX	0.8598
13380	Bellingham, WA, Whatcom County, WA	1.1890
13460	Bend, OR, Deschutes County, OR	1.1807
13644	Bethesda-Rockville-Frederick, MD, Frederick County, MD, Montgomery County, MD	1.0319
13740	Billings, MT, Carbon County, MT, Yellowstone County, MT	0.8691
13780	Binghamton, NY, Broome County, NY, Tioga County, NY	0.8602
13820	Birmingham-Hoover, AL, Bibb County, AL, Blount County, AL, Chilton County, AL, Jefferson County, AL, St. Clair County, AL, Shelby County, AL, Walker County, AL.	0.8367
13900	Bismarck, ND, Burleigh County, ND, Morton County, ND	0.7282
13980	Blacksburg-Christiansburg-Radford, VA, Giles County, VA, Montgomery County, VA, Pulaski County, VA, Radford City, VA.	0.8319
14020	Bloomington, IN, Greene County, IN, Monroe County, IN, Owen County, IN	0.9304
14060	Bloomington-Normal, IL, McLean County, IL	0.9310
14260	Boise City-Nampa, ID, Ada County, ID, Boise County, ID, Canyon County, ID, Gem County, ID, Owyhee County, ID.	0.9259
14484	Boston-Quincy, MA, Norfolk County, MA, Plymouth County, MA, Suffolk County, MA	1.2453
14500	Boulder, CO, Boulder County, CO	0.9850
14540	Bowling Green, KY, Edmonson County, KY, Warren County, KY	0.8573
14740	Bremerton-Silverdale, WA, Kitsap County, WA	1.0268
14860	Bridgeport-Stamford-Norwalk, CT, Fairfield County, CT	1.3252
15180	Brownsville-Harlingen, TX, Cameron County, TX	0.8179
15260	Brunswick, GA, Brantley County, GA, Glynn County, GA, McIntosh County, GA	0.8457
15380	Buffalo-Niagara Falls, NY, Erie County, NY, Niagara County, NY	1.0045
15500	Burlington, NC, Alamance County, NC	0.8529

TABLE 1—FY 2015 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
15540	Burlington-South Burlington, VT, Chittenden County, VT, Franklin County, VT, Grand Isle County, VT	1.0130
15764	Cambridge-Newton-Framingham, MA, Middlesex County, MA	1.1146
15804	Camden, NJ, Burlington County, NJ, Camden County, NJ, Gloucester County, NJ	1.0254
15940	Canton-Massillon, OH, Carroll County, OH, Stark County, OH	0.8730
15980	Cape Coral-Fort Myers, FL, Lee County, FL	0.8683
16020	Cape Girardeau-Jackson, MO–IL, Alexander County, IL, Bollinger County, MO, Cape Girardeau County, MO	0.9174
16180	Carson City, NV, Carson City, NV	1.0721
16220	Casper, WY, Natrona County, WY	1.0111
16300	Cedar Rapids, IA, Benton County, IA, Jones County, IA, Linn County, IA	0.8964
16580	Champaign-Urbana, IL, Champaign County, IL, Ford County, IL, Piatt County, IL	0.9416
16620	Charleston, WV, Boone County, WV, Clay County, WV, Kanawha County, WV, Lincoln County, WV, Putnam County, WV.	0.8119
16700	Charleston-North Charleston-Summerville, SC, Berkeley County, SC, Charleston County, SC, Dorchester County, SC.	0.8972
16740	Charlotte-Gastonia-Rock Hill, NC-SC, Anson County, NC, Cabarrus County, NC, Gaston County, NC, Mecklenburg County, NC, Union County, NC, York County, SC.	0.9447
16820	Charlottesville, VA, Albemarle County, VA, Fluvanna County, VA, Greene County, VA, Nelson County, VA, Charlottesville City, VA.	0.9209
16860	Chattanooga, TN–GA, Catoosa County, GA, Dade County, GA, Walker County, GA, Hamilton County, TN, Marion County, TN, Sequatchie County, TN.	0.8783
16940	Cheyenne, WY, Laramie County, WY	0.9494
16974	Chicago-Naperville-Joliet, IL, Cook County, IL, DeKalb County, IL, DuPage County, IL, Grundy County, IL, Kane County, IL, Kendall County, IL, McHenry County, IL, Will County, IL.	1.0418
17020	Chico, CA, Butte County, CA	1.1616
17140	Cincinnati-Middletown, OH–KY–IN, Dearborn County, IN, Franklin County, IN, Ohio County, IN, Boone County, KY, Bracken County, KY, Campbell County, KY, Gallatin County, KY, Grant County, KY, Kenton County, KY, Pendleton County, KY, Brown County, OH, Butler County, OH, Clermont County, OH, Hamilton County, OH, Warren County, OH.	0.9470
17300	Clarksville, TN–KY, Christian County, KY, Trigg County, KY, Montgomery County, TN, Stewart County, TN	0.7802
17420	Cleveland, TN, Bradley County, TN, Polk County, TN	0.7496
17460	Cleveland-Elyria-Mentor, OH, Cuyahoga County, OH, Geauga County, OH, Lake County, OH, Lorain County, OH, Medina County, OH.	0.9303
17660	Coeur d'Alene, ID, Kootenai County, ID	0.9064
17780	College Station-Bryan, TX, Brazos County, TX, Burleson County, TX, Robertson County, TX	0.9497
17820	Colorado Springs, CO, El Paso County, CO, Teller County, CO	0.9282
17860	Columbia, MO, Boone County, MO, Howard County, MO	0.8196
17900	Columbia, SC, Calhoun County, SC, Fairfield County, SC, Kershaw County, SC, Lexington County, SC, Richland County, SC, Saluda County, SC.	0.8601
17980	Columbus, GA–AL, Russell County, AL, Chattahoochee County, GA, Harris County, GA, Marion County, GA, Muscogee County, GA.	0.8170
18020	Columbus, IN, Bartholomew County, IN	0.9818
18140	Columbus, OH, Delaware County, OH, Fairfield County, OH, Franklin County, OH, Licking County, OH, Madison County, OH, Morrow County, OH, Pickaway County, OH, Union County, OH.	0.9803
18580	Corpus Christi, TX, Aransas County, TX, Nueces County, TX, San Patricio County, TX	0.8433
18700	Corvallis, OR, Benton County, OR	1.0596
18880	Crestview-Fort Walton Beach-Destin, FL, Okaloosa County, FL	0.8911
19060	Cumberland, MD–WV, Allegany County, MD, Mineral County, WV	0.8054
19124	Dallas-Plano-Irving, TX, Collin County, TX, Dallas County, TX, Delta County, TX, Denton County, TX, Ellis County, TX, Hunt County, TX, Kaufman County, TX, Rockwall County, TX.	0.9831
19140	Dalton, GA, Murray County, GA, Whitfield County, GA	0.8625
19180	Danville, IL, Vermilion County, IL	0.9460
19260	Danville, VA, Pittsylvania County, VA, Danville City, VA	0.7888
19340	Davenport-Moline-Rock Island, IA–IL, Henry County, IL, Mercer County, IL, Rock Island County, IL, Scott County, IA.	0.9306
19380	Dayton, OH, Greene County, OH, Miami County, OH, Montgomery County, OH, Preble County, OH	0.9034
19460	Decatur, AL, Lawrence County, AL, Morgan County, AL	0.7165
19500	Decatur, IL, Macon County, IL	0.8151
19660	Deltona-Daytona Beach-Ormond Beach, FL, Volusia County, FL	0.8560
19740	Denver-Aurora-Broomfield, CO, Adams County, CO, Arapahoe County, CO, Broomfield County, CO, Clear Creek County, CO, Denver County, CO, Douglas County, CO, Elbert County, CO, Gilpin County, CO, Jefferson County, CO, Park County, CO.	1.0395
19780	Des Moines-West Des Moines, IA, Dallas County, IA, Guthrie County, IA, Madison County, IA, Polk County, IA, Warren County, IA.	0.9393
19804	Detroit-Livonia-Dearborn, MI, Wayne County, MI	0.9237
20020	Dothan, AL, Geneva County, AL, Henry County, AL, Houston County, AL	0.7108
20100	Dover, DE, Kent County, DE	0.9939
20220	Dubuque, IA, Dubuque County, IA	0.8790
20260	Duluth, MN–WI, Carlton County, MN, St. Louis County, MN, Douglas County, WI	1.0123
20500	Durham-Chapel Hill, NC, Chatham County, NC, Durham County, NC, Orange County, NC, Person County, NC.	0.9669
20740	Eau Claire, WI, Chippewa County, WI, Eau Claire County, WI	1.0103

TABLE 1—FY 2015 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
20764	Edison-New Brunswick, NJ, Middlesex County, NJ, Monmouth County, NJ, Ocean County, NJ, Somerset County, NJ.	1.0985
20940	El Centro, CA, Imperial County, CA	0.8848
21060	Elizabethtown, KY, Hardin County, KY, Larue County, KY	0.7894
21140	Elkhart-Goshen, IN, Elkhart County, IN	0.9337
21300	Elmira, NY, Chemung County, NY	0.8725
21340	El Paso, TX, El Paso County, TX	0.8404
21500	Erie, PA, Erie County, PA	0.7940
21660	Eugene-Springfield, OR, Lane County, OR	1.1723
21780	Evansville, IN–KY, Gibson County, IN, Posey County, IN, Vanderburgh County, IN, Warrick County, IN, Henderson County, KY, Webster County, KY.	0.8381
21820	Fairbanks, AK, Fairbanks North Star Borough, AK	1.0997
21940	Fajardo, PR, Ceiba Municipio, PR, Fajardo Municipio, PR, Luquillo Municipio, PR	0.3728
22020	Fargo, ND–MN, Cass County, ND, Clay County, MN	0.7802
22140	Farmington, NM, San Juan County, NM	0.9735
22180	Fayetteville, NC, Cumberland County, NC, Hoke County, NC	0.8601
22220	Fayetteville-Springdale-Rogers, AR–MO, Benton County, AR, Madison County, AR, Washington County, AR, McDonald County, MO.	0.8955
22380	Flagstaff, AZ, Coconino County, AZ	1.2786
22420	Flint, MI, Genesee County, MI	1.1238
22500	Florence, SC, Darlington County, SC, Florence County, SC	0.7999
22520	Florence-Muscle Shoals, AL, Colbert County, AL, Lauderdale County, AL	0.7684
22540	Fond du Lac, WI, Fond du Lac County, WI	0.9477
22660	Fort Collins-Loveland, CO, Larimer County, CO	0.9704
22744	Fort Lauderdale-Pompano Beach-Deerfield, FL, Broward County, FL	1.0378
22900	Fort Smith, AR–OK, Crawford County, AR, Franklin County, AR, Sebastian County, AR, Le Flore County, OK, Sequoyah County, OK.	0.7561
23060	Fort Wayne, IN, Allen County, IN, Wells County, IN, Whitley County, IN	0.9010
23104	Fort Worth-Arlington, TX, Johnson County, TX, Parker County, TX, Tarrant County, TX, Wise County, TX	0.9535
23420	Fresno, CA, Fresno County, CA	1.1768
23460	Gadsden, AL, Etowah County, AL	0.7983
23540	Gainesville, FL, Alachua County, FL, Gilchrist County, FL	0.9710
23580	Gainesville, GA, Hall County, GA	0.9253
23844	Gary, IN, Jasper County, IN, Lake County, IN, Newton County, IN, Porter County, IN	0.9418
24020	Glens Falls, NY, Warren County, NY, Washington County, NY	0.8367
24140	Goldsboro, NC, Wayne County, NC	0.8550
24220	Grand Forks, ND–MN, Polk County, MN, Grand Forks County, ND	0.7290
24300	Grand Junction, CO, Mesa County, CO	0.9270
24340	Grand Rapids-Wyoming, MI, Barry County, MI, Ionia County, MI, Kent County, MI, Newaygo County, MI	0.9091
24500	Great Falls, MT, Cascade County, MT	0.9235
24540	Greeley, CO, Weld County, CO	0.9653
24580	Green Bay, WI, Brown County, WI, Kewaunee County, WI, Oconto County, WI	0.9587
24660	Greensboro-High Point, NC, Guilford County, NC, Randolph County, NC, Rockingham County, NC	0.8320
24780	Greenville, NC, Greene County, NC, Pitt County, NC	0.9343
24860	Greenville-Mauldin-Easley, SC, Greenville County, SC, Laurens County, SC, Pickens County, SC	0.9604
25020	Guayama, PR, Arroyo Municipio, PR, Guayama Municipio, PR, Patillas Municipio, PR	0.3707
25060	Gulfport-Biloxi, MS, Hancock County, MS, Harrison County, MS, Stone County, MS	0.8575
25180	Hagerstown-Martinsburg, MD–WV, Washington County, MD, Berkeley County, WV, Morgan County, WV	0.9234
25260	Hanford-Corcoran, CA, Kings County, CA	1.1124
25420	Harrisburg-Carlisle, PA, Cumberland County, PA, Dauphin County, PA, Perry County, PA	0.9533
25500	Harrisonburg, VA, Rockingham County, VA, Harrisonburg City, VA	0.9090
25540	Hartford-West Hartford-East Hartford, CT, Hartford County, CT, Middlesex County, CT, Tolland County, CT	1.1050
25620	Hattiesburg, MS, Forrest County, MS, Lamar County, MS, Perry County, MS	0.7938
25860	Hickory-Lenoir-Morganton, NC, Alexander County, NC, Burke County, NC, Caldwell County, NC, Catawba County, NC.	0.8492
25980	Hinesville-Fort Stewart, GA[1], Liberty County, GA, Long County, GA	0.8700
26100	Holland-Grand Haven, MI, Ottawa County, MI	0.8016
26180	Honolulu, HI, Honolulu County, HI	1.2321
26300	Hot Springs, AR, Garland County, AR	0.8474
26380	Houma-Bayou Cane-Thibodaux, LA, Lafourche Parish, LA, Terrebonne Parish, LA	0.7525
26420	Houston-Sugar Land-Baytown, TX, Austin County, TX, Brazoria County, TX, Chambers County, TX, Fort Bend County, TX, Galveston County, TX, Harris County, TX, Liberty County, TX, Montgomery County, TX, San Jacinto County, TX, Waller County, TX.	0.9915
26580	Huntington-Ashland, WV–KY–OH, Boyd County, KY, Greenup County, KY, Lawrence County, OH, Cabell County, WV, Wayne County, WV.	0.8944
26620	Huntsville, AL, Limestone County, AL, Madison County, AL	0.8455
26820	Idaho Falls, ID, Bonneville County, ID, Jefferson County, ID	0.9312
26900	Indianapolis-Carmel, IN, Boone County, IN, Brown County, IN, Hamilton County, IN, Hancock County, IN, Hendricks County, IN, Johnson County, IN, Marion County, IN, Morgan County, IN, Putnam County, IN, Shelby County, IN.	1.0108
26980	Iowa City, IA, Johnson County, IA, Washington County, IA	0.9854
27060	Ithaca, NY, Tompkins County, NY	0.9326

TABLE 1—FY 2015 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
27100	Jackson, MI, Jackson County, MI	0.8944
27140	Jackson, MS, Copiah County, MS, Hinds County, MS, Madison County, MS, Rankin County, MS, Simpson County, MS.	0.8162
27180	Jackson, TN, Chester County, TN, Madison County, TN	0.7729
27260	Jacksonville, FL, Baker County, FL, Clay County, FL, Duval County, FL, Nassau County, FL, St. Johns County, FL.	0.8956
27340	Jacksonville, NC, Onslow County, NC	0.7861
27500	Janesville, WI, Rock County, WI	0.9071
27620	Jefferson City, MO, Callaway County, MO, Cole County, MO, Moniteau County, MO, Osage County, MO	0.8465
27740	Johnson City, TN, Carter County, TN, Unicoi County, TN, Washington County, TN	0.7226
27780	Johnstown, PA, Cambria County, PA	0.8450
27860	Jonesboro, AR, Craighead County, AR, Poinsett County, AR	0.7983
27900	Joplin, MO, Jasper County, MO, Newton County, MO	0.7983
28020	Kalamazoo-Portage, MI, Kalamazoo County, MI, Van Buren County, MI	0.9959
28100	Kankakee-Bradley, IL, Kankakee County, IL	0.9657
28140	Kansas City, MO–KS, Franklin County, KS, Johnson County, KS, Leavenworth County, KS, Linn County, KS, Miami County, KS, Wyandotte County, KS, Bates County, MO, Caldwell County, MO, Cass County, MO, Clay County, MO, Clinton County, MO, Jackson County, MO, Lafayette County, MO, Platte County, MO, Ray County, MO.	0.9447
28420	Kennewick-Pasco-Richland, WA, Benton County, WA, Franklin County, WA	0.9459
28660	Killeen-Temple-Fort Hood, TX, Bell County, TX, Coryell County, TX, Lampasas County, TX	0.8925
28700	Kingsport-Bristol-Bristol, TN–VA, Hawkins County, TN, Sullivan County, TN, Bristol City, VA, Scott County, VA, Washington County, VA.	0.7192
28740	Kingston, NY, Ulster County, NY	0.9066
28940	Knoxville, TN, Anderson County, TN, Blount County, TN, Knox County, TN, Loudon County, TN, Union County, TN.	0.7432
29020	Kokomo, IN, Howard County, IN, Tipton County, IN	0.9061
29100	La Crosse, WI–MN, Houston County, MN, La Crosse County, WI	1.0205
29140	Lafayette, IN, Benton County, IN, Carroll County, IN, Tippecanoe County, IN	0.9954
29180	Lafayette, LA, Lafayette Parish, LA, St. Martin Parish, LA	0.8231
29340	Lake Charles, LA, Calcasieu Parish, LA, Cameron Parish, LA	0.7765
29404	Lake County-Kenosha County, IL–WI, Lake County, IL, Kenosha County, WI	1.0658
29420	Lake Havasu City-Kingman, AZ, Mohave County, AZ	0.9912
29460	Lakeland-Winter Haven, FL, Polk County, FL	0.8283
29540	Lancaster, PA, Lancaster County, PA	0.9695
29620	Lansing-East Lansing, MI, Clinton County, MI, Eaton County, MI, Ingham County, MI	1.0618
29700	Laredo, TX, Webb County, TX	0.7586
29740	Las Cruces, NM, Dona Ana County, NM	0.9265
29820	Las Vegas-Paradise, NV, Clark County, NV	1.1627
29940	Lawrence, KS, Douglas County, KS	0.8664
30020	Lawton, OK, Comanche County, OK	0.7893
30140	Lebanon, PA, Lebanon County, PA	0.8157
30300	Lewiston, ID–WA, Nez Perce County, ID, Asotin County, WA	0.9215
30340	Lewiston-Auburn, ME, Androscoggin County, ME	0.9048
30460	Lexington-Fayette, KY, Bourbon County, KY, Clark County, KY, Fayette County, KY, Jessamine County, KY, Scott County, KY, Woodford County, KY.	0.8902
30620	Lima, OH, Allen County, OH	0.9158
30700	Lincoln, NE, Lancaster County, NE, Seward County, NE	0.9465
30780	Little Rock-North Little Rock-Conway, AR, Faulkner County, AR, Grant County, AR, Lonoke County, AR, Perry County, AR, Pulaski County, AR, Saline County, AR.	0.8632
30860	Logan, UT–ID, Franklin County, ID, Cache County, UT	0.8754
30980	Longview, TX, Gregg County, TX, Rusk County, TX, Upshur County, TX	0.8933
31020	Longview, WA, Cowlitz County, WA	1.0460
31084	Los Angeles-Long Beach-Glendale, CA, Los Angeles County, CA	1.2417
31140	Louisville-Jefferson County, KY–IN, Clark County, IN, Floyd County, IN, Harrison County, IN, Washington County, IN, Bullitt County, KY, Henry County, KY, Meade County, KY, Nelson County, KY, Oldham County, KY, Shelby County, KY, Spencer County, KY, Trimble County, KY.	0.8852
31180	Lubbock, TX, Crosby County, TX, Lubbock County, TX	0.8956
31340	Lynchburg, VA, Amherst County, VA, Appomattox County, VA, Bedford County, VA, Campbell County, VA, Bedford City, VA, Lynchburg City, VA.	0.8771
31420	Macon, GA, Bibb County, GA, Crawford County, GA, Jones County, GA, Monroe County, GA, Twiggs County, GA.	0.9014
31460	Madera-Chowchilla, CA, Madera County, CA	0.8317
31540	Madison, WI, Columbia County, WI, Dane County, WI, Iowa County, WI	1.1414
31700	Manchester-Nashua, NH, Hillsborough County, NH	1.0057
31740	Manhattan, KS, Geary County, KS, Pottawatomie County, KS, Riley County, KS	0.7843
31860	Mankato-North Mankato, MN, Blue Earth County, MN, Nicollet County, MN	0.9277
31900	Mansfield, OH, Richland County, OH	0.8509
32420	Mayagüez, PR, Hormigueros Municipio, PR, Mayagüez Municipio, PR	0.3762
32580	McAllen-Edinburg-Mission, TX, Hidalgo County, TX	0.8393
32780	Medford, OR, Jackson County, OR	1.0690

TABLE 1—FY 2015 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
32820	Memphis, TN–MS–AR, Crittenden County, AR, DeSoto County, MS, Marshall County, MS, Tate County, MS, Tunica County, MS, Fayette County, TN, Shelby County, TN, Tipton County, TN.	0.9038
32900	Merced, CA, Merced County, CA	1.2734
33124	Miami-Miami Beach-Kendall, FL, Miami-Dade County, FL	0.9870
33140	Michigan City-La Porte, IN, LaPorte County, IN	0.9216
33260	Midland, TX, Midland County, TX	1.0049
33340	Milwaukee-Waukesha-West Allis, WI, Milwaukee County, WI, Ozaukee County, WI, Washington County, WI, Waukesha County, WI.	0.9856
33460	Minneapolis-St. Paul-Bloomington, MN–WI, Anoka County, MN, Carver County, MN, Chisago County, MN, Dakota County, MN, Hennepin County, MN, Isanti County, MN, Ramsey County, MN, Scott County, MN, Sherburne County, MN, Washington County, MN, Wright County, MN, Pierce County, WI, St. Croix County, WI.	1.1213
33540	Missoula, MT, Missoula County, MT	0.9142
33660	Mobile, AL, Mobile County, AL	0.7507
33700	Modesto, CA, Stanislaus County, CA	1.3629
33740	Monroe, LA, Ouachita Parish, LA, Union Parish, LA	0.7530
33780	Monroe, MI, Monroe County, MI	0.8718
33860	Montgomery, AL, Autauga County, AL, Elmore County, AL, Lowndes County, AL, Montgomery County, AL	0.7475
34060	Morgantown, WV, Monongalia County, WV, Preston County, WV	0.8339
34100	Morristown, TN, Grainger County, TN, Hamblen County, TN, Jefferson County, TN	0.6861
34580	Mount Vernon-Anacortes, WA, Skagit County, WA	1.0652
34620	Muncie, IN, Delaware County, IN	0.8743
34740	Muskegon-Norton Shores, MI, Muskegon County, MI	1.1076
34820	Myrtle Beach-North Myrtle Beach-Conway, SC, Horry County, SC	0.8700
34900	Napa, CA, Napa County, CA	1.5375
34940	Naples-Marco Island, FL, Collier County, FL	0.9108
34980	Nashville-Davidson—Murfreesboro-Franklin, TN, Cannon County, TN, Cheatham County, TN, Davidson County, TN, Dickson County, TN, Hickman County, TN, Macon County, TN, Robertson County, TN, Rutherford County, TN, Smith County, TN, Sumner County, TN, Trousdale County, TN, Williamson County, TN, Wilson County, TN.	0.9141
35004	Nassau-Suffolk, NY, Nassau County, NY, Suffolk County, NY	1.2755
35084	Newark-Union, NJ-PA, Essex County, NJ, Hunterdon County, NJ, Morris County, NJ, Sussex County, NJ, Union County, NJ, Pike County, PA.	1.1268
35300	New Haven-Milford, CT, New Haven County, CT	1.1883
35380	New Orleans-Metairie-Kenner, LA, Jefferson Parish, LA, Orleans Parish, LA, Plaquemines Parish, LA, St. Bernard Parish, LA, St. Charles Parish, LA, St. John the Baptist Parish, LA, St. Tammany Parish, LA.	0.8752
35644	New York-White Plains-Wayne, NY-NJ, Bergen County, NJ, Hudson County, NJ, Passaic County, NJ, Bronx County, NY, Kings County, NY, New York County, NY, Putnam County, NY, Queens County, NY, Richmond County, NY, Rockland County, NY, Westchester County, NY.	1.3089
35660	Niles-Benton Harbor, MI, Berrien County, MI	0.8444
35840	North Port-Bradenton-Sarasota-Venice, FL, Manatee County, FL, Sarasota County, FL	0.9428
35980	Norwich-New London, CT, New London County, CT	1.1821
36084	Oakland-Fremont-Hayward, CA, Alameda County, CA, Contra Costa County, CA	1.7048
36100	Ocala, FL, Marion County, FL	0.8425
36140	Ocean City, NJ, Cape May County, NJ	1.0584
36220	Odessa, TX, Ector County, TX	0.9661
36260	Ogden-Clearfield, UT, Davis County, UT, Morgan County, UT, Weber County, UT	0.9170
36420	Oklahoma City, OK, Canadian County, OK, Cleveland County, OK, Grady County, OK, Lincoln County, OK, Logan County, OK, McClain County, OK, Oklahoma County, OK.	0.8879
36500	Olympia, WA, Thurston County, WA	1.1601
36540	Omaha-Council Bluffs, NE–IA, Harrison County, IA, Mills County, IA, Pottawattamie County, IA, Cass County, NE, Douglas County, NE, Sarpy County, NE, Saunders County, NE, Washington County, NE.	0.9756
36740	Orlando-Kissimmee-Sanford, FL, Lake County, FL, Orange County, FL, Osceola County, FL, Seminole County, FL.	0.9063
36780	Oshkosh-Neenah, WI, Winnebago County, WI	0.9398
36980	Owensboro, KY, Daviess County, KY, Hancock County, KY, McLean County, KY	0.7790
37100	Oxnard-Thousand Oaks-Ventura, CA, Ventura County, CA	1.3113
37340	Palm Bay-Melbourne-Titusville, FL, Brevard County, FL	0.8790
37380	Palm Coast, FL, Flagler County, FL	0.8174
37460	Panama City-Lynn Haven-Panama City Beach, FL, Bay County, FL	0.7876
37620	Parkersburg-Marietta-Vienna, WV–OH, Washington County, OH, Pleasants County, WV, Wirt County, WV, Wood County, WV.	0.7569
37700	Pascagoula, MS, George County, MS, Jackson County, MS	0.7542
37764	Peabody, MA, Essex County, MA	1.0553
37860	Pensacola-Ferry Pass-Brent, FL, Escambia County, FL, Santa Rosa County, FL	0.7767
37900	Peoria, IL, Marshall County, IL, Peoria County, IL, Stark County, IL, Tazewell County, IL, Woodford County, IL.	0.8434
37964	Philadelphia, PA, Bucks County, PA, Chester County, PA, Delaware County, PA, Montgomery County, PA, Philadelphia County, PA.	1.0849
38060	Phoenix-Mesa-Scottsdale, AZ, Maricopa County, AZ, Pinal County, AZ	1.0465
38220	Pine Bluff, AR, Cleveland County, AR, Jefferson County, AR, Lincoln County, AR	0.8069

TABLE 1—FY 2015 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
38300	Pittsburgh, PA, Allegheny County, PA, Armstrong County, PA, Beaver County, PA, Butler County, PA, Fayette County, PA, Washington County, PA, Westmoreland County, PA.	0.8669
38340	Pittsfield, MA, Berkshire County, MA	1.0920
38540	Pocatello, ID, Bannock County, ID, Power County, ID	0.9754
38660	Ponce, PR, Juana Díaz Municipio, PR, Ponce Municipio, PR, Villalba Municipio, PR	0.4594
38860	Portland-South Portland-Biddeford, ME, Cumberland County, ME, Sagadahoc County, ME, York County, ME	0.9981
38900	Portland-Vancouver-Hillsboro, OR–WA, Clackamas County, OR, Columbia County, OR, Multnomah County, OR, Washington County, OR, Yamhill County, OR, Clark County, WA, Skamania County, WA.	1.1766
38940	Port St. Lucie, FL, Martin County, FL, St. Lucie County, FL	0.9352
39100	Poughkeepsie-Newburgh-Middletown, NY, Dutchess County, NY, Orange County, NY	1.1544
39140	Prescott, AZ, Yavapai County, AZ	1.0161
39300	Providence-New Bedford-Fall River, RI–MA, Bristol County, MA, Bristol County, RI, Kent County, RI, Newport County, RI, Providence County, RI, Washington County, RI.	1.0539
39340	Provo-Orem, UT, Juab County, UT, Utah County, UT	0.9461
39380	Pueblo, CO, Pueblo County, CO	0.8215
39460	Punta Gorda, FL, Charlotte County, FL	0.8734
39540	Racine, WI, Racine County, WI	0.8903
39580	Raleigh-Cary, NC, Franklin County, NC, Johnston County, NC, Wake County, NC	0.9304
39660	Rapid City, SD, Meade County, SD, Pennington County, SD	0.9568
39740	Reading, PA, Berks County, PA	0.9220
39820	Redding, CA, Shasta County, CA	1.4990
39900	Reno-Sparks, NV, Storey County, NV, Washoe County, NV	1.0326
40060	Richmond, VA, Amelia County, VA, Caroline County, VA, Charles City County, VA, Chesterfield County, VA, Cumberland County, VA, Dinwiddie County, VA, Goochland County, VA, Hanover County, VA, Henrico County, VA, King and Queen County, VA, King William County, VA, Louisa County, VA, New Kent County, VA, Powhatan County, VA, Prince George County, VA, Sussex County, VA, Colonial Heights City, VA, Hopewell City, VA, Petersburg City, VA, Richmond City, VA.	0.9723
40140	Riverside-San Bernardino-Ontario, CA, Riverside County, CA, San Bernardino County, CA	1.1497
40220	Roanoke, VA, Botetourt County, VA, Craig County, VA, Franklin County, VA, Roanoke County, VA, Roanoke City, VA, Salem City, VA.	0.9195
40340	Rochester, MN, Dodge County, MN, Olmsted County, MN, Wabasha County, MN	1.1662
40380	Rochester, NY, Livingston County, NY, Monroe County, NY, Ontario County, NY, Orleans County, NY, Wayne County, NY.	0.8749
40420	Rockford, IL, Boone County, IL, Winnebago County, IL	0.9751
40484	Rockingham County-Strafford County, NH, Rockingham County, NH, Strafford County, NH	1.0172
40580	Rocky Mount, NC, Edgecombe County, NC, Nash County, NC	0.8750
40660	Rome, GA, Floyd County, GA	0.8924
40900	Sacramento-Arden-Arcade-Roseville, CA, El Dorado County, CA, Placer County, CA, Sacramento County, CA, Yolo County, CA.	1.5498
40980	Saginaw-Saginaw Township North, MI, Saginaw County, MI	0.8849
41060	St. Cloud, MN, Benton County, MN, Stearns County, MN	1.0658
41100	St. George, UT, Washington County, UT	0.9345
41140	St. Joseph, MO–KS, Doniphan County, KS, Andrew County, MO, Buchanan County, MO, DeKalb County, MO.	0.9834
41180	St. Louis, MO–IL, Bond County, IL, Calhoun County, IL, Clinton County, IL, Jersey County, IL, Macoupin County, IL, Madison County, IL, Monroe County, IL, St. Clair County, IL, Crawford County, MO, Franklin County, MO, Jefferson County, MO, Lincoln County, MO, St. Charles County, MO, St. Louis County, MO, Warren County, MO, Washington County, MO, St. Louis City, MO.	0.9336
41420	Salem, OR, Marion County, OR, Polk County, OR	1.1148
41500	Salinas, CA, Monterey County, CA	1.5820
41540	Salisbury, MD, Somerset County, MD, Wicomico County, MD	0.8948
41620	Salt Lake City, UT, Salt Lake County, UT, Summit County, UT, Tooele County, UT	0.9350
41660	San Angelo, TX, Irion County, TX, Tom Green County, TX	0.8169
41700	San Antonio-New Braunfels, TX, Atascosa County, TX, Bandera County, TX, Bexar County, TX, Comal County, TX, Guadalupe County, TX, Kendall County, TX, Medina County, TX, Wilson County, TX.	0.8911
41740	San Diego-Carlsbad-San Marcos, CA, San Diego County, CA	1.2213
41780	Sandusky, OH, Erie County, OH	0.7788
41884	San Francisco-San Mateo-Redwood City, CA, Marin County, CA, San Francisco County, CA, San Mateo County, CA.	1.6743
41900	San Germán-Cabo Rojo, PR, Cabo Rojo Municipio, PR, Lajas Municipio, PR, Sabana Grande Municipio, PR, San Germán Municipio, PR.	0.4550
41940	San Jose-Sunnyvale-Santa Clara, CA, San Benito County, CA, Santa Clara County, CA	1.7086

TABLE 1—FY 2015 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
41980	San Juan-Caguas-Guaynabo, PR, Aguas Buenas Municipio, PR, Aibonito Municipio, PR, Arecibo Municipio, PR, Barceloneta Municipio, PR, Barranquitas Municipio, PR, Bayamón Municipio, PR, Caguas Municipio, PR, Camuy Municipio, PR, Canóvanas Municipio, PR, Carolina Municipio, PR, Cataño Municipio, PR, Cayey Municipio, PR, Ciales Municipio, PR, Cidra Municipio, PR, Comerío Municipio, PR, Corozal Municipio, PR, Dorado Municipio, PR, Florida Municipio, PR, Guaynabo Municipio, PR, Gurabo Municipio, PR, Hatillo Municipio, PR, Humacao Municipio, PR, Juncos Municipio, PR, Las Piedras Municipio, PR, Loíza Municipio, PR, Manatí Municipio, PR, Maunabo Municipio, PR, Morovis Municipio, PR, Naguabo Municipio, PR, Naranjito Municipio, PR, Orocovis Municipio, PR, Quebradillas Municipio, PR, Río Grande Municipio, PR, San Juan Municipio, PR, San Lorenzo Municipio, PR, Toa Alta Municipio, PR, Toa Baja Municipio, PR, Trujillo Alto Municipio, PR, Vega Alta Municipio, PR, Vega Baja Municipio, PR, Yabucoa Municipio, PR.	0.4356
42020	San Luis Obispo-Paso Robles, CA, San Luis Obispo County, CA	1.3036
42044	Santa Ana-Anaheim-Irvine, CA, Orange County, CA	1.2111
42060	Santa Barbara-Santa Maria-Goleta, CA, Santa Barbara County, CA	1.2825
42100	Santa Cruz-Watsonville, CA, Santa Cruz County, CA	1.7937
42140	Santa Fe, NM, Santa Fe County, NM	1.0136
42220	Santa Rosa-Petaluma, CA, Sonoma County, CA	1.6679
42340	Savannah, GA, Bryan County, GA, Chatham County, GA, Effingham County, GA	0.8757
42540	Scranton—Wilkes-Barre, PA, Lackawanna County, PA, Luzerne County, PA, Wyoming County, PA	0.8331
42644	Seattle-Bellevue-Everett, WA, King County, WA, Snohomish County, WA	1.1733
42680	Sebastian-Vero Beach, FL, Indian River County, FL	0.8760
43100	Sheboygan, WI, Sheboygan County, WI	0.9203
43300	Sherman-Denison, TX, Grayson County, TX	0.8723
43340	Shreveport-Bossier City, LA, Bossier Parish, LA, Caddo Parish, LA, De Soto Parish, LA	0.8262
43580	Sioux City, IA–NE–SD, Woodbury County, IA, Dakota County, NE, Dixon County, NE, Union County, SD	0.9163
43620	Sioux Falls, SD, Lincoln County, SD, McCook County, SD, Minnehaha County, SD, Turner County, SD	0.8275
43780	South Bend-Mishawaka, IN–MI, St. Joseph County, IN, Cass County, MI	0.9425
43900	Spartanburg, SC, Spartanburg County, SC	0.8782
44060	Spokane, WA, Spokane County, WA	1.1174
44100	Springfield, IL, Menard County, IL, Sangamon County, IL	0.9165
44140	Springfield, MA, Franklin County, MA, Hampden County, MA, Hampshire County, MA	1.0383
44180	Springfield, MO, Christian County, MO, Dallas County, MO, Greene County, MO, Polk County, MO, Webster County, MO.	0.8440
44220	Springfield, OH, Clark County, OH	0.8447
44300	State College, PA, Centre County, PA	0.9575
44600	Steubenville-Weirton, OH–WV, Jefferson County, OH, Brooke County, WV, Hancock County, WV	0.7598
44700	Stockton, CA, San Joaquin County, CA	1.3734
44940	Sumter, SC, Sumter County, SC	0.7594
45060	Syracuse, NY, Madison County, NY, Onondaga County, NY, Oswego County, NY	0.9897
45104	Tacoma, WA, Pierce County, WA	1.1574
45220	Tallahassee, FL, Gadsden County, FL, Jefferson County, FL, Leon County, FL, Wakulla County, FL	0.8391
45300	Tampa-St. Petersburg-Clearwater, FL, Hernando County, FL, Hillsborough County, FL, Pasco County, FL, Pinellas County, FL.	0.9075
45460	Terre Haute, IN, Clay County, IN, Sullivan County, IN, Vermillion County, IN, Vigo County, IN	0.9706
45500	Texarkana, TX-Texarkana, AR, Miller County, AR, Bowie County, TX	0.7428
45780	Toledo, OH, Fulton County, OH, Lucas County, OH, Ottawa County, OH, Wood County, OH	0.9013
45820	Topeka, KS, Jackson County, KS, Jefferson County, KS, Osage County, KS, Shawnee County, KS, Wabaunsee County, KS.	0.8974
45940	Trenton-Ewing, NJ, Mercer County, NJ	1.0648
46060	Tucson, AZ, Pima County, AZ	0.8953
46140	Tulsa, OK, Creek County, OK, Okmulgee County, OK, Osage County, OK, Pawnee County, OK, Rogers County, OK, Tulsa County, OK, Wagoner County, OK.	0.8145
46220	Tuscaloosa, AL, Greene County, AL, Hale County, AL, Tuscaloosa County, AL	0.8500
46340	Tyler, TX, Smith County, TX	0.8526
46540	Utica-Rome, NY, Herkimer County, NY, Oneida County, NY	0.8769
46660	Valdosta, GA, Brooks County, GA, Echols County, GA, Lanier County, GA, Lowndes County, GA	0.7527
46700	Vallejo-Fairfield, CA, Solano County, CA	1.6286
47020	Victoria, TX, Calhoun County, TX, Goliad County, TX, Victoria County, TX	0.8949
47220	Vineland-Millville-Bridgeton, NJ, Cumberland County, NJ	1.0759
47260	Virginia Beach-Norfolk-Newport News, VA–NC, Currituck County, NC, Gloucester County, VA, Isle of Wight County, VA, James City County, VA, Mathews County, VA, Surry County, VA, York County, VA, Chesapeake City, VA, Hampton City, VA, Newport News City, VA, Norfolk City, VA, Poquoson City, VA, Portsmouth City, VA, Suffolk City, VA, Virginia Beach City, VA, Williamsburg City, VA.	0.9121
47300	Visalia-Porterville, CA, Tulare County, CA	0.9947
47380	Waco, TX, McLennan County, TX	0.8213
47580	Warner Robins, GA, Houston County, GA	0.7732
47644	Warren-Troy-Farmington Hills, MI, Lapeer County, MI, Livingston County, MI, Macomb County, MI, Oakland County, MI, St. Clair County, MI.	0.9432

TABLE 1—FY 2015 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
47894	Washington-Arlington-Alexandria, DC–VA–MD–WV, District of Columbia, DC, Calvert County, MD, Charles County, MD, Prince George's County, MD, Arlington County, VA, Clarke County, VA, Fairfax County, VA, Fauquier County, VA, Loudoun County, VA, Prince William County, VA, Spotsylvania County, VA, Stafford County, VA, Warren County, VA, Alexandria City, VA, Fairfax City, VA, Falls Church City, VA, Fredericksburg City, VA, Manassas City, VA, Manassas Park City, VA, Jefferson County, WV.	1.0533
47940	Waterloo-Cedar Falls, IA, Black Hawk County, IA, Bremer County, IA, Grundy County, IA	0.8331
48140	Wausau, WI, Marathon County, WI	0.8802
48300	Wenatchee-East Wenatchee, WA, Chelan County, WA, Douglas County, WA	1.0109
48424	West Palm Beach-Boca Raton-Boynton Beach, FL, Palm Beach County, FL	0.9597
48540	Wheeling, WV–OH, Belmont County, OH, Marshall County, WV, Ohio County, WV	0.6673
48620	Wichita, KS, Butler County, KS, Harvey County, KS, Sedgwick County, KS, Sumner County, KS	0.8674
48660	Wichita Falls, TX, Archer County, TX, Clay County, TX, Wichita County, TX	0.9537
48700	Williamsport, PA, Lycoming County, PA	0.8268
48864	Wilmington, DE–MD–NJ, New Castle County, DE, Cecil County, MD, Salem County, NJ	1.0593
48900	Wilmington, NC, Brunswick County, NC, New Hanover County, NC, Pender County, NC	0.8862
49020	Winchester, VA–WV, Frederick County, VA, Winchester City, VA, Hampshire County, WV	0.9034
49180	Winston-Salem, NC, Davie County, NC, Forsyth County, NC, Stokes County, NC, Yadkin County, NC	0.8560
49340	Worcester, MA, Worcester County, MA	1.1584
49420	Yakima, WA, Yakima County, WA	1.0355
49500	Yauco, PR, Guánica Municipio, PR, Guayanilla Municipio, PR, Peñuelas Municipio, PR, Yauco Municipio, PR.	0.3782
49620	York-Hanover, PA, York County, PA	0.9540
49660	Youngstown-Warren-Boardman, OH–PA, Mahoning County, OH, Trumbull County, OH, Mercer County, PA	0.8262
49700	Yuba City, CA, Sutter County, CA, Yuba County, CA	1.1759
49740	Yuma, AZ, Yuma County, AZ	0.9674

[1] At this time, there are no hospitals located in this urban area on which to base a wage index.

TABLE 2—FY 2015 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

State code	Nonurban area	Wage index
1	Alabama	0.7147
2	Alaska	1.3662
3	Arizona	0.9166
4	Arkansas	0.7343
5	California	1.2788
6	Colorado	0.9802
7	Connecticut	1.1311
8	Delaware	1.0092
10	Florida	0.7985
11	Georgia	0.7459
12	Hawaii	1.0739
13	Idaho	0.7605
14	Illinois	0.8434
15	Indiana	0.8513
16	Iowa	0.8434
17	Kansas	0.7929
18	Kentucky	0.7784
19	Louisiana	0.7585
20	Maine	0.8238
21	Maryland	0.8696
22	Massachusetts	1.3614
23	Michigan	0.8270
24	Minnesota	0.9133
25	Mississippi	0.7568
26	Missouri	0.7775
27	Montana	0.9098
28	Nebraska	0.8855
29	Nevada	0.9781
30	New Hampshire	1.0339
31	New Jersey [1]	.....
32	New Mexico	0.8922
33	New York	0.8220
34	North Carolina	0.8100
35	North Dakota	0.6785
36	Ohio	0.8377
37	Oklahoma	0.7704
38	Oregon	0.9435
39	Pennsylvania	0.8430
40	Puerto Rico [1]	0.4047
41	Rhode Island [1]	.....
42	South Carolina	0.8329
43	South Dakota	0.8164
44	Tennessee	0.7444
45	Texas	0.7874
46	Utah	0.8732
47	Vermont	0.9740
48	Virgin Islands	0.7060
49	Virginia	0.7758
50	Washington	1.0529
51	West Virginia	0.7407
52	Wisconsin	0.8904
53	Wyoming	0.9243
65	Guam	0.9611

[1] All counties within the State are classified as urban, with the exception of Puerto Rico. Puerto Rico has areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2015. The Puerto Rico wage index is the same as FY 2014.

Addendum C

IPF CODE FIRST TABLE

Code	Code First Instructions ICD–10–CM (effective October 1, 2014)
F01.50	Code first the underlying physiological condition or sequelae of cerebrovascular disease
F01.51	Code first the underlying physiological condition or sequelae of cerebrovascular disease
F02.80	Code first the underlying physiological condition, such as: A52.17, A81.0–A81.9, E75.00–E75.09, E75.10–E75.19, E75.4, E83.00–E83.09, G10, G30.0–G30.9, G31.01, G31.09, G31.83, G35, G40.001–G40.319, G40.401–G40.919, G40.A01–G40.B19, M30.8 This list is a translation of the ICD–9 codes rather than a list of the conditions in the ICD–10 codebook code first note for category F02.

IPF CODE FIRST TABLE—Continued

Code	Code First Instructions ICD–10–CM (effective October 1, 2014)
F02.81	Code first the underlying physiological condition, such as: A52.17, A81.0–A81.9, E75.00–E75.09, E75.10–E75.19, E75.4, E83.00–E83.09, G10, G30.0–G30.9, G31.01, G31.09, G31.83, G35, G40.001–G40.319, G40.401–G40.919, G40.A01–G40.B19, M30.8
F04	Code first the underlying physiological condition
F05	Code first the underlying physiological condition, such as: A52.17, A81.0–A81.9, E75.00–E75.09, E75.10–E75.19, E75.4, E83.00–E83.09, G10, G30.0–G30.9, G31.01, G31.09, G31.83, G35, G40.001–G40.319, G40.401–G40.919, G40.A01–G40.B19, M30.8
F06.0	Code first the underlying physiological condition
F06.1	Code first the underlying physiological condition
F06.2	Code first the underlying physiological condition
F06.30	Code first the underlying physiological condition
F06.31	Code first the underlying physiological condition
F06.32	Code first the underlying physiological condition
F06.33	Code first the underlying physiological condition
F06.34	Code first the underlying physiological condition
F06.4	Code first the underlying physiological condition
F06.8	Code first the underlying physiological condition
F45.42	Code also associated acute or chronic pain

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Part IV

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 202, 231, 244, et. al.

Defense Federal Acquisition Regulation Supplement: Detection and Avoidance of Counterfeit Electronic Parts (DFARS Case 2012–D055); Final Rule

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 231, 244, 246, and 252

RIN 0750–AH88

Defense Federal Acquisition Regulation Supplement: Detection and Avoidance of Counterfeit Electronic Parts (DFARS Case 2012–D055)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the DFARS in partial implementation of a section of the National Defense Authorization Act for Fiscal Year 2012, and a section of the National Defense Authorization Act for Fiscal Year 2013, relating to the detection and avoidance of counterfeit electronic parts.

DATES: Effective May 6, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 78 FR 28780 on May 16, 2013, to implement paragraphs (a), (c), and (f) of section 818, entitled ''Detection and Avoidance of Counterfeit Electronic Parts,'' of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112–81, enacted December 31, 2011). Paragraph (c) of section 818 requires the issuance of DFARS regulations addressing contractor responsibilities for detecting and avoiding the use or inclusion of counterfeit electronic parts or suspect counterfeit electronic parts, the use of trusted suppliers, and requirements for contractors to report counterfeit electronic parts and suspect counterfeit electronic parts. Paragraph (f) of section 818 contains the definitions of ''covered contractor'' and ''electronic part.'' Also, paragraph (a) of section 818 requires DoD to provide definitions of ''counterfeit electronic part'' and ''suspect counterfeit electronic part.'' Other aspects of section 818 are being implemented separately.

The proposed rule and this final rule also address the amendments to section 818 made by section 833, entitled ''Contractor Responsibilities in Regulations Relating to Detection and Avoidance of Counterfeit Electronic Parts,'' of the NDAA for FY 2013 (Pub. L. 112–239, enacted January 2, 2013). Fifty respondents submitted public comments in response to the proposed rule.

After publication of the proposed rule, DoD hosted a public meeting to obtain the views of experts and interested parties in Government and the private sector regarding the electronic parts detection and avoidance coverage proposed for inclusion in the DFARS (see 78 FR 35262, dated June 12, 2013). A dozen representatives of private-sector firms, industry associations, and Government agencies made presentations. Many recommendations were made for improving the definition of counterfeit part, and these were carefully considered in preparing the final rule. Another frequently voiced recommendation was to expand on the nine criteria provided by statute for counterfeit part detection and avoidance systems, a recommendation also acted upon for the final rule. There were many comments made on the applicability of the proposed rule only to Cost Accounting Standards (CAS)-covered contractors and the resultant exemption of small businesses and contracts for the acquisition of commercial items.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From Proposed Rule

- In the definitions at DFARS 202.101 and the clause at DFARS 252.246–7007—
  - The definitions of ''counterfeit part'' and ''suspect counterfeit part'' are substantively revised and limited to electronic parts;
  - The definition of ''legally authorized source'' is deleted; and
  - A new definition of ''obsolete part'' is added.
- The criteria for a contractor's counterfeit electronic part detection and avoidance system at DFARS 246.870–2(b) and paragraph (c) of the clause at DFARS 252.246–7007 are expanded and clarified and three new criteria have been added. In addition, the use of a risk-based system by the contractor is clarified.
- Applicability of the counterfeit system criteria only to CAS-covered prime contractors is clarified, as is the required flow down to all subcontractor tiers providing electronic parts or assemblies containing electronic parts.

B. Analysis of Public Comments

Outline of issues:

1. Comment Period
2. Definitions
   a. ''Counterfeit [Electronic] Part'' and ''Suspect Counterfeit [Electronic] Part''
   b. ''Trusted Supplier''
   c. ''Legally Authorized Source''
   d. ''Electronic Part''
3. System Criteria
   a. General
   b. Training of Personnel
   c. Inspection and Testing
   d. Proliferation of Counterfeit Electronic Parts
   e. Traceability
   f. Use of Trusted Suppliers
   g. Reporting and Quarantining
   h. Suspect Counterfeit Electronic Parts
   i. Design, Operations, and Maintenance of System
   j. Flow Down
4. Applicability
   a. CAS-Covered Contractors
   b. Commercial Items, Especially COTS Items
   c. Parts Already on the Shelf
   d. Other
5. Flowdown Requirements
6. Contractor Purchasing System Review (CPSR)
7. Cost Allowability
8. Industry Standards
9. Testing/Item Unique Identification (IUID) Use
10. Reporting
11. Clauses
12. Obsolete Parts
13. Other Comments

1. Comment Period

Comment: Five respondents submitted comments on this subject. Three respondents recommended extending the public comment period. One recommended an extension of 12 months, another recommended aligning the comment period for this DFARS rule with that of the two associated FAR proposed rules, and a third respondent recommended delaying this case until formal publication of the report of the Intellectual Property Enforcement Coordinator. Two of these respondents also recommended establishment of a formal Government-industry dialogue to ''minimize costs and avoid adverse impacts to . . . supply chains.'' A respondent recommended that, given the complexities of this issue, DoD would benefit from issuing a second proposed rule and soliciting additional public comment. However, one respondent argued strongly against any further delay, citing the threats that counterfeit parts pose to warfighters and the country's economic and physical security.

Response: While DoD is aware that many issues associated with

management of the counterfeit parts problem remain to be resolved, DoD cannot afford to wait to take action. Further, the Congress has spoken on counterfeit electronic parts and mandated certain DoD implementation actions in section 818 of the NDAA for FY 2012. All of the possibilities cited by respondents above were considered, and the best course of action was determined to be issuance of this final rule without undue delay. However, a means of accomplishing the suggested Government-industry dialogue is being pursued, and future changes to the DFARS regulations will be considered as they are identified.

2. Definitions

a. ''Counterfeit [Electronic] Part'' and ''Suspect Counterfeit [Electronic] Part''

Twenty three respondents provided comments on the definitions of ''counterfeit part'' and ''suspect counterfeit part.''

i. Definition of ''Counterfeit Part''

Comment: One respondent said that the proposed definition of ''counterfeit part'' is too broad and allows for undefined and unregulated purchases of electronic parts from sources not authorized by the original manufacturer. Six respondents said that the definition must be limited to electronic parts, i.e., counterfeit electronic parts.'' One respondent recommended using the term ''item'' rather than ''part'' (see DFARS 202.101 and 252.246–7007).

Response: DoD has revised the definition to limit it to electronic parts. The DFARS definition for ''electronic part'' is the statutory definition included at paragraph (f)(2) of section 818 (see paragraph 2.d. of this section, ''Electronic part''). The coverage in this final rule is clearly limited to electronic parts. Therefore, ''part'' is retained in lieu of ''item'' in accordance with the language used by the Congress in section 818.

Comment: Several respondents cited a preference for the definitions from the SAE AS5553A and (pending) AS6081 standards (''A fraudulent part that has been confirmed to be a copy, imitation, or substitute that has been represented, identified, or marked as genuine, and/or altered by a source without legal right with intent to mislead, deceive, or defraud''). Another respondent suggested that the definition of ''counterfeit item'' should be the same as that provided in DoDI 4140.67, DoD Counterfeit Prevention Policy.

Response: The revised definition takes into account current published agency and industry definitions. Some changes have been made to bring the DFARS definition in line with the best features of these definitions. However, because of the continually evolving nature of the definitions in industry standards and the inconsistencies among the definitions in the standards, it was not possible to adopt the definitions as included in industry standards. For example, the definition is revised to (1) address the element of intent by adding ''misrepresented'' and (2) add ''unlawful or unauthorized substitution.'' Given the wide variety of industry standards and the evolving state of knowledge on the elements needed to be included in a workable definition, it is likely there will continue to be differences between industry standards. Furthermore, using the definition of ''counterfeit item'' in DoDI 4140.67 verbatim was not feasible because it was developed before the public comment period for this DFARS case and did not benefit from the information provided during the public comment period.

Comment: A number of other respondents provided various alternative definitions.

Response: DoD carefully reviewed all suggested wording and formulated a comprehensive definition that includes many of the respondents' recommendations (see response immediately above).

Comment: Several respondents commented that the element of ''intent'' was missing from the definition in the proposed rule, and, as claimed by one of these respondents, the definition therefore is inconsistent with 18 U.S.C. 2320. Another respondent agreed that the definition needs an ''intent'' element. In the estimation of this respondent, ''intent'' is especially important because, without it, many more costs become unallowable under the terms of DFARS 231.205–71. Two additional respondents said, by omitting an ''intent'' element, inadvertent delivery of an incorrect part by a bona fide source could result in liabilities and other obligations that should be limited to situations where there is evidence of intent to mislead or deceive. Another respondent stated that adding an intent element to the definition would mitigate the strict-liability aspect present in the proposed rule. However, the respondent's proposed definition includes ''reckless'' and ''negligent'' ''misrepresentation'' in addition to ''knowingly misrepresented'' in order to prevent occurrences of willful blindness or lack of due care. A last element related to ''intent'' came from a respondent who said that parts that are out of warranty or are genuine but out of specification or suffer from quality deficiencies should be addressed under the warranty provisions of the contract rather than treated as counterfeit parts.

Response: DoD has added an element of intent to the definition of ''counterfeit electronic part'' by including the term ''misrepresented.'' Terms indicating supplier failure to exercise appropriate counterfeit detection and avoidance measures, such as ''recklessly'' and ''negligently,'' are not included in the definition because they have no bearing on whether the part itself is counterfeit (i.e., supplier negligence cannot change the status of a counterfeit part to a non-counterfeit part).

Comment: Many comments addressed one or more of the three parts of the definition in the proposed rule. Regarding Part 1 of the definition, two respondents noted favorably that it conformed to DoDI 4140.67. Another respondent recommended adding '', reproduction, overrun,'' after ''copy'' and before ''or substitute.'' A respondent stated that the definition of ''legally authorized source'' would have to be expanded to include the authorized distributor before the respondent could agree with it.

Response: Based on comments received, DoD added to the definition to explain what is meant by ''unlawful or unauthorized substitution.'' This enabled deletion of the third portion of the ''counterfeit'' definition in the proposed rule.

Comment: With regard to Part 2 of the proposed rule's definition, a respondent said that it was inconsistent with the intent of the statute and utilized the Lanham Act meanings. Another respondent recommended revising Part 2 to use the term ''legally authorizing source'' because it would be clearer to apply the term to the source of the item rather than the item itself. A third respondent said that Part 2 constitutes fraud and should be considered in the appropriate areas of law that deal with fraud. Another respondent asked if Part 2 was intended to be different from Part 1. A respondent stated that ''intended use'' was ambiguous.

Four respondents offered a solution by recommending that Part 2 of the three elements be deleted, given that Part 1, in their estimation, captured the intent of Part 2. A respondent said that an item misrepresented to be an authorized item of the legally authorized source could exclude supply by bona-fide distributors or brokers that acquire excess and out-of-production authentic parts.

Response: DoD has revised the definition of ''counterfeit electronic part'' to list the sources legally

authorized to permit manufacturing or resale of the item (see above responses in this section). In addition, the reference to ''intended use'' is removed.

Comment: Commenting on Part 3 of the definition, one respondent concluded that Part 3 was overbroad because it equated contract-requirements compliance with counterfeiting. This respondent recommended that Part 3 of the definition be struck altogether. A respondent said that it was alright to use ''previously used parts represented as new,'' but other terms went too far (e.g., new, unused genuine part from the original manufacturer that is discovered to have an unintentional quality issue). Several respondents stated that Part 3 is overly broad because ''even newly made parts from original manufacturers that fail acceptance tests would be deemed counterfeits that contractors would be liable for.'' One respondent suggested that requiring willful misrepresentation may narrow the scope of the definition appropriately. According to one respondent, basing a counterfeit determination solely on age-related criteria or solely on performance requirements is unnecessary and goes beyond the concerns articulated by Congress. The respondent recommended deleting Part 3 and using a single definition. A respondent proposed to revise Part 3 of the definition to read ''(3) A used, outdated, or expired genuine item from any source that is misrepresented to the end user as new or as meeting new part performance requirements'' because the revised wording focuses on genuine parts that may not perform as new due to the passage of time or prior misuse. A respondent said that Part 3 of the definition is incorrect because ''any source'' includes sources that have the right to re-mark, re-label, and reconfigure their device to meet performance specifications. This respondent recommended the following Part 3 language: ''A new, used, outdated, or expired item that has been represented, identified, or marked as genuine, and/or altered by a source without legal right as meeting the performance requirements for the intended use.'' Another respondent proposed to revise Part 3 into two parts. The respondent, as justification, noted that the AS5553 definition of ''counterfeit part'' is focused on the misrepresentation of the origin of the part, not its performance with respect to the end user's requirements, and it is unnecessary to protect the DoD supply chain.

A respondent said that a nonconforming item, even one that is wholly unintentional and furnished by its original source, would be considered ''counterfeit''. Out-of-specification escapes could well be unintentional and unobserved by the supplier and thus represented to the customer ''as meeting the performance requirements for the intended use;'' this would expose the supplier to False Claims Act liability.

Two respondents were concerned with ''misrepresentation'' issues. An escape due to a temporary lapse of manufacturing and testing process control could be unintentional and unobserved, these respondents said, and could subject the supplier to False Claims Act liability. Further, ''misrepresented'' could be misinterpreted manufacturing defects.

Several respondents addressed the use of terms like ''new, used, outdated, or expired item.'' These respondents said that ''outdated'' may indicate a date code or lot number that may or may not be equal to either an older or newer date code, and that, left undefined, ''expired'' could be read to mean packing material such as humidity indicator cards, shelf life that can legitimately be restored in most parts, and other transactions as long as the customer is fully informed and approves. The respondents asked whether an obsolete but original part carried in distributor inventory and still in use in fielded products was considered to be an ''outdated'' or ''expired'' item.

Similarly, several respondents raised concerns with regard to ''intended use,'' asking who determines what the ''intended use'' is. The respondents said that the DoD end-user ''would certainly have knowledge for the 'intended use' of the equipment containing the electronic part but would likely not have design application knowledge for the 'intended use' for the electronic part within the design of the equipment.''

Response: DoD addressed concerns about Part 3 of the definition by removing it and including an ''intent'' element in the revised definition.

Comment: A respondent recommended that the definition be revised to delete ''from a legally authorized source that is misrepresented by any source to the end user.'' Another respondent recommended deleting ''from a legally authorized source.'' A third respondent said that the definition of ''legally authorized source'' would have to be revised before the respondent could accept Parts 1 and 2 of the definition. A respondent wondered how a legally authorized source was identified and who gets to decide.

Response: DoD is revising the definition of ''counterfeit part'' to specify what constitutes the legally authorized source, i.e., the current design activity, the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. The separate definition of that term has been deleted (see also paragraph 2.c. of this section, ''Legally authorized source'').

Comment: A respondent recommended removing references to substitute equipment because genuine replacement equipment may be ''identified (or) marked . . . by a source other than the part's legally authorized source.'' According to the respondent, this could exclude legitimate substitutes for, or alternatives to, original-manufacturer parts due to such circumstances as a legally authorized source no longer producing the equipment. The current definition, the respondent said, could also be interpreted as precluding the use of certain commercially available off-the-shelf (COTS) items.

Response: The word ''substitute'' is replaced with the term ''unlawful or unauthorized substitution'' in order to distinguish such items from legitimate substitutes.

Comment: One respondent suggested replacing ''meeting the performance requirements'' with ''being the current or authorized part.'' This respondent also recommended deleting ''new'' and inserting, between ''outdated,'' and ''or expedited item,'' ''decommissioned, recalled.''

Two respondents suggested that the final rule provide a definition for ''outdated or expired'' item. Another respondent recommended defining ''authentic part'' as ''a part manufactured by the original component manufacturer or by a source authorized by the original component manufacturer, including the authorized aftermarket manufacturer.'' A respondent asked that the term ''source'' be revised to ''supplier'' in two places and ''item'' to ''part'' in two places.

Response: Part 3 of the proposed definition, which referred to outdated or expired items and items that do not meet performance requirements, is removed. These items, as well as decommissioned and recalled items, fall under the revised definition of counterfeit, which includes ''unlawful or unauthorized substitutions.''

ii. Definition of ''Suspect Counterfeit [Electronic] Part''

Comment: One respondent suggested that DFARS should set forth who has the burden of proof, including

procedures for determination, how it is done, and what should be done with the part once it is classified as ''suspect.'' This respondent suggested that any part obtained from a non-authorized source be considered a ''suspect counterfeit part'' if the non-authorized source does not use detection, avoidance, testing, and/or verification processes in accordance with industry standards. One respondent stated its belief that any finding based on testing ''can, and should, be supported by 'visual inspection' and 'other information.'''

Several respondents provided alternate definitions. Two respondents declared the definition to be overbroad. Another respondent said that, to be consistent with legal precedents, the definition should be revised as follows: ''An electronic part for which there is an indication that it may be Counterfeit based on analysis, testing and/or evidence, although not yet confirmed.'' Yet another respondent recommended a revised definition as follows: ''An electronic item, or any electronic component thereof, for which visual inspection, testing, or other information provide reason to believe that an electronic part may be a counterfeit item.'' A different respondent recommended that the definition should be ''one for which there is reasonable cause under the circumstances to believe a part is counterfeit, based on either (1) physical inspection of the part, or (2) credible evidence from other sources.'' The respondent considered this to be a better definition because ordinary quality problems could emerge that are treated initially as suspect counterfeit parts but, after investigation, turn out to be otherwise. But, the respondent said, the cost principle at DFARS 231.205–71 would make any costs associated with the item unallowable. Industry should have the authority, according to the respondent, to make a determination whether a part is a ''suspect counterfeit'' part, and the rule should clarify the processes that should be followed.

Response: As with all nonconforming items, the contracting officer is the official responsible for acceptance under the FAR. The definition is revised to include the phrase ''credible evidence,'' along with examples, to strengthen the fact-based approach. It is not practical or cost effective to test in every case of a suspected counterfeit.

b. ''Trusted Supplier''

Comment: Nineteen respondents submitted comments requesting a definition for ''trusted supplier,'' many noting that section 818 relies heavily on the concept of trusted suppliers. Two of these respondents stated that the law, at section 818(c)(3)(C), requires the regulations to establish qualification requirements pursuant to which DoD may identify trusted suppliers that have appropriate policies and procedures in place to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. A respondent offered an alternate definition, which was supported by a separate respondent as consistent with SAE industry standards AS5553A and AS6081. A respondent suggested that that term ''trustworthy supplier'' would be more appropriate and less likely to be confused with other, existing programs. A similar definition was provided by another respondent. Concerns about confusion with other, existing programs were expressed by another respondent, which requested that the DFARS require that companies that are not Defense Microelectronics Activity (DMEA)-accredited trusted suppliers be required to disclose this fact and, further, that the final rule include a statement in the **Federal Register** notice that ''clearly underscores that existing requirements to use DMEA-accredited Trusted Suppliers remain in force.''

Other respondents suggested simpler definitions. One respondent recommended that trusted supplier be equated to legally authorized source, as long as these sources were able to document traceability and chain of custody to the original manufacturer.

A respondent recommended that the term ''independent suppliers'' be used in lieu of ''trusted suppliers,'' so as not to confuse it with other programs, such as the Trusted Access Program. Another respondent recommended that authorization to purchase electronic parts from trusted suppliers should only be given when it is not possible to purchase the parts from the original manufacturer or sources authorized by the original manufacturer (legally authorized sources).

A respondent pointed out that the DFARS hadn't defined ''supplier'' and suggested that the final rule add such a definition. A respondent provided a definition of ''authorized distributor.'' One respondent stated that it had signed agreements between it and various suppliers that bind the company's relationship to ensure original manufactured product only is supplied to customers; consideration of these agreements was not included in the proposed rule and, according to the respondent, would unfairly designate authorized distribution as an illegal source. One respondent suggested that use and qualification of trusted suppliers should be defined by the contractor, not by the Government.

One respondent noted that industry is well aware that it should purchase electronic parts from original manufacturers and their authorized distributors, but this is not always possible because there are thousands of systems in the inventory for which parts remain in demand but are not available from such trusted suppliers.

Response: Paragraph (c)(3)(A)(i) of section 818 requires that DoD, and its contractors and subcontractors, whenever possible, obtain electronic parts that are in production or currently available in stock from the original manufacturer, dealers authorized by the original manufacturer, or from trusted suppliers that ''obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers.''

Paragraph (c)(3)(A)(ii) of section 818 also permits the acquisition of electronic parts that are not in production or currently available in stock from trusted suppliers. Paragraphs (c)(3)(C) and (c)(3)(D) require DoD and contractors and subcontractors to establish procedures and criteria for the identification of such trusted suppliers. DoD contemplates further implementation with regard to identification of trusted suppliers under DFARS Case 2014–D005.

Paragraph (c)(3)(B) of section 818 requires DoD regulations to establish requirements for notification of DoD and inspection, testing, and authentication of electronic parts that a DoD contractor or subcontractor obtains from any source other than a source identified in paragraph (c)(3)(A).

Therefore, testing or additional inspection is not generally required for electronic parts purchased from the original manufacturer, the design authority, or an original manufacturer-authorized dealer(s). Furthermore, DFARS 252.246–7007(c)(2) specifies that selection of tests and inspection shall be based on minimizing risk to the Government. One of the criteria for determination of risk is the assessed probability of receiving a counterfeit electronic part.

DoD is concerned that defining and using the term ''trusted supplier,'' or a variation of it, would create confusion due to the use of this term in other, current DoD and industry initiatives. Accordingly, the systems criteria in DFARS are revised to express what is intended by ''trusted supplier'' without directly using the term, e.g., 252.246–7007(c)(5) uses the phrase ''suppliers that meet applicable counterfeit

detection and avoidance system criteria.''

c. ''Legally Authorized Source''

Comment: Seventeen respondents commented on the definition of ''legally authorized source'' at DFARS 202.101 in the proposed rule. Many of the comments alleged ambiguity in the definition and expressed concerns about the treatment of millions of parts made by original manufacturers that are in circulation worldwide and are purchased legally by responsible brokers and distributors, parts that are still in demand. Three respondents recommended adding ''or distribute'' between ''produce'' and ''an item,'' in order to capture distributors that have agreements in place with the original manufacturers to distribute items sourced direct from the original manufacturer. Similar changes were recommended by another respondent. Other respondents recommended adding reputable, or authorized, distributors to the definition. Four respondents supported the change with a more strongly worded alternate definition. One of these respondents noted the proposed definition of ''legally authorized source'' is consistent with the definition of ''current design activity'' in MIL–STD–130N. A respondent wanted to revise the definition to include licensors of software to clarify that the term applies to both hardware and software.

However, two respondents stated that using the term ''legally'' added unnecessary complexity to the definition. Another respondent took a different approach, stating that the term ''authorized source'' needed its own definition. One other respondent was concerned that the current definition could be construed to mean that the actions of an authorized reseller could create a legal liability for the original manufacturer where the reseller integrated third-party components to configure or customize the product at DoD's direction.

Response: DoD has removed the definition of ''legally authorized source'' and, instead, spelled out at DFARS 246.870–2(b)(5) the entities that are authorized to produce a genuine item, i.e., the original manufacturer, current design activity, or an authorized aftermarket manufacturer.

d. ''Electronic Part''

Comment: Five respondents provided comments on the definition of electronic part at DFARS 202.101 in the proposed rule. One respondent proposed adding to the end of the definition provided in the statute (section 818(f)(2)) the phrase '', or materials used to produce assemblies and cables.'' Another respondent stated that electronic parts are usually more inclusive than indicated in the proposed rule's definition. A third respondent recommended that the definition expressly include software, so that there was no opportunity to assume that software was not included. Two other respondents suggested that, for electronic parts where physical marking is not possible and where the risk of counterfeit parts presents a significant mission, security, or safety hazard, DoD should consider requiring ''electronic unique identification.''

Response: Paragraph (f) of section 818 provided only two definitions, one for ''covered contractor'' and the other for ''electronic part.'' The proposed definition directly implements the statutory definition.

However, while retaining the statutory definition, DoD has added to the definition the statement that ''The term electronic part includes any embedded software or firmware.''

Requiring electronic unique identification is addressed in paragraph 9.b. of this section, IUID use.

3. System Criteria

a. General

Comments: Twenty respondents submitted comments on this subject area. A number of respondents criticized the proposed rule for merely repeating the system criteria from section 818 without elaboration. One respondent said that, while the DFARS requires an operational system, it does not define the approval criteria or specify who will conduct the review or the frequency of reviews. Many of the respondents concluded that the proposed rule did not correctly implement section 818 of the law, specifically the requirement at section 818(b)(2) ''to implement a risk-based approach to minimize the impact of counterfeit electronic parts or suspect counterfeit electronic parts on DoD.'' In the opinion of some respondents, the proposed rule would impose unreasonable strict liability standards on industry, regardless of significant and good-faith efforts to address the issue. This comment was supported by other respondents that stated, considering the potentially unaffordable costs of treating all acquisitions of electronic parts equally, the final rule should provide for weighing the odds of occurrence and the potential consequences in responding to potential threats of counterfeit parts, which can vary from serious impact to negligible impact. One of these respondents recommended that DoD enable its largest contractors to take the lead in detection and avoidance of counterfeit electronic parts by allowing those contractors to make risk-based decisions on how best to implement supply chain assurance measures.

A respondent suggested that one way to address the broad-ranging concerns would be to revise DFARS 246.870–2(a) effectively to define a ''counterfeit avoidance and detection system'' to mean ''the contractor's system for risk analysis based on inspection and testing to mitigate the acquisition and use of counterfeit electronic parts from the supply chain.'' The respondent's use of the term ''mitigate'' would alleviate the strict liability requirement for 100 percent detection in the proposed rule. A second respondent supported the use of ''mitigation'' in lieu of a 100 percent avoidance requirement.

Response: The final rule adds criteria to the system requirements and expands and clarifies the intent of the criteria in the clause at 252.246–7007. The respondent stating that the DFARS does not define the approval criteria or specify who will conduct the review is referred to FAR subpart 44.3, Contractor Purchasing Systems Reviews, and its supplement, DFARS subpart 244.3. DCMA has developed and published guidance for the conduct of Contractor Purchasing Systems Reviews (CPSRs) that is available on the agency's Web site. In addition, DCMA is developing a ''Counterfeit Detection and Avoidance System Checklist'' that will be available when finalized.

The DFARS does take a risk-based approach, as is further clarified in the final rule. DoD has modified DFARS 246.870–2(b) to read, ''A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address . . .''. This change conforms the final rule with DoDI 4140.67. The contractor is responsible for establishing a risk-based counterfeit detection and avoidance system with the amount of risk based on the potential for receipt of counterfeit parts from different types of sources. Three additional system criteria are added to the nine criteria set forth in the statute. These criteria are elaborated in the additions to the system criteria that are included in the final rule in the clause at DFARS 252.246–7007.

Comment: One respondent made specific suggestions for improving the system criteria at DFARS 246.870–2(b) by requiring the use of ''secure mass serialization with alphanumeric tokens for digital authentication'' and not

limiting the coverage only to electronic parts.

Response: DoD does not endorse specific mechanisms or technology in the rule, but rather focuses on the desired outcome. Furthermore, DoD is restricting initial implementation to electronic parts as specified in section 818, although other items are considered critical and can be subject to counterfeiting.

b. Training of Personnel

Comment: With regard to DFARS 246.870–2(b)(1) (training of personnel), a respondent noted that the training criteria and the scope of the required training were not identified in the listing of minimum system criteria.

Response: DoD agrees with the respondent's statement, but notes that this is an intentional omission. DoD is providing contractors with the flexibility to determine the appropriate type of training required for individual firms, based upon each contractor's assessment of what programs and capabilities are already in place within the firm and the assessment of what more is needed.

c. Inspection and Testing

Comment: Another respondent, commenting on DFARS 246.870–2(b)(2) (inspection and testing of electronic parts), suggested that DoD provide a listing of minimum inspections and tests.

Response: DoD agrees that requiring the contractor to test and inspect all electronic parts would be prohibitive. However, the DFARS does not require all electronic parts to be treated equally. The requirement to test or inspect is dependent on the source of the electronic part. The potential for receipt of counterfeit electronic items is considerably lower when the item is procured from authorized sources and retains traceability. The final rule allows contractors to make risk-based decisions based on supply chain assurance measures.

d. Proliferation of Counterfeit Electronic Parts

Comment: For DFARS 246.870–2(b)(3) (processes to abolish counterfeit parts proliferation), a respondent commented that DoD should provide minimum requirements for selection of suppliers that include a requirement to purchase products from authorized suppliers whenever possible. Another respondent recommended the addition of the phrase '', such as the quarantine of counterfeit parts.'' The respondent stated that this addition would provide a path of legal justification for quarantining counterfeit parts.

Response: DoD has amended DFARS 246.870–2(b)(4) and (b)(6) to address quarantining of counterfeit electronic parts and suspect counterfeit electronic parts. These criteria are elaborated on in paragraph (c) of the clause at DFARS 252.246–7007.

e. Traceability

Comment: Multiple respondents commented on the traceability requirements in DFARS 246.870–2(b)(4) (process for maintaining electronic traceability). Two respondents took issue with the perceived significant implementation and compliance problems posed by traceability. One respondent suggested that DoD incorporate a traceability provision that is in accordance with prevailing industry standards to ensure that covered contractors establish and verify the source of electronic parts and the chain of custody. One respondent stated that traceability cannot resolve unreliability concerns and recommended that purchase of electronic parts from an independent supplier should be permitted only after an exhaustive search of all legally authorized sources proved fruitless, and any such purchases must come with required testing. A third respondent stated that the use of the term ''mechanisms'' required something more than ''best practices,'' and strongly recommended that DoD establish a technology solution that is proactive and strategic, and one which provides quality, measurable data.

Two other respondents recommended requiring the use of Item Unique Identification (IUID) as a mandatory traceability mechanism.

Another respondent expressed its strong belief that, although the requirement to maintain traceability is taken directly from the statute, it is not realistic to promulgate a zero-tolerance standard. Instead, the respondent recommended that paragraph (b)(4) be revised to make it clear that DoD will be satisfied if a contractor has a system that meets applicable industry standards.

Response: DoD intentionally did not mandate specific technology solutions for traceability. The rule provides a contractor flexibility to utilize industry standards and best practices to achieve the required outcome of traceability.

References to IUID marking are added to the final rule as an optional means of maintaining traceability.

With regard to mission-critical electronic parts and electronic parts that could impact human safety, DoD does have a zero-tolerance policy.

f. Trusted Suppliers

Comment: For DFARS 246.870–2(b)(5)(use and qualification of trusted suppliers), a respondent recommended that it include guidance on what would need to be included in a trusted supplier program. The respondent stated its belief that the Congress intended that a trusted supplier should be one that can demonstrate that it has processes in place to evidence traceability to the original manufacturer or its authorized distributor chain. The respondent stated that, because of the importance of this change to contractors' purchasing systems requirements, any standards imposed by DoD related to trusted suppliers should be subject to notice and comment by industry. A respondent stated that DoD should have a list or checklist of requirements for determining what is a trusted supplier, including auditing processes. Another respondent said that there is a pressing need for industry to receive more guidance about how to handle situations where parts are obsolete or not available from authorized sources or original manufacturers. A third respondent suggested that paragraph (b)(5) would be much improved by adding, at the end, the phrase ''as defined by the contractor.''

Response: For reasons explained in detail in paragraph 2.b. of this section, ''Trusted supplier'', the term ''trusted supplier'' is not defined in the final rule. However, a categorization of what types of suppliers may be deemed ''trusted'' and therefore treated differently from other suppliers is included in the system criteria and explained further in paragraph (c) of the clause at DFARS 252.246–7007.

g. Reporting and Quarantining

Comment: Two respondents commented that DFARS 246.870–2(b)(6)(The reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts) should be revised by adding, at the end, ''by use of a global serialized item identifier or IUID per MIL STD 130.'' Another respondent referenced section 818(c)(4), (5), and (e)(2)(a)(vi), noting that these provisions directed revision of the DFARS to address reporting requirements, reporting methods, and reporting-related civil liability protections, but paragraph (b)(6) referred only to the requirement to report and did not address the level of reporting detail DoD expects or to whom at DoD or elsewhere the contractor should report. One respondent recommended adding a qualification

that the requirement to report and quarantine didn't come into play until ''confirmation of a suspect status by a third-party inspection and, if necessary, testing to the extent of destructive testing of a sample(s).''

Response: DoD agrees with respondents who requested additional guidance on reporting and quarantining procedures. The clause at DFARS 252.246–7007 is expanded in the final rule to provide information on where to report, what to report, and the circumstances that require a report. Additionally, the Government plans to address reporting and quarantining requirements more fully in FAR Case 2013–002, Expanded Reporting of Nonconforming Supplies.

h. Suspect Counterfeit Electronic Parts

Comment: With regard to DFARS 246.870–2(b)(7)(methodologies to identify suspect counterfeit electronic parts and to determine if a suspect counterfeit electronic part is counterfeit), a respondent said that only the original manufacturer, not the prime contractor, can make the determination that a particular part is actually counterfeit, but experience indicates that the original manufacturer will not participate, in most cases, in an investigation. Further, the respondent claimed, it is often more cost effective for both the prime contractor and the Government to declare the parts suspect or scrap and reprocure the parts.

Response: DFARS 246.870–2(b)(7) requires the contractor's counterfeit electronic part detection and avoidance system to address methodologies to identify suspect parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit. However, the rule provides the contractor flexibility to employ a risk-based approach to tests and inspections.

i. Design, Operations, and Maintenance of System

Comment: A respondent commented on DFARS 246.870–2(b)(8) (Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts) and asked whether compliance with industry standards such as AS5553 would fulfill the requirement. Another respondent recommended inserting the phrase ''the use and supply of'' after ''detect and avoid'' and before ''counterfeit electronic parts.''

Response: DoD does not specify industry standards in the rule, because industry standards are continually evolving. However, a contractor may elect to use current Government- and industry-recognized standards to meet this requirement. This clarification has been added to the clause 252.246–7007 in paragraph (c)(8). ''Use and supply of'' is implied in the current language.

j. Flow Down

Comment: With regard to DFARS 246.870–2(b)(9) (the flow down of counterfeit detection and avoidance requirements to subcontractors), two respondents recommended the addition, at the end of ''including the use of IUID to enable supply chain traceability.''

Response: Paragraph (b)(9) requires the flow down of all counterfeit detection and avoidance requirements, without the need to specifically identify or list individual requirements. See the response at paragraph 9.b. of this section, IUID use.

4. Applicability

Comments: Eighteen respondents submitted comments on applicability.

a. CAS-Covered Contractors

Comments: Several respondents objected to limiting the applicability of the rule to CAS-covered contractors. Although recognizing that the statute (section 818(f)(1), with reference to section 893(f)(2) of the National Defense Authorization Act for Fiscal Year 2011), defined ''covered contractor'' to mean a CAS-covered contractor, a respondent expressed concern that limiting applicability to CAS-covered contractors might provide undue risk for the infiltration of counterfeit parts into the DoD supply chain.

Another respondent questioned the exclusion of educational institutions, Federally Funded Research and Development Centers (FFRDCs), and University Associated Research Centers (UARCs) from the new requirements. The respondent stated that the statute does not carve out any of the institutions listed in the proposed rule as exempt from the counterfeit parts strictures. The respondent said that the proposed rule did not sufficiently explain why DoD exempted these institutions and whether they are exempt from the rule even if they are a subcontractor to prime contracts that do include the clause.

Some other respondents, however, interpreted the flowdown requirement not to apply to subcontractors unless the subcontractor also was subject to CAS, leaving, in the opinion of one respondent, a substantial gap in the regulatory coverage.

One of these respondents, for example, stated that ''(r)ather than . . . directing counterfeit prevention requirements toward lower-tier suppliers that tend to be associated with the sale of suspect counterfeit electronic parts, the proposed rule focuses on prime and upper-tier subcontractors (large entities that are subject to CAS) that are not as well positioned to 'eliminate counterfeit electronic parts from the defense supply chain.' '' Regardless of this interpretation, these respondents recommended making all subcontractors at all tiers subject to the requirements of the rule.

A respondent noted that the preponderance of sales of counterfeit items is far less than the limits required here and said that it was unclear if subcontracts under the CAS threshold were covered.

One respondent objected that small entities, educational institutions, FFRDCs, and UARCs could be impacted by the rule as subcontractors to CAS-covered prime contractors.

A respondent asked how the regulations would apply to contractors and subcontractors subject to modified-CAS.

Response: Section 818 specifically limited to ''covered contractors'' the applicability of paragraphs—

- (c)(2)(1)(A) (the responsibility for detecting and avoiding the use or inclusion of counterfeit parts or suspect counterfeit electronic parts and for rework or corrective action); and
- (e) (Improvement of Contractor Systems for Detection and Avoidance of Counterfeit Electronic Parts).

The definition of ''covered contractor'' at 818(f)(1) referred to the definition at section 893(f)(2) of the National Defense Authorization Act for Fiscal Year 2011, i.e., ''the term 'covered contractor' means a contractor that is subject to the cost accounting standards under section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422.'' Section 422, in conjunction with the recodification of title 41 of the United States Code, is now sections 1501–1504 of title 41.

As an initial implementation of section 818, this rule has limited application at the prime contract level (including implementation of paragraph (c)(3) of section 818 (Trusted Suppliers)) to CAS-covered contractors.

The final rule does not specifically exempt educational institutions, FFRDCs, and UARCs from application of the rule. Rather, the clause specifies that it does not apply to any contractor that is not CAS-covered pursuant to 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1.

The final rule does exclude set-asides for small business from the clause prescriptions for 252.246–7007,

Contractor Counterfeit Electronic Part Detection and Avoidance System (and thus indirectly 252.244–7001, Contractor Purchasing System Administration-Alternative I), because CAS does not apply to contracts with small businesses.

However, all levels of the supply chain have the potential for introducing counterfeit or suspect-counterfeit electronic items into the end items contracted for under a CAS-covered prime contract. The prime contractor cannot bear all responsibility for preventing the introduction of counterfeit parts. By flowing down the prohibitions against counterfeit and suspect counterfeit electronic items and the requirements for systems to detect such parts to all subcontractors that provide electronic parts or assemblies containing electronic parts (without regard to CAS-coverage of the subcontractor), there will be checks instituted at multiple levels within the supply chain, reducing the opportunities for counterfeit parts to slip through into end items. As requested by many respondents, the flowdown requirement is clarified by the addition of a paragraph in the clause at DFARS 252.246–7007 (see also paragraph 5. of this section, Flowdown requirements).

It is correct that small entities, educational institutions, FFRDCs, and UARCS may be impacted by the rule as subcontractors to CAS-covered prime contractors.

With regard to contractors or subcontractors with modified CAS-coverage, the law does not specify a distinction. Therefore any prime contract subject to CAS coverage, whether full or modified, is subject to the final rule.

b. Commercial Items, Especially COTS Items

Comments: Several respondents questioned making the rule applicable to commercial items in general and commercially available off-the-shelf (COTS) items in particular. One respondent noted that it would not be in DoD's best interest to apply the Government-unique requirements of section 818 to COTS items. Two respondents recommended that, instead, DoD should recognize that commercial and COTS items purchased directly from the original manufacturers and their authorized distributors should be held only to the requirements of the commercial warranties and any other standard commercial obligations. One respondent suggested that, if a COTS item is purchased directly from the original manufacturer, then its authenticity should not be subject to question. Another respondent stated its belief that the Congress intended to exclude commercial and COTS items from the coverage of the statute.

A respondent concluded that the rule must not be applicable to commercial items because the **Federal Register** notice for the proposed rule did not contain a determination (required by law) that it would not be in the best interest of DoD to exempt commercial items. While agreeing that it was proper to exempt commercial items, the respondent wanted that exemption for commercial items clearly stated in the rule.

Response: Section 818 does not specifically address application to contracts or subcontracts for the acquisition of commercial items, either to exempt or to make applicable. However, the provisions of section 818 that require implementation in a contract clause meet the criteria for a covered law subject to 41 U.S.C. 1906 and 1907. That means that DoD shall not apply the clauses to implement section 818 to contracts or subcontracts for the acquisition of commercial items (including COTS items), unless the Director, DPAP, makes a written determination that it would not be in the best interest of the Government to exempt contracts and subcontracts for the acquisition of commercial items (including COTS items) from the applicability of the provisions of section 818.

Therefore, the final rule, like the proposed rule, does not prescribe the clause at 252.246–7007 (and the related clause at 252.244–7001, Alternate I) for use in prime contracts for the acquisition of commercial items (including COTS items). In order to require application to the acquisition of commercial items, it would be necessary to list the clauses at 212.301. However, CAS does not apply to acquisitions of commercial items, and therefore most contractors providing commercial items are not CAS-covered (unless they also provide non-commercial items to the Government under contracts covered by CAS).

The Director, DPAP has determined that the aforementioned clauses in the final rule do apply to subcontracts for the acquisition of commercial items (including COTS items). The proposed rule required at 252.246–7007(c)(9) that the contractor shall flow down counterfeit detection and avoidance requirements to all levels in the supply chain, and did not specify any exceptions. Because this requirement did not specify mandatory flow down of the clause itself, it was not covered by 252.244–7000, which specifies that the contractor is not required to flow down the terms of DFARS clauses in subcontracts for commercial items, unless so specified in the clause. The final rule adds a flowdown paragraph to the clause at 252.246–7007 and makes applicability to subcontracts for commercial items explicit (see paragraph 5. of this section, Flowdown requirement).

Any electronic part procured by a CAS-covered prime contractor is therefore subject to the restrictions concerning counterfeit and suspect counterfeit parts, without regard to whether the purchased part is a commercial or COTS item. Further, studies have shown that a large proportion of proven counterfeit parts were initially purchased as commercial or COTS items.

c. Parts Already on the Shelf

Comment: A respondent asked how the rules would be applied to parts that had been purchased already and were on the shelf.

Response: If the parts are already on the contractor's shelf or in inventory, and they were not procured in connection with a previous DoD contract, they will be subject to the same requirements, such as traceability and authentication.

d. Other

Comments: One respondent objected to limiting applicability to electronic parts and suggested that the rule should apply to all types of DoD purchases. Another respondent wanted to know if the rule was intended to apply only to contractual deliverables or also to ''tooling, GSE or other manufacturing aides that are procured with contract funds.''

Response: DoD is restricting initial implementation to electronic parts as specified in section 818, although other items are considered critical and can be subject to counterfeiting.

Comments: One respondent recommended that the final rule apply not only to the acquisition of electronic parts but also to their use, as the latter may well involve software through which malware or exploits are introduced into a company's information technology networks.

Response: DoD is not expanding upon the applicability required by the statute, but understands the term ''electronic part'' to include embedded software. Accordingly, the definition at 202.101 for ''electronic part'' is revised to add ''The term ''electronic part'' includes any embedded software or firmware.''

5. Flowdown Requirements

Comments: Ten respondents submitted comments on flowdown requirements. Several respondents strongly recommended that the final rule must ensure compliance throughout the supply chain, and the clause must therefore include a mandatory flowdown requirement for use in all subcontracts at every tier. Some of these respondents did note that, even if the requirements were flowed down by prime contractors, there is no way to ensure that a subcontractor would accept the mandatory flowdown. One of these respondents said that ''(s)ome companies important to the Department, below the level of primes, but in the higher tiers of the supply chain, may choose not to participate in the defense market if they are forced to shoulder excess risk and cost but have no effective means of control over exposure to counterfeit parts.'' In such cases, the respondent urged that a mechanism be provided for notification to DoD and relief from the flowdown requirement or other instruction or assumption of responsibility by DoD.

Another position was taken by two respondents that recommended that a legally authorized source, including an original manufacturer and distributor that only purchases from an original manufacturer, regardless of what subcontractor tier it might reside at, should not be subjected to the unnecessary costs and man-hours associated with a counterfeit detection and avoidance requirement.

A respondent believed that the flowdown requirement was unnecessary and burdensome and recommended that DoD utilize instead a requirement for compliance with the industry standard AS5553A ''that many companies have already implemented.''

Response: The final rule flows down the requirements to all subcontractors of prime CAS-covered contractors, at all tiers, without regard to whether the subcontractor itself is subject to CAS or is a commercial item (see also paragraphs 4.a. and 4.b. of this section, CAS-covered contractors and Commercial items (especially CORS items). DoD has expanded system criterion at (e)(2)(A)(ix) of the statute and clarified the flowdown requirements for the clause at DFARS 252.246–7007 by also adding a flowdown paragraph that applies when the subcontractor is providing electronic parts or assemblies containing electronic parts.

6. Contractor Purchasing Systems Review (CPSR)

Comments: Fifteen respondents submitted comments on the inclusion of the counterfeit detection and avoidance system as part of the contractor's purchasing system. Several respondents were dubious that DCMA has the manpower to execute the additional requirements associated with this rule.

Response: The DCMA CPSR Group will include a review of the counterfeit electronic parts detection and avoidance system of a contractor when performing a CPSR. The review will include assistance from the local DCMA Quality Assurance Representative. Based on yearly risk assessments and requests from administrative contracting officers (ACOs), the CPSR Group performs as many reviews as possible. A priority determination is considered when preparing the yearly schedule of contractors to be reviewed to mitigate the demand exceeding capabilities.

Comment: A respondent noted that section 818 did not specifically require the creation of a new business system or the inclusion of a counterfeit parts detection and avoidance system in an existing business system. This respondent pointed out its interpretation that a contractor's failure to establish and maintain an acceptable detection and avoidance system could result in disapproval of the contractor's entire purchasing system and the withholding of payments. Another respondent requested that DoD ensure that a deficiency solely related to the counterfeit part detection and avoidance system would not prevent the overall purchasing system from functioning as if approved. One respondent further requested that the clauses be revised to ''make it clear that a 'significant deficiency' in a counterfeit system should not result in the imposition of a withhold in addition to any withholds due to such significant deficiency findings in the CPSR system audit.'' Several respondents considered that inclusion of the counterfeit parts detection and avoidance system within the purchasing system goes well beyond the intended scope of a contractor's purchasing system, fails to address the many other contractor systems (e.g., design, engineering, and quality assurance), and fails to acknowledge or incentivize responsible corrective action. If DoD were to proceed as in the proposed rule and retain this as part of the contractor's purchasing system, then a respondent recommended that any part purchased from a legally authorized source be exempted. Another respondent suggested that contractors be given wide discretion in their use of industry standards and internal processes to meet goals, particularly with regard to commercial items, and that DoD be given the authority to provide short-term waivers for the introduction of new technology products. Another alternative came from a respondent recommending that the rule include a contractor self-certification declaration of the contractor's compliance with the AS5553A standard. Two respondents suggested that compliance would be possible if DoD adopted a requirement to capture and authenticate the DoD IUID of each electronic part received from a supplier. (See also section B.9.)

Other respondents stated unequivocally that paragraph (c)(21) of the clause at DFARS 252.244–7001 (the requirement to comply with the counterfeit parts detection and avoidance system (DFARS 246.870–2(b)) could not be met until those requirements are defined with more specificity.

Response: If a deficiency is determined by the ACO to be significant in reference to the counterfeit electronic parts detection and avoidance system, the purchasing system may be disapproved, and a withholding of payments can result. There are factors considered by DCMA when making a determination of significance, some of which include public law violations and repeat occurrences.

A CPSR can include the expertise from technical support personnel such as engineering and quality assurance. A contractor's corrective actions are considered when performing a CPSR, but no incentive program has been developed.

When performing a CPSR, the contractor's subcontract management policies and procedures are reviewed to ensure they are effective and are being followed. The review will include an examination of the contractor's policies and procedures related to the detection and avoidance of counterfeit electronic parts.

The definition of legally authorized source is addressed in the definition section of this document. The NDAA for FY 2012 (Pub. L. 112–81) requires that, whenever possible, electronic parts be purchased from original manufacturers, their authorized dealers, or trusted suppliers. DoD reads this requirement as requiring suppliers to have a counterfeit detection and avoidance system that meets the requirements of DFARS 246.870–2(b) and section 818.

The prime contractor is responsible for accepting only non-counterfeit electronic parts from its subcontractors

and suppliers. Requiring electronic unique identification is addressed at section paragraph 9.b. of this section, IUID use.

A CPSR currently ensures compliance with paragraph (c)(21) of DFARS 252.244–7001 by examining the contractor's vendor rating system or equivalent. There is no need for additional definition or clarification.

Comment: A respondent recommended that the following sentence be added to paragraph (a) of DFARS 244.303, Extent of review: ''Criteria for assessing the adequacy of rationale documenting ''commercial item'' determinations shall be based on guidance from the 'DoD Commercial Item Handbook.' ''

Response: The respondent's comment is outside the scope of this case.

7. Cost Allowability

Comments: Seven respondents submitted comments on the cost allowability section of the proposed rule. The majority of these respondents deemed the cost principle at DFARS 231.205–71 an overreach because it would apply, not just to contractors covered by the Cost Accounting Standards (CAS), but to their suppliers and subcontractors as well. Another respondent read the proposed rule to apply only to a contractor or subcontractor subject to CAS, which argues, at the least, for clarification of the flowdown requirements in the final rule. A respondent stated that the report of the Senate Armed Services Committee assumed ''that contractors will recover costs associated with counterfeit part quality escapes from their lower-tier suppliers that provided the counterfeit.'' This respondent claimed that the Senate Armed Services Committee report and the DFARS proposed rule do not acknowledge realities that a DoD contractor faces.

Response: Section 818 paragraph (c)(2)(B) (subsequently modified to provide limited exceptions by section 833 of the NDAA for FY 2013) makes the blanket statement that the regulations shall provide that the cost of counterfeit electronic parts and suspect counterfeit electronic parts and the cost for rework or corrective action that may be required . . . are not allowable costs under Department contracts. This requires treatment in the regulations like any other cost principle. The new cost principle has been located in DFARS subpart 231.2, Contracts with Commercial Organizations. It is therefore applicable to any contract with a commercial organization (i.e., not an educational institution State, local, or federally recognized Indian tribal government; or a non-profit institution). The cost principles are applied to the pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed, and is used for the determination, negotiation, or allowance of costs when required by a contract clause (see FAR 31.000).

To clarify applicability of the cost principle, the final rule has been modified by removing the statement of contractor responsibility (derived from section 818(c)(2)(A)) that was included in the proposed rule at 231.205–71(b) and could lead to misinterpretation of the applicability of the cost principle.

The prime contractor's responsibility with regard to dealing with unallowable costs incurred by a subcontractor is no different for this cost principle than for any other cost principle.

Comment: Two respondents pointed out that the use of ''expressly'' in the phrase ''expressly unallowable'' makes the associated costs subject to penalties and, because the statute did not use the term ''expressly,'' suggested that it be removed from the DFARS.

Response: DoD has removed the term ''expressly'' from the final rule. Section 833 does not employ the term ''expressly.'' However, even without the inclusion of the term ''expressly'' in the regulations, the costs are nevertheless expressly unallowable, because DFARS 231.205–71 explicitly states that the costs are unallowable. Therefore, inclusion of the term is unnecessary.

Comment: Some respondents read section 833 to apply only a two-part test, i.e., when (1) the contractor has an approved system or the parts at issue were provided by the Government and (2) timely notice was provided to DoD. However, other respondents read both the statute and DoD as applying a three-part test for allowability. One respondent considered that the use of the conjunctive ''and'' between the second and third prongs could create ambiguity, given that there is no conjunction between the first and second prongs. Several of these respondents recommended revisions to the cost principle to make it a two-part test rather than a three-part test, as it was expressed in the proposed rule. These respondents also submitted that it would clarify the issue of cost allowability if DoD were to express a preference for purchases from the original manufacturer or a Government procurement center (e.g., the Defense Logistics Agency), thus effectively isolating contractors from any liability associated with such parts.

Response: Subsequently, the NDAA for FY 2013 (Pub. L. 112–239) was enacted on January 2, 2013. It contained section 833, which modified the language of section 818 quoted above, to read as follows:

''(T)he cost of counterfeit electronic parts and suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts are not allowable costs under Department contracts, unless—

(i) The covered contractor has an operational system to detect and avoid counterfeit parts and suspect counterfeit electronic parts that has been reviewed and approved by the Department of Defense pursuant to subsection (e)(2)(B);

(ii) the counterfeit electronic parts or suspect counterfeit electronic parts were provided to the contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation; and

(iii) the covered contractor provides timely notice to the Government pursuant to paragraph (4).''

The proposed rule correctly reflects the most recent statutory language, i.e., section 833. Furthermore, review of the legislative history indicated that this structure and resultant meaning was deliberate.

Comments: Several respondents proffered other safe-harbor proposals (see also prior comment and response) as follows:

- Change the requirement for notice to the Government from ''timely'' to ''immediate.''
- The costs of rework and corrective action should be exempt from the express unallowability of costs if the part was purchased from the original manufacturer or a source authorized by the original manufacturer, or, alternatively, if the contractor ''mitigated'' (as opposed to ''avoided'') counterfeit electronic parts.
- When ''evidence reveals that questioned parts stemmed from an overt criminal enterprise or the work of foreign intelligence attack, the prime contractor's liability should be limited.''
- A safe harbor should be created for old parts that the original manufacturer no longer manufactures and for which no trusted suppliers have been named.

Response: The term ''immediate'' would institute an unreasonable requirement, and it would not conform to the section 818(c)(4) requirement for the contractor to ''report in writing within 60 days to appropriate Government authorities and the Government-Industry Data Exchange Program (or a similar program designated by the Secretary).'' Thus, the laws define ''timely'' as 60 days, not ''immediately.'' Sixty days is also the

time period specified in DoDI 4140.67. DoD agreed that ''timely,'' as used in DFARS 231.205–71(c)(3), would be clearer if a reference to the 60-day period were added.

The language of section 833 does not allow for the additional exemptions or carve-outs as suggested by respondents.

Comment: One respondent noted that, if adopted as final, DFARS 231.205–71(c) would conflict with the clause at FAR 52.245–1, Government Property, by adding an extra requirement (i.e., the requirement at DFARS 231.205–71(c)(1) for the contractor to have an approved, operational system to detect and avoid counterfeit parts) that contractors must meet before they are able to receive equitable adjustment for delivery of Government-furnished property in a condition not suitable for its intended use. The respondent considered this to have relieved the Government of a responsibility that currently exists within FAR 52.245–1, to provide conforming material without regard to whether the contractor has an approved operational system to detect and avoid counterfeit parts.

Response: The requirements of DFARS 231.205–71(c), as written, do not conflict with FAR 52.245–1. First, the clause at FAR 52.245–1 places Government contract property management requirements on the contractor. This clause does not contain terms and conditions related to the allowability of costs (which can found at FAR part 31). Further, the cost principle included at DFARS 231.205–71 is based on the statutory language contained in section 833.

8. Industry Standards

Comments: Eleven respondents submitted comments on the issue of industry standards. Most of these respondents urged DoD, for its contractors' use, to adopt industry standards such as SAE AS5553A, entitled ''Counterfeit Electronic Parts; Avoidance, Detection, Mitigation, and Disposition,'' which respondents said provided uniform requirements, practices, and methods to mitigate the risk of receiving and installing counterfeit electronic parts, including requirements, practices, and methods related to (i) parts management, (ii) supplier management, (iii) procurement, (iv) inspection, test, and evaluation, and (v) response strategies when suspect counterfeit electronic parts are discovered. One respondent stated that DoD and NASA already have adopted the AS5553A standard for their own use. Another respondent recommended that AS5553A be used to delineate detection and avoidance system criteria by express reference to industry standards. A respondent noted that the use of a standard-based approach would be technology neutral and afford industry with a variety of choices that enable flexibility in implementation rather than imposing rigid and potentially harmful Government regulations. Using the available industry standards, according to another respondent, would consider source, traceability, part application, risk assessment, and testing requirements. Some of these respondents noted that current industry standards, e.g., AS5553A, require processes to prevent the reintroduction of counterfeit and suspect counterfeit parts back into the supply chain. If AS5553A were adopted, a respondent said, then contractors should be allowed to self-certify their compliance with the standard; upon such self-certification, a contractor should be considered to have an acceptable system for counterfeit part detection and avoidance, until determined otherwise.

Other respondents focused on the ''secondary market,'' i.e., distributors and brokers, stating that these types of sources are necessary. These respondents recommended that covered contractors should be encouraged, if not required, to impose known industry standards, such as AS5553A, AS6081, or AS6171 on their secondary market sources and small business suppliers.

A cautionary note was struck, however, by one respondent, which stated that industry standards on counterfeit parts currently vary and continue to evolve in response to industry advances, requirements, and applicable regulations, which might lead to the risk of procurements involving the same part specifying different standards. Another respondent recommended the use of industry standards, including IDEA–STD–1010 as well as AS5553A and AS6081, but cautioned that there are still many artifacts and characteristics found under inspection that remain controversial. The respondent provided examples, such as ''striations on the body of an electronic part due to normal shuffling within the product's protective carrier during transportation (or) authorized remarking of a part by the/an authorizing entity.''

Response: DoD concurs that industry consensus standards could be used for the development and implementation of internal counterfeit parts detection and avoidance systems. It is Government policy to participate on industry standard writing bodies (see OMB Circular A–119) and Government/industry conformity assessment initiatives (see 15 CFR Part 287, Guidance on Federal Conformity Assessment Activities) and to adopt industry standards wherever practical. DoD will continue to be an active participant on industry counterfeit avoidance standard-writing bodies. An additional system criterion is added to DFARS 246.870–2(b) to require contractors to have a process for keeping continually informed of current counterfeiting information and trends. However, DoD agrees with the respondent noting that industry standards on counterfeit parts currently vary and continue to evolve. For this reason, DoD has not mandated the use of specific industry standards but left their use to the contractor, and DoD has not adopted the still-changing definitions in industry standards.

9. Testing/IUID Use

In this category, eight respondents submitted comments.

a. Testing

Comments: To help make the determination of whether a part is ''suspect counterfeit,'' and to mitigate the risk of inclusion of ''counterfeit'' or ''suspect counterfeit'' electronic parts, one respondent recommended that ''parts acquired from brokers be tested as part of the acceptable counterfeit avoidance and detection system described by proposed DFARS 246.870–2, in alignment with the test requirements of the DoD-adopted SAE standard AS6081, 'Fraudulent/Counterfeit Electronic Parts: Avoidance, Detection, Mitigation, and Disposition—Independent Distribution,' currently invoked by the Defense Logistics Agency's Qualified Testing Suppliers List (QTSL) Program.'' Another respondent recommended testing of all items, parts, and components when they are received by the procuring entity.

Response: DoD agrees with the respondent's recommendation to specify testing requirements when parts are procured from sources that present elevated risk. Appropriate text is added in the system criteria at DFARS 246.870–2(b) and the clause at DFARS 252.246–7007.

b. IUID Use

Comments: Many respondents stated their belief that the detection and avoidance of counterfeit electronic parts is predicated on the successful implementation of Item Unique Identification (IUID) for each electronic part. Several of the respondents noted that considerable policy already exists in DoD that could be leveraged to assist with the identification of counterfeit

electronic parts. The respondents cited the required use of automatic identification technology (AIT) or automatic identification and data capture (AIDC) technologies, and some cited, in support, GAO report GAO–10–389, entitled ''DoD Should Leverage Ongoing Initiatives in Developing Its Program to Mitigate Risk of Counterfeit Parts.'' Two of these respondents referred to section 807, Sense of Congress on the Continuing Progress of the Department of Defense in Implementing its Item Unique Identification Initiative, of the NDAA for FY 2013. The Congress found that IUID ''has the potential for realizing significant cost savings and improving the management of defense equipment and supplier throughout their life cycle'' (section 807(a)(2)), as well as being able to ''help the Department combat the growing problem of counterfeit parts in the military supply chain'' (section 807(a)(3)). These respondents stated that requiring suppliers to assign IUIDs to electronic parts and register those parts in the DoD IUID Registry would better enable contractors to verify their sources as part of a contractor purchasing system review. The respondents noted that DoD has a policy that supports serialized item management for material maintenance (DoDI 4151.19), and another policy, at DoDI 8320.04, that requires any DoD serially managed items to be marked with an IUID-compliant mark. Further, one of the respondents stated that DoD's IUID policy requires the use of the IUID Registry, which includes, along with the Unique Item Identifier, pedigree data. A major component of the pedigree data, according to the respondent, is the Enterprise Identifier (EID), which mostly corresponds to the original item manufacturer. For electronic parts where physical marking is not possible, two respondents said that technology exists and standards are evolving for electronic unique identification.

Response: DoD concurs with the benefits of item unique identification (IUID) described by the respondents. DoDI 4140.67 requires DoD component heads to ''(a)pply item unique identification (IUID) using unique item identifier (UII) for critical materiel identified as susceptible to counterfeiting to enable authoritative life-cycle traceability and authentication.'' For purposes of this final rule, DoD focused on the desired outcome of traceability without mandating the means to achieve the outcome.

Currently, the clause at DFARS 252.211–7003, Item Identification and Valuation, requires an IUID for items with an acquisition cost of $5,000 or more. In an individual contract, the DoD may request assignment of an IUID for items with a lower acquisition cost, when identified by the requiring activity as critical materiel identified as susceptible to counterfeiting, serially managed, mission essential, or controlled inventory, or the requiring activity determines that permanent identification is required. IUID marking and registry is already required by the DFARS for electronic items that meet those criteria (see DFARS 211.274).

A complete discussion of DoD's IUID system is found at *http://www.acq.osd.mil/dpap/pdi/uid/data_submission.information.html.* The registry, located on the Internet at *https://www.bpn.gov/iuid,* is an acquisition gateway to identify (a) what the item is; (b) how and when it was acquired; (c) the initial value of the item; (d) current custody (Government or contractor); and (e) how it is marked.

10. Reporting

Comment: A respondent recommended revisions to DFARS 246.870–2(b)(6) and the clause at 252.246–7007(c)(iv) to include specific reporting requirements consistent with the current reporting of possible violations of a contractor's code of business ethics and conduct (DFARS 203.1003(b)). The respondent's recommended change would revise the text as follows:

''The reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts, in writing, to the contracting officer and the Department of Defense Inspector General, in accordance with DFARS 203.1003(b), within 60 days of identifying the counterfeit or suspect counterfeit electronic parts.''

Response: Not all counterfeit or suspect counterfeit parts are due to fraud, and, in any case, reporting of fraudulent activity to the DoD IG is already required by various DoD and Governmentwide clauses and provisions. FAR Case 2013–002, Enhanced Reporting of Nonconforming Parts, has been opened to further address reporting requirements. In that case, the requirements to report to the contracting officer and to the Government-Industry Data Exchange Program (GIDEP) will be clear, as is the existing requirement (at other parts of the FAR and DFARS) to report fraud to the IG. Although DoD recognizes the importance of the ''mandatory disclosure'' rules, this may not be an appropriate use of them because it suggests a contractor has committed an ''ethical or code of conduct violation.''

Comment: A respondent recommended adding, at DFARS 246.870–2(b)(6), to whom the occurrence (of a counterfeit or suspect counterfeit electronic part) must be reported and within what period of time it must be reported. The respondent wanted to know whether it would be acceptable to report to industry associations, law enforcement, or other organizations in other countries if the counterfeit was discovered outside the U.S.

Response: In accordance with section 818, the reporting is intended to be made to GIDEP within 60 days, but these requirements are being addressed in a FAR case (2013–002, Expanded Reporting of Nonconforming Items) that had not been released for public comment at the time the public comment closed for this DFARS case. The FAR signatories intend for all such reports to be made to GIDEP, regardless of where the counterfeit was identified.

Comment: A respondent noted that Congress was insistent on improved reporting by DoD and industry and said that it is through reporting that industry and Government inform each other of known risks and identified threats. The respondent acknowledged that a draft FAR case (2013–002) will address reporting, but the DFARS rule essentially ignored reporting. The respondent expressed concern about anecdotal evidence of lower reporting to the GIDEP since enactment of section 818 and urged DoD to conduct a review of reporting frequency to GIDEP subsequent to December 13, 2011.

Response: The frequency of reports made to GIDEP is outside the scope of this case.

11. Clauses

Comment: A respondent recommended reversing the order of the words ''detection'' and ''avoidance'' in the clause title of 252.246–7007 and in lines 3 and 5 of paragraph (b), so as to reflect the actual process, i.e., one cannot avoid what one has not detected.

Response: DoD has made appropriate revisions to DFARS 246.870–2 and –3 and the clauses at 252.244–7001, its Alternate I, and 252.244–7007.

Comment: One respondent recommended revising the prescription for the clause at FAR 52.246–7007 to add statutory references and references to the Code of Federal Regulations.

Response: The clause prescription is revised to ensure the clarity of its applicability, but statutory references and references to the CFR generally are not included in clause prescriptions.

12. Obsolete Parts

Comment: One respondent stated that the issue of obsolete parts must be addressed, possibly through a definition for ''obsolete part.'' Noting that electronic parts have life cycles far shorter than the defense and aerospace products utilizing them, the respondent said that it is incumbent on DoD to provide clear guidance so that contractors can develop supply chain processes to mitigate risks inherent with obsolete parts requisitioning.

Response: The following definition of ''obsolete electronic part'' is added in the final rule: ''An electronic part that is no longer in production by the original manufacturer or an aftermarket manufacturer that has been provided express written authorization from the design activity or original manufacturer.'' Obsolescence control is a fundamental aspect of counterfeit prevention and should be addressed by the contractor in its counterfeit detection and avoidance system (see DFARS 246.870–2(b)(12) and paragraph (c)(12) of the clause at DFARS 252.246–7007).

Comments: Several respondents expressed concerns about obsolete parts. One respondent stated that the rule should address ''(a) known risks and challenges of DoD's continued use of obsolete and out-of-production parts, (b) the vulnerability created by the continued demand for obsolete and out-of-production parts, (c) the increasing constraints on DoD's ability to support and fund ways to eliminate continued use of obsolete and out-of-production parts needed to (i) support fielded systems, and (ii) manufacture new orders to aged, legacy designs and specifications.'' This respondent recommended some mechanism for contractors to assess the bill of materials for products being supported, recommend alternatives, and expect direction from each DoD customer as to how to proceed.

A respondent recommended that contractors be instructed to purchase directly from legally authorized sources. The respondent recognized, however, that there may be circumstances where a part is unavailable from any legally authorized source, including authorized aftermarket sources, and recommended that, after a contractor in good faith determines this to be the case, it should be permitted to purchase a part from a ''trusted supplier.'' Another respondent stated that DoD had not recognized the role parts brokers play in supplying obsolete parts for long life-cycle DoD systems when the original manufacturer has discontinued manufacturing a part long before a system is retired.

Response: Parts obsolescence is a matter of concern because it can create vulnerabilities in the supply chain. DoD is adding a definition of ''obsolete electronic part'' in the final rule, and the system criteria at DFARS 246.870–2(b) and 252.246–7007(c)(12) are modified to address obsolete parts. Detailed guidance and mechanisms concerning supply chain processes to mitigate risks inherent with obsolete parts are outside the scope of this case. Guidance and mechanisms concerning obsolete parts mitigation are discussed collaboratively via the Government's Diminishing Manufacturing and Material Shortages (DMSMS) Program and its Knowledge Sharing Portal. See *https://acc.dau.mil/dmsms.*

13. Other Comments

Comment: Recognizing that DoD was constrained by the terms of the legislation in drafting this rule, a respondent recommended that DoD push in the future for a legislative change that the respondent considered would give DoD and its contractors an opportunity to establish plans for addressing part obsolescence and balance the cost of design modifications to eliminate obsolete parts against the risk of purchasing obsolete parts from riskier sources of supply.

Response: Legislative proposals are outside the scope of this case.

Comment: A respondent noted that a large challenge will be to ensure adequate workforce training across the Federal Government.

Response: The determination and provision of appropriate training for the DoD workforce is outside the scope of this rule and is being assessed by the Defense Acquisition University.

Comments: Three respondents provided information about their products that they assert are proven and acceptable methods for detecting counterfeit parts and rapidly determining if a suspect part is, in fact, counterfeit.

Response: DoD does not advocate for individual products.

Comment: A respondent noted that a major rule is defined as one that is likely to result in (a) an annual effect on the economy of $100 million or more, (b) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the U.S.-based firms to compete with foreign-based firms in domestic and export markets. Given the definition, the respondent suggested that DoD should reexamine whether this rule should be re-classified as a major rule because of the potential for understatement as a result of the flowdown requirement to all subtiers.

Response: DoD has reassessed the cost impact of this rule and does not consider that it meets the criteria for classification as a major rule. The Office of Information and Regulatory Affairs also did not find this rule to be a major rule.

C. Other Changes

The proposed rule contained a definition of ''counterfeit electronic part avoidance and detection system'' in the clause at DFARS 252.246–7007. Because the revisions and extensive additions made in the final rule to the system criteria at DFARS 246.870–2(b) and the clause at DFARS 252.246–7007 effectively define this system more thoroughly than did the definition in the proposed rule, the definition has been removed from the clause in the final rule.

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

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

This final rule partially implements section 818 of the National Defense Authorization Act for Fiscal Year 2012 and implements section 833 of the National Defense Authorization Act for Fiscal Year 2013 in DoD-wide regulations on contractors' requirements to identify, avoid, and report counterfeit and suspect counterfeit parts.

No significant issues were raised by the public with regard to the initial regulatory flexibility analysis. However,

several respondents commented in favor of, or against, flowing down the counterfeit parts detection and avoidance system required of prime CAS-covered contractors to small business suppliers. Small business subcontractors that supply electronic parts or assemblies containing electronic parts to CAS-covered prime contractors will incur some costs for complying with prime contractors' requirements.

No comments were received from the Chief Counsel for Advocacy of the Small Business Administration.

The rule does not apply to small entities as prime contractors. The requirements apply only to prime contractors that are subject to the Cost Accounting Standards (CAS) under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1. Prime contracts with small entities are exempt from CAS requirements.

There is, however, the potential for an impact on small entities in the supply chain of a CAS-covered prime contractor, but only when the prime contractor is supplying electronic parts or assemblies containing electronic parts and the subcontractor is also supplying electronic parts or assemblies containing electronic parts. In that case, the prohibitions against counterfeit and suspect counterfeit electronic items and the requirements for systems to detect such parts flow down to all levels of the supply chain. There will, therefore, be some impact on small entities that supply electronic parts to DoD CAS-covered prime contractors but no impact on small entities when they supply electronic parts directly to DoD.

The rule uses the existing requirements for contractors' purchasing systems as the basis for the anti-counterfeiting compliance (see the clause at DFARS 252.244–7001, Contractor Purchasing System Administration, and its Alternate I).

Suppliers, including small entities, will need to be able to trace the source of the electronic parts they are supplying to the original source if they are not the original manufacturer or current design activity, including an authorized aftermarket manufacturer.

The economic impact on small entities has been minimized by—

(a) Using the existing requirements (and contract clause) for contractors' purchasing systems, rather than creating separate, new systems; and

(b) Restraining applicability only to small businesses that are subcontractors supplying electronic parts or assemblies containing electronic parts to CAS-covered prime contractors.

Seven comments were received on the Regulatory Flexibility Act section during the public comment period:

Comments: Several respondents concluded that, because small business suppliers are part of every CAS-covered contractor's supply chain, small businesses will be impacted by this rule, even though they would otherwise be exempted as prime contractors (not subject to CAS). Despite the different impact on small businesses as subcontractors/suppliers versus small businesses as prime contractors, one of these respondents stated that it was important to make the clause at DFARS 252.246–7007 a mandatory flowdown requirement for use in all subcontracts at every tier. However, a different respondent strongly recommended that the impact on small businesses should be minimized by clarifying the applicability of the cost allowability limitations to prime CAS-covered contractors and limiting the flowdown of counterfeit detection and avoidance requirements to subcontractors operating under CAS-covered subcontracts. A third respondent approached this subject by noting that, ''(a)nalytically, DoD should be just as concerned about the impact of a counterfeit from a small business as from a large contractor . . . (b)ut important socio-economic policies are served by small business participation requirements.'' This respondent favored flowdown to all subcontractors/suppliers but suggested that DoD fashion some sort of safety valve to address situations where the only sources of required parts refuse to accept flowdown and won't agree to conform to risk-mitigation requirements.

Other respondents stated that the impact on small business subcontractors/suppliers would not be negligible because the flowdown of counterfeit detection and avoidance requirements will always have costs. The proposed rule would require all affected subcontractors, including small businesses, to incur substantial overhead costs to establish the necessary compliance systems, according to one respondent. Two other respondents stated that the impact on small entities would likely be significant, either due to the associated costs of detection and avoidance or the inability to compete without such capabilities.

Response: DoD agrees with those respondents that deemed small businesses will be impacted as subcontractors. The requirement for flowdown is addressed in a previous section of this rule. However, affected subcontractors, including small businesses, will not necessarily incur substantial new overhead costs to establish necessary compliance systems, as suggested by some respondents. Most firms that produce or distribute electronic parts or assemblies containing electronic parts are well aware of their obligation not to furnish counterfeit electronic parts and have programs in place to protect themselves and their customers from the consequences of counterfeit parts. DoD's analysis of the impact of this rule on small businesses reflects this circumstance.

V. Paperwork Reduction Act

This rule affects the information collection requirements in the provisions at DFARS subpart 244.3 and the clause at DFARS 252.244–7001, currently approved under OMB Control Number 0704–0253, entitled Purchasing Systems, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The current information collection estimates that 90 respondents will submit one response annually, with 16 hours per response. We estimate that the additional information collection burden associated with the clause at 52.244–7001—Alternate, will be as much as five percent more than the existing burden. Therefore, the change to the current annual reporting burden for OMB Control Number 0704–0253 is estimated as follows:

Respondents: 5.

Responses per respondent: 1.

Total annual responses: 5.

Preparation hours per response: 16.

Total hours: 80.

One comment was received on the Paperwork Reduction Act section of the proposed rule:

Comment: A respondent noted that the numbers submitted in the proposed rule estimated that DCMA would conduct 90 CPSRs annually and that, if these numbers were accurate, then DCMA would be unable to complete audits of all 1,200 CAS- and partial-CAS-covered contractors for a first-time audit of their counterfeit parts enhancements for over a decade. In addition, the respondent said, the DoD estimate did not factor in the cost and paperwork associated with the enhanced CPSRs for the other potentially impacted subcontractors, which it claimed could number in the tens of thousands.

Response: A complete CPSR is not always necessary for all contractors. Further, DCMA continually assesses its oversight obligations and modifies its priorities and assignments as required.

List of Subjects in 48 CFR Parts 202, 231, 244, 246, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202, 231, 244, 246, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 202, 231, 244, 246, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. In section 202.101 add, in alphabetical order, the definitions ''counterfeit electronic part,'' ''electronic part,'' ''obsolete electronic part,'' and ''suspect counterfeit electronic part'' to read as follows:

202.101 Definitions.

* * * * *

Counterfeit electronic part means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

* * * * *

Electronic part means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112–81). The term ''electronic part'' includes any embedded software or firmware.

* * * * *

Obsolete electronic part means an electronic part that is no longer in production by the original manufacturer or an aftermarket manufacturer that has been provided express written authorization from the current design activity or original manufacturer.

* * * * *

Suspect counterfeit electronic part means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

* * * * *

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Add section 231.205–71 to read as follows:

231.205–71 Cost of remedy for use or inclusion of counterfeit electronic parts and suspect counterfeit electronic parts.

(a) *Scope.* This subsection implements the requirements of section 818(c)(2), National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81) and section 833, National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239).

(b) The costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

(1) The contractor has an operational system to detect and avoid counterfeit parts and suspect counterfeit electronic parts that has been reviewed and approved by DoD pursuant to 244.303;

(2) The counterfeit electronic parts or suspect counterfeit electronic parts are Government-furnished property as defined in FAR 45.101; and

(3) The contractor provides timely (i.e., within 60 days after the contractor becomes aware) notice to the Government.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

■ 4. In section 244.303, designate the text as paragraph (a) and add a new paragraph (b) to read as follows:

244.303 Extent of review.

* * * * *

(b) Also review the adequacy of the contractor's counterfeit electronic part detection and avoidance system under clause 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System.

■ 5. Revise section 244.305–71 to read as follows:

244.305–71 Contract clause.

Use the Contractor Purchasing System Administration basic clause or its alternate as follows:

(a) Use the clause at 252.244–7001, Contractor Purchasing System Administration—Basic, in solicitations and contracts containing the clause at FAR 52.244–2, Subcontracts.

(b) Use the clause at 252.244–7001, Contractor Purchasing System Administration—Alternate I, in solicitations and contracts that contain the clause at 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, but do not contain FAR 52.244–2, Subcontracts.

PART 246—QUALITY ASSURANCE

■ 6. Add subpart 246.8 to read as follows:

Subpart 246.8—Contractor Liability for Loss of or Damage to Property of the Government

Sec.
246.870 Contractors' counterfeit electronic part detection and avoidance systems.
246.870–1 Scope.
246.870–2 Policy.
246.870–3 Contract clause.

Subpart 246.8—Contractor Liability for Loss of or Damage to Property of the Government

246.870 Contractors' counterfeit electronic part detection and avoidance systems.

246.870–1 Scope.

This section—

(a) Implements section 818(c) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81); and

(b) Prescribes policy and procedures for preventing counterfeit electronic parts and suspect counterfeit electronic parts from entering the supply chain when procuring electronic parts or end items, components, parts, or assemblies that contain electronic parts.

246.870–2 Policy.

(a) *General.* Contractors that are subject to the Cost Accounting Standards (CAS) and that supply electronic parts or products that include electronic parts and their subcontractors that supply electronic parts or products that include electronic parts, are required to establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to do so may result in disapproval of the purchasing system by the contracting officer and/or withholding of payments (see 252.244–7001, Contractor Purchasing System Administration).

(b) *System criteria.* A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address, at a minimum, the following areas (see 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System):

(1) The training of personnel.

(2) The inspection and testing of electronic parts, including criteria for acceptance and rejection.

(3) Processes to abolish counterfeit parts proliferation.

(4) Processes for maintaining electronic part traceability.

(5) Use of suppliers that are the original manufacturer, sources with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer or suppliers that obtain parts exclusively from one or more of these sources.

(6) The reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts.

(7) Methodologies to identify suspect counterfeit electronic parts and to rapidly determine if a suspect counterfeit electronic part is, in fact, counterfeit.

(8) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts.

(9) Flow down of counterfeit detection and avoidance requirements.

(10) Process for keeping continually informed of current counterfeiting information and trends.

(11) Process for screening the Government-Industry Data Exchange Program (GIDEP) reports and other credible sources of counterfeiting information.

(12) Control of obsolete electronic parts.

246.870–3 Contract clause.

(a) Except as provided in paragraph (b) of this section, use the clause at 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, in solicitations and contracts when procuring—

(1) Electronic parts;

(2) End items, components, parts, or assemblies containing electronic parts; or

(3) Services where the contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

(b) Do not use the clause in solicitations and contracts that are set-aside for small business.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 252.244–7001 by—

■ a. Revising the introductory text, clause title and date;

■ b. Revising paragraphs (c)(19), (20) and (21); and

■ c. Adding Alternate I.

Revised text reads as follows:

252.244–7001 Contractor Purchasing System Administration.

As prescribed in 244.305–71, use one of the following clauses:

Basic. As prescribed in 244.305–71(a), use the following clause.

CONTRACTOR PURCHASING SYSTEM ADMINISTRATION—BASIC (MAY 2014)

* * * * *

(c) * * *

(19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable;

(20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, if applicable;

(21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements, including the requirements of 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, and the item marking requirements of 252.211–7003, Item Unique Identification and Valuation, if applicable;

* * * * *

Alternate I. As prescribed in 244.305–71(b), use the following clause, which amends paragraph (c) of the basic clause by deleting paragraphs (c)(1) through (c)(18) and (c)(22) through (c)(24), and revising and renumbering paragraphs (c)(19) through (c)(21) of the basic clause.

CONTRACTOR PURCHASING SYSTEM ADMINISTRATION—ALTERNATE I (MAY 2014)

The following paragraphs (a) through (f) of this clause do not apply unless the Contractor is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1.

(a) *Definitions.* As used in this clause—

Acceptable purchasing system means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

Purchasing system means the Contractor's system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *Acceptable purchasing system.* The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor's purchasing system shall—

(1) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System;

(2) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, and, if applicable, the item marking requirements of 252.211–7003, Item Unique Identification and Valuation; and

(3) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are from sources that meet contractor quality requirements, including the requirements of 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System.

(d) *Significant deficiencies.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final

determination to disapprove the Contractor's purchasing system, and the contract includes the clause at 252.242–7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

■ 8. Add new section 252.246–7007 to read as follows:

252.246–7007 Contractor Counterfeit Electronic Part Detection and Avoidance System.

As prescribed in 246.870–3, use the following clause:

CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (MAY 2014)

The following paragraphs (a) through (e) of this clause do not apply unless the Contractor is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1.

(a) *Definitions.* As used in this clause—

Counterfeit electronic part means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

Electronic part means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112–81). The term ''electronic part'' includes any embedded software or firmware.

Obsolete electronic part means an electronic part that is no longer in production by the original manufacturer or an aftermarket manufacturer that has been provided express written authorization from the current design activity or original manufacturer.

Suspect counterfeit electronic part means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

(b) *Acceptable counterfeit electronic part detection and avoidance system.* The Contractor shall establish and maintain an acceptable counterfeit electronic part detection and avoidance system. Failure to maintain an acceptable counterfeit electronic part detection and avoidance system, as defined in this clause, may result in disapproval of the purchasing system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* A counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address, at a minimum, the following areas:

(1) The training of personnel.

(2) The inspection and testing of electronic parts, including criteria for acceptance and rejection. Tests and inspections shall be performed in accordance with accepted Government- and industry-recognized techniques. Selection of tests and inspections shall be based on minimizing risk to the Government. Determination of risk shall be based on the assessed probability of receiving a counterfeit electronic part; the probability that the inspection or test selected will detect a counterfeit electronic part; and the potential negative consequences of a counterfeit electronic part being installed (e.g., human safety, mission success) where such consequences are made known to the Contractor.

(3) Processes to abolish counterfeit parts proliferation.

(4) Processes for maintaining electronic part traceability (e.g., item unique identification) that enable tracking of the supply chain back to the original manufacturer, whether the electronic parts are supplied as discrete electronic parts or are contained in assemblies. This traceability process shall include certification and traceability documentation developed by manufacturers in accordance with Government and industry standards; clear identification of the name and location of supply chain intermediaries from the manufacturer to the direct source of the product for the seller; and where available, the manufacturer's batch identification for the electronic part(s), such as date codes, lot codes, or serial numbers. If IUID marking is selected as a traceability mechanism, its usage shall comply with the item marking requirements of 252.211–7003, Item Unique Identification and Valuation.

(5) Use of suppliers that are the original manufacturer, or sources with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer or suppliers that obtain parts exclusively from one or more of these sources. When parts are not available from any of these sources, use of suppliers that meet applicable counterfeit detection and avoidance system criteria.

(6) Reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts. Reporting is required to the Contracting Officer and to the Government-Industry Data Exchange Program (GIDEP) when the Contractor becomes aware of, or has reason to suspect that, any electronic part or end item, component, part, or assembly containing electronic parts purchased by the DoD, or purchased by a Contractor for delivery to, or on behalf of, the DoD, contains counterfeit electronic parts or suspect counterfeit electronic parts. Counterfeit electronic parts and suspect counterfeit electronic parts shall not be returned to the seller or otherwise returned to the supply chain until such time that the parts are determined to be authentic.

(7) Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit.

(8) Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. The Contractor may elect to use current Government- or industry-recognized standards to meet this requirement.

(9) Flowdown of counterfeit detection and avoidance requirements, including applicable system criteria provided herein, to subcontractors at all levels in the supply chain that are responsible for buying or selling electronic parts or assemblies containing electronic parts, or for performing authentication testing.

(10) Process for keeping continually informed of current counterfeiting information and trends, including detection and avoidance techniques contained in appropriate industry standards, and using such information and techniques for continuously upgrading internal processes.

(11) Process for screening GIDEP reports and other credible sources of counterfeiting information to avoid the purchase or use of counterfeit electronic parts.

(12) Control of obsolete electronic parts in order to maximize the availability and use of authentic, originally designed, and qualified electronic parts throughout the product's life cycle.

(d) Government review and evaluation of the Contractor's policies and procedures will be accomplished as part of the evaluation of the Contractor's purchasing system in accordance with 252.244–7001, Contractor Purchasing System Administration—Basic, or Contractor Purchasing System Administration—Alternate I.

(e) The Contractor shall include the substance of this clause, including paragraphs (a) through (e), in subcontracts, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts.

(End of clause)

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